



HUMAN RIGHTS ASSOCIATION

**COPENHAGEN POLITICAL  
CRITERIA  
and  
TURKEY  
(Legislative Screening)**

Human Rights Association Publications  
*Copenhagen Political Criteria and Turkey*  
*(Legislative Screening)*  
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HRA Publications

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**Ankara  
13 July 2000**

# Introduction

With a study on Copenhagen Political Criteria and Turkey (Legislative Screening) the Human Rights Association aims at specifying the position of the Turkish law legislation vis-à-vis Copenhagen criteria, attracting the attention of public opinion and of legislative and executive organs, establishing, therefore, a basis to develop proposals for amendments in the light of supranational human rights documents, and contributing to Turkey to become a country having high level of human rights and democratic standards.

Legislative screening has been limited to Constitution and laws. Copenhagen Political Criteria - democracy, rule of law, human rights and minority rights - have been evaluated in the framework of the approach of the Human Rights Association that human rights are universal, indivisible and interrelated each other. Existing legislation has been screened in accordance with definitions of and approaches on democracy, rule of law, human rights and minority rights in the supranational human rights documents agreed and declared by the United Nations, Council of Europe, European Security and Cooperation Organisation.

We consider that 77 law needs to be amended with regard to Copenhagen Criteria. According to the indicators we developed, there are 17 laws in the field of human rights, 33 laws in the field of rule of law, 55 laws in the field of democracy and 21 laws in the field of minority rights (based on pluralism principle) require amendments. Some of laws are related with rule of law, some with democracy and some with human rights categories. On some issues, repetitions were unavoidable. In spite of the fact that, this study could have been conducted by sorting out all issues under human rights category without making any distinction, but it appeared to be imperative to make distinction in the light of Copenhagen Political Criteria.

On this occasion we would like to emphasize the approach of the Human Rights Association once more. Since the Human Rights Association defends the universality of human rights, it does not look at the problem as an internal one. Human rights require a universal attention and consideration. However, the main dynamics of protection and development of human rights are anchored to internal dynamics of each country. This is why the Human Rights Association emphasises its confidence to the strength of democratic public opinion in Turkey in protection and development of human rights. This does not exclude international solidarity. The Human Rights Association is in contact and solidarity with human rights activists all over the world.

The approach of the Human Rights Association is as follows: Protection and the development of human rights depend on the existence of people who are in need of human rights and feel this need. Nevertheless this is not enough. Those who need human rights have to demand these rights. The acquisition, protection, use and development of human rights require the existence of an international solidarity and interest both at regional and universal levels. Supranational control and judicial mechanisms are important.

In the development of interstate relations, it is positive to bring the criteria to respect to human rights. This is one of the most effective ways to protect human rights in given circumstances. Without undermining the effect of external dynamics on human rights and democratic standards, it will be necessary to keep away from approaches that will lead to idleness on the issues of rights and freedoms.

The Human Rights Association shall continue its struggle in protection and development of human rights whatever the direction of the EU process goes to. The important thing here is to be consistent in principles. The EU- Turkey relations will create a positive effect towards the human rights and development of

democratic standards as long as it is developed in a way that they do not sacrifice human rights, vis-a-vis economic, financial and military interests which come naturally in interstate relations. This is only a forecast and an observation. The Human Rights Association shall continue to work for the protection and development of human standards in all circumstances. This is why we are concerned about EU-Turkey relations. We are both citizens of the Republic of Turkey, and a national human rights organisation operating in accordance with laws of the Republic of Turkey. Human rights and freedoms to be discussed in the EU-Turkey relations are directly related to our rights and freedoms. Therefore we have made a screening study to comply with Article 2 of our Regulation that aims at conducting studies on human rights and freedoms.

The study is carried out under four categories: democracy, rule of law, human rights and minority rights. In the section devoted to democracy, legislation is screened in the light of three fundamental elements of the principle of democracy; *pluralism*, *participation* and *openness*. In the section devoted to the rule of law, independence of judges and guarantees for judges, military judiciary in the context of relations with executive organ have been screened. In the human rights section, right to live, right of freedom and security of individual, freedom of expression, freedom of belief and freedom to organise have been examined. Finally, in the context of minority rights - not as a status, but as part of human rights and democratic standards—rights for language, mother tongue, culture, education and training, radio and television have been taken into consideration.

HRA believes in bright future of the people of Turkey. In our country, there is a democratic public opinion consisted of labourers, public servants, intellectuals, journalists, jurists and several others who demands and strives to increase human rights and democratic standards to universal level.



Kurdish population intensively living in the South East Region of our country outspokenly expresses their wish to move from extraordinary governance prolonged since 22 years towards normal regime conditions, and to live in a high standard democracy with peace. Our people, whose villages have been burnt and, who were forced to migrate and attested and subject of the armed conflict, demand no further suffering but introduction of reforms in political, social and economic fields by governors of Turkey.

Turkey, as a whole, wants more freedom and more rights. Turkey has overcome a process of 16-year of conflict. We had all been traumatised and wounded. It is now the time to recover and to increase standards. Standards are universal, human rights are universal, and democracy is universal. There are no human rights “*only for us*”. There is no democracy “*only for us*”. As a human rights organisation what we want to do is to fulfill our responsibilities. We feel responsible towards our country, citizens and humanity, not only responsible but also indebted. Of course experts of the issue shall make better and more detailed studies. It will be our society and us who shall be benefiting criticism.

13.07.2000 - Hüsni Öndül, President

**PART I**  
**DEMOCRACY**



## DEMOCRACY

### **Evaluation and Suggestions With Respect to the Principle of Pluralism**

The screening reveals that incongruity with the principle of pluralism has been entirely spread over the legal structure. On the other hand, political and legal systems have been based on the emphasis to ethnic identity. In spite of the fact that the Republic of Turkey is not formed by a human community with a single ethnic origin, citizens of the Republic of Turkey are identified as Turkish citizen basing on the Turkish ethnical identity. As it can be seen from legal texts referring to ethnic origin, descriptions like *Turks*, *children of Turk*, *being Turk*, *Turkish consanguinity*, *honour to be Turk* are used. Neither to citizen of the Republic of Turkey nor to citizen of the State of Republic of Turkey are referred in legal arrangements where citizenship of the Republic of Turkey is meant.

Although it has been claimed by some politicians, academics or bureaucrats, judges and jurist, citizenship in the Constitution and laws is not, in reality, perceived as a legal bound between the State and the citizen. Any description like *Turk*, *Turks and Turkish history*, *Turkish culture*, *Turkish language*, *every Turk* is not obviously related to citizenship. The main question to be posed here is in which way the citizenship is perceived. Concrete analysis of the situation should start with the Constitution.

Article 66 of the Constitution together with the title of Article reads that;

#### *Turkish Citizenship*

*Article 66. Everyone bound to the Turkish State through the bond of citizenship is a Turk.*

*The child of Turkish father or a Turkish mother is a Turk. The citizenship of a child of a foreign father and a Turkish mother shall*

*be defined by law.*

*Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law.*

*No Turk shall be deprived of citizenship, unless he/she commits an Law incompatible with loyalty to the motherland.*

*Recourse to the courts, against the decisions and proceedings related to the deprivation of citizenship, shall not be denied.*

From the examination of the Article, it is understood that the legislator of the Constitution asked the question of whom the Turk is. This is the reason why the title of the Article does not read as “*citizenship of the Republic of Turkey*”. Instead, the word *Turkish* referring to an ethnic origin is used. It is the Turk defined in the Article. The Turk is the one who is bound to the Turkish State with citizenship. The State is therefore the Turkish State. This explicitly shows that the citizenship is not comprehended as a legal bound, but it is rather determined according to the ethnic origin. Because, citizenship is understood to be citizen of the Turk and of the Turkish State.

However, if the problem were apprehended and understood as a problem of citizenship, the heading and the content of the Article should have been formulated as follows: *Citizenship of the State of the Republic of Turkey* or simply *Citizenship*. Naturally, this sort of approach would ask the question of whom the citizen of the State of Republic of Turkey is, rather than questioning whom the Turk is or who is called as Turk. Therefore, the content of Article could have been arranged as below, since the question aims at identifying the legal bound in real terms,:

***Everyone bound to the State of the Republic of Turkey (or State of Turkey or Republic of Turkey) through the bond of citizenship is the citizen of the State of the Republic of Turkey (or simply State of Turkey or Republic of Turkey).***

There is a big difference between these two approaches. The

existing Constitutional arrangement has been prepared in the light of an approach emphasising an ethnic origin. When it is examined together with duties and works entrusted to the State by other laws, it is observed that there is no normative arrangement entrusted to the State to enable citizens of the Republic of Turkey having different language, religion and cultures to protect and develop these differences. Even differences are forbidden and expression of differences are taken under sanction too. On the contrary, the State has gone for specific legal arrangements and created institutionalisation on the language, religion, culture, music, cinema, folklore, literature and whatnot of the Turk. This is natural. What is not natural is to ignore the existence of different languages and cultures and, on top of it to forbid them by a regime of prohibition. Issues mentioned here are evidences that the Turkish citizenship is not perceived as a legal bound.

We have to also underline the male dominant approach which takes the Turkish citizenship under the monopoly of male sex in Article 66 of the Constitution. Even though the child of Turkish fathers has the possibility to have Turkish citizenship, citizenship of child who is born to a foreign father and a Turkish mother is left to be determined by law according to the Constitution. This puts forward the consideration of root relations and the understanding that roots continue through males. The wording here should be as follows; *the child of a mother and/or father who are the citizens of the Republic of Turkey (State of Turkey or Republic of Turkey) is the citizen of the Republic of Turkey (State of Turkey or Republic of Turkey).*

As a natural result of pluralism principle, acceptance of the existence of different language, religion, and ethnic origins means also acceptance on the freedom of expression of different thoughts. Acceptance on its own is not enough, **the main aim and duties of the state should also be defined accordingly.** This situation also identifies the context of the Constitutional Citizenship. The national character of the State does not disappear in the

Constitutional Citizenship. It is not possible to perceive of national character to be based on a single ethnic origin of the community. To be national means to be based on citizens of the Republic of Turkey having various ethnic origins in the Constitutional Citizenship and the understanding of above-mentioned citizenship. By the adoption of the approach on Constitutional Citizenship, more duties and aims neglected up to now have to be entrusted to the State. For example, in ethnic and cultural fields, the following arrangement should be made: ***“the state prepares the appropriate conditions necessary for protection and development of the pluralist ethnic structure of Turkey and cultural diversity within the integrity of the state*** (proposed by Zafer Üskül) ***and takes the necessary measures*** (addition by HRA). The reason for such an arrangement and undertaking by the State is based on the nature of the plural ethnic and cultural structure of Turkey. For example, in Turkey at the 1927—1965 census, statistics on spoken languages (mother tongues) were published. Languages of Turkish, Kurdish, Abhaza, Arabic, Albanian, Caucasian, Armenian, Georgian, Coptic, Laz, Pomak, Greek, Assyrian, Tatar, Jewish and Zaza have been spoken in Turkey. Instead of showing an effort by the State to protect and to develop these languages (except the non-Muslim community recognised by Lausanne), there are prohibitive and punishing measures in Articles 26, 28 and 42 of the Constitution, the Law on Associations and Law on Political Parties.

Similarly, in the field of freedom of religion, the State, supposed to be laic, has only gone for institutionalisation in providing services related to Islam - only to a sect of the Islam - and has kept religious instructions obligatory in educational and training institutions. Therefore, the State makes its choice in the field of freedom of religion and belief.

As an example, Article 136 of the Constitution-provides a role to the Department of Religious within the general administration, talks about the laic character of the State on the one hand, and establishes an institution providing religious services on the other.

It is not clear in Article the position of State vis-à-vis religions and beliefs. But, at the very first Article on the establishment of the Department of the Religious Affairs as a Constitutional institution, it is written that the aim of setting up the Department is to make relevant services to Islam religion. However, in the sub normative arrangements as well as in activities and procedures, it is seen that it provides services for a single sect, by making a distinction within the Islam, among several sects of Islam (Sunni Hanefi), however for other beliefs and sects together with citizens of different beliefs does not offer any services. With the existing structure, it will not be an exaggeration to say that the Turkish-Islam synthesis has put its deep sealing on the Constitutional and legal structure. For this reason, the constitution should be reconsidered with an understanding which sees all its citizens, men and women as a whole, equal and balanced instead of obstinating in an ideology, thought, religion and ethnic origin.

In the above-mentioned arrangements, the ethnic emphasis should be deleted from legal arrangements related with the rights for citizenship, and citizen of the State of the Republic of Turkey or citizens of Republic of Turkey should be inserted. Measures imposing prohibition of different language, religion and cultures and sanctions for contrary behaviours should be eliminated. The understanding for constitutional citizenship should be dominant in Turkey and appropriate arrangements should be made in accordance with the reality that the nation is formed by all citizens.

### **Evaluation and Suggestions With Respect to the Principle of Openness**

Democracy is a regime where the people exercise rights freely to obtain correct information, to get information on laws, to know about the activities and procedures of the public authorities and to appeal to judiciary against these activities and procedures. It is observed that the principle of openness is infringed by putting



forward reasons related to state security, state secrets, high interests of the state. Legal arrangements have been made with the concepts of confidentiality and state secrets which excludes judicial supervision. Therefore, enforcement of Article 125 of the Constitution becomes impossible. Moreover, immunity for civil servants who act against laws is ensured by hiding behind the concept of state secrecy, in addition to the regulations which subject trial of public servants and state officials to a permission system. In democracies, it cannot be accepted that any information or any high interest be hidden from the Constitutional Court which supervises the general administration. For this reason, abovementioned laws should be entirely changed and reformulated in the light of the open society principle.

### **Evaluation and Suggestions With Respect to the Principle of Participation**

Participation into the country governance is one of the human rights. Although the main principle for participation into governance is the general voting, only holding elections which are made under the control and observation of judiciary and basing on the principle of free, general, equal, secret ballot, open counting are not sufficient to ensure the participation. When issue is considered from this aspect, it is easy to see that the establishment of the National Security Council is an administrative unit not basing on elections.

Joining political parties by citizens should be facilitated in order to enliven the principle of participation. Legal arrangements should not give way to the establishment of political parties based on a single ideology. People with different beliefs should be able to take part in different political parties. One of the main conditions for this is to recognise the right for freedom of expression. But, there are a series of limitations in this respect. Political parties are subject to a regime of prohibition. Provisions in existing legislation like imposition of high thresholds in the election system, condition of being organised at least in the half of the

country to participate in elections, ruling out the freedom of expression in the programmes and regulations of the political parties, prohibitions on the use of language other than Turkish in party activities and in elections, restrictions on the expression of thoughts towards the functions of the Department of Religious Affairs cannot be accepted. Similarly, it is also difficult to understand Why organised bodies like associations and trade unions cannot be regarded as being principal elements of democracy as political parties are regarded so. Participation in democracies requires direct participation of organised people into decision making mechanism and, supervision of decisions and executions by the public beside the judiciary. However, in Turkey, any participation opportunity has not been provided for associations, trade unions or any other democratic mass organisations neither in local governance nor in central governance. Central and Local governments consult very rarely to democratic mass organisations when they need to get opinions. As it is the case with Decrees on State of Emergency, a system run solely by possessions of the executive organ, without involving the Turkish Grand National Assembly in the decision making process, means having a lot deficits. These are reasons why the National security Council should be eliminated from being a Constitutional body and its functions should be limited to only a consultative level. Military and civil bureaucracy can only function at disposal of the elected institutions in democracies.

Restrictive provisions should be abrogated from laws regulating establishment and functions of political parties. Election system should be rearranged to give a way for representation. Proportional representation system (system of justice in representation) applied in 1960s should be turned back. Prohibitions on language, culture and freedom of wxpression in party activities should be lifted. If the barrage system is to be maintained then it should be reduced to a minimum level.

## DEMOCRACY

### a) With respect to the principle of pluralism in a society consisted of people with different ethnic origins

Following provisions in the legislation need to be amended

#### **The Constitution of the Republic of Turkey**

*Turkish nation and country, High Turkish State, Turkish nation, Turkish national interests, Turkish entity, Turkish historical and spiritual values, Turkish sons and daughters mentioned in the Preamble*

*Turkish nation, Turkish society in Articles 5,6,7 and 9, Turkish citizens in Article 42,*

*Turkish citizens in Articles 59 and 62, Turkish citizenship, Turkish State, everybody is Turk, Turkish Father, Turkish mother, No Turk in Article 66, Turkish citizen in Article 67, Every Turk in Article 70, Every Turk in Article 72, Every Turk in Article 76, Great Turkish Nation in Article 81, Turkish laws in Article 90, Turkish citizens in Article 101, Turkish nation, Turkish state in Article 104, Turkish culture, Turkish history, Turkish language in Article 134, Turkish society in Article 174.*

#### **Population Law**

*Every Turk in Article 4, Turkish citizen, Turkish consulate in Article 9*

#### **Surname Law**

*Every Turk in Article 1*

#### **Law on Cinema, Video and Music Works**

*Turkish cinema and music art in Article 1 and Turkish cinema and music art in Article 2*

#### **Law on Villages**

*Turkish and Islam History in Article 84*

#### **Decree on Private Education Institutions**

*Turkish national education in Article 1*

**Law on Private Education Institutions**

*Aims of the Turkish national education in Article 2, Turkish citizens, Turkish State, Turkish nation and national values in Article 5, Turkish director, Turkish origin, Turkish deputy director in Article 24, Turkish citizens in Article 25*

**Law on Foreign Language Education and Teaching**

*Turkish citizens, aims of Turkish national education in Article 2*

**Higher Education Law.**

*National moral, humanitarian, spiritual and cultural values of the Turkish nation, honour and happiness to be Turk, Turkish State in Article 4, Living level of the Turkish society in Article 12, Turkish republics and relative communities in Article 39*

**Law on Atatürk High Institute of Culture, Language and History**

*Turkish culture, Turkish history in Article 2  
Turkish citizens, Turkish language, Turkish history and history of Turkey, services of Turks to civilisation, honourable past of Turkish nation, Turkic republics and other countries where Turks live intensively, take the possession of all Turk in Article 4, Turkish language, Turkish culture in Article 36, Turkish history and the history of Turkey, contribution of Turks to the civilisation, in Article 54, Turkish history and the history of Turkey in Article 55, Turkish culture in Article 73, Turkish literature, Turkish art, Turkish folklore, Turkish moral laws and traditions, Turkish culture in Article 74*

**Law on Intellectual and Art Works**

*Turkish citizens, Turkish property holders in Article 88*

**Law on Radio and Television- Establishment and Broadcasting**

*Turkish family structure, Turkish national education, Turkish music sector in Article 4, Turkish public and art music in Article 31*

**Law on Wireless Communication**

*Turkish territorial waters, Turkish navigation, Turkish legislation in Article 19, Turkish maritime and air vehicles, Turkish territorial*

waters in Article 22

**Law on Settlement**

*Belonging to Turkish culture in Article 1, from the Turkish ancestors, belonging to Turkish culture in Article 3, ones not belonging to Turkish culture in Article 4, Turkish emigrant in Article 16*

**Law on Turkish citizenship**

*Acquisition of Turkish citizenship at the heading of the Section I*

*Turkish father, from Turkish mother, Turkish citizen in Article 1*

*Turkish citizen in Article 2*

*A Turk, Turkish citizen in Article 3, Turkish citizen in Article 4,*

*Turkish citizen, a Turk in Article 5, Turkish citizen in Article 7,*

*Turkish citizen in Article 13, Turkish citizen in Article 15, Turkish*

*citizen in Article 16, Turkish citizen, stay as a Turk in Article 30*

**Law concerning ban on some garments**

*Turks in Turkey in Article 3*

**Law on removal of by-names, titles such as master, pasha, bey**

*Turks in Article 2*

**Law on prohibition and Abolition of Dervish Lodge, Recluse's Cells and Tombs Guardian and Some Titles**

*Tombs belong to Turkish ancestors*

**Law on Wearing Hat**

*Turkish nation in Article 1*

**Decree (having force of law) on the Establishment of Sciences Academy of Turkey**

*Turkish scientists in Article 2*

**Law on the Establishment of Scientific and Technical Research Council of Turkey**

*Turkish industry in Article 2*

**Law on Radio and Television of Turkey**

*Turkish national education, Turkish citizens in Article 5, Turkish*

22

*armed forces* in Article 31

#### **Law on Civil Servants**

*Turkish nationalism, Turkish nation* in Article 6, *Turkish citizen* in Article 48

#### **Turkish Penal Code**

*Turkish laws, about a Turk* in Article 3, *a Turk* in Article 4, *a Turk, Turkish laws* in Article 5, *Turkish laws, at loss of Turk* in Article 6, *a Turk* in Article 7, *Turkish laws* in Article 8, *of a Turk* in Article 9, *Turkish citizen, Turkish laws* in Article 10, *Turkish flag, from a Turk* in Article 145,

#### **Law on Meetings and Demonstration Marches**

*Turkish citizens* in Article 3

#### **Law on Associations**

*Turkish state* in Article 5, *Turkish citizen* in Article 16, *Turkish citizens, Turkish Consulate* in Article 72

#### **Press Law**

*Turkish citizen* in Article 5, *Turkish courts* in Article 16

#### **Law on Art and Services Devoted to Turkish Citizens in Turkey**

*Turkish citizens, Turkish citizen* in Article 1, *foreigners not from the Turkish race*, in Article 2, *Turkish citizens* in Article 3, *Turkish citizens* in Article 7

#### **Law on Residence and Travel of Foreigners in Turkey**

*Turkish citizens, Turkish law or usage and custom* in Article 7, *not belong to Turkish culture* in Article 21

#### **Law on National Security and Secretariat-General of the National Security Council**

*...by uniting the Turkish nation around the national ideal and values* in Article 4

#### **Law on Primary Education**

*Woman, man all Turks* in Article 1, *Turkish citizen, Turkish primary*

*schools* in Article 4

**Law on Trade Unions**

*Sovereignty belong to Turkish nation* in Article 28, *Turkish State* in Article 58

**Law on Turkish Armed Forces Internal Service**

*Turkish state* in Article 2, *Turkish motherland* in Article 35

**Law on Military High Administrative Court**

*To the name of Turkish nation* in Article 20

**Law on National Basic Education**

*Turkish national education* in Article 1, *Turkish national education system and Aims of Turkish national education system* in the Section I heading, *Turkish national education, Turkish nation, Turkish citizens, Turkish society* in Article 2, *Turkish education and training system* in Article 3, *Turkish national education in the heading of the Section II, Turkish citizens, Turkish society* in Article 5, *Turkish citizen* in Article 7, *national moral and national culture* in Article 10, *Turkish national education* in Articles 12, 17 and 18, *every Turkish child* in Article 23, *Turkish society* in Article 35, *to make education in the quality of protecting, developing, promoting and appropriating national cultural values (from the aim of Turkish national education it is understood that national culture refers to Turkish culture)* in Article 40, *Turkish national education* in Article 43, *Turkish citizens* in Article 59.

**Law on Criminal Procedures**

*Turkish laws* in Article 76, *Turkish political servants* in Article 296

**Law on Political parties**

*Turkish state, Turkish nation* in Article 78, *Turkish nationality* in Article 79, *Turkish society* in Article 84, *Turkish nation* in Article 85

**b) Pluralism principle with regard to the freedom of religion, language, education and training**

**Constitution of the Republic of Turkey**

*No language prohibited by law shall be used in the expression and*

*dissemination of thought in Article 26, freedom area limited with science and art in Article 27, Publication shall not be made in any language prohibited by law in Article 28, No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education in Article 42*

**Political Parties Law**

*No language other than Turkish can be used as a language and in writings in Article 43,*

*Article 78-The provision concerning that Political parties shall not aim at establishing a state regime basing on..... language, race, colour, religion and religious sect discriminations and shall not perform towards this aim; b) Political parties cannot be based on region, race, certain person, family or society, religion, religious sect and religious order and cannot use their names, political parties cannot aim at defending the domination of a social class on other social classes...*

**Boundaries of these provisions are dubious and open for all sort of interpretation. It is difficult to comply with the principle of pluralism. Therefore there is a need to reformulate Article in the light of the pluralism principle.**

Article 81 on Preventing the Creation of Minorities

Provisions concerning that Political parties cannot put forward that minorities exist in the Turkish Republic based on national, religious, racial, or language differences....; cannot use a language other than Turkish in writing and printing party statute or program, at congresses, at meetings in open air or indoor gatherings; at meetings, and in propaganda; cannot use or distribute placards, pictures, phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish;

Article 82 - the provision that political parties cannot aim at regionalism and cannot organise any activity to reach this target

Article 89, the provision which can be construed as prohibition on the critical approaches towards the Religious Affairs Department



## **Associations Law**

*Article 5* forbidding to found an association for the purpose of:(.para 6) putting forward the proposition that there are minorities within the Turkish Republic based on differences of class, race, language, religion or region, or creating minorities by protecting, promoting or spreading languages or cultures separate from the Turkish Language and culture, or making people from any region or race or class or any religion or sect dominant over or privileged above others,

Article 6 – on the Prohibition on the use of certain names, signs and languages ( *Associations may not use: (Para 3). Languages forbidden by law, in their statute or in the writing of any other of the association's regulations or publications, in their general meeting, or in any of their private or official, open or closed meetings, (Para 4). Any banner, sign, placard, audio or video tape, brochure, pamphlet, declaration or similar in a language forbidden by law in any meeting closed or open, organized by the association, or in which the association is participating, (Para 5.) On seals or headed paper, any names or symbols other than the name and symbol, if any, of the association,*

### **Law amending Civil Code No.903**

*Article 74* on Foundations -provision concerning not registering any Foundation contravening laws, morals and manners or national interests, or supporting any political thinking or specific race or specific community members

### **Population Law**

Provision in *Article 16* forbidding to give names not in conformity to our (*Turkish*) national culture, usage and customs

### **Provincial Administration Law**

*Article 2 concerning* village names that are not Turkish and give rise to confusion are to be changed in the shortest possible time by the Ministry of Interior after receiving the opinion of the Provincial permanent Committee.

### **Foreign Languages Education and Teaching Law**

*Article 2* provision concerning that mother tongue of Turkish citizens cannot be taught and educated in any language other than Turkish

### **Cinema, Video and Music Works Law,**

Provision aiming at bringing order and scale to cinema and music life with respect to national unity, integrity and continuity *in Article 1*

Encouraging Turkish cinema, music and art works *in Article 2*

Supervision of the compatibility with national culture, usage and customs *in Article 3*

Provision authorising the administration to prohibit works not in conformity to usage and customs *in Article 9*

### **Law on Fight Against Terrorism (Anti-Terror Law)**

*Article 6,7, and 8*, which regard propaganda as a crime

### **Press Law**

*Additional Articles 1 and 2:* Empowering the authority (prosecutor) out of judiciary to prohibit the distribution, confiscate of printed material and close down newspapers and journals

*Article 16 –Punishment of responsible editor (Para 1. The responsibility for crimes committed in periodicals belong, together with the person who caused the crime, whether the writer, news writer, artist, or caricaturist, to the periodical's responsible editor. Para 2... the responsibility for a writing, or a news report, or a picture, or a caricature, where the author of a work is not clear or where the author's names is not revealed in a true manner by the responsible editor at the latest during the first court interrogation, shall fall to the responsible editor as if he were the person who through writing, or news writing, or making a picture or caricature caused the crime. )*

*Article 31* Prohibition of materials printed abroad to enter into country *-(The entry or distribution into Turkey of works published in a foreign country that contradict the indivisible unity of the state with its territory and nation, national hegemony, the existence of*

*the Republic, national security, public order, general law and order, the common good, general morality or health can be outlaw by a decision of the Council of Ministers.)*

#### **Law on Duties and Powers of Police**

*Article 8--If the police are in possession of incontrovertible evidence and by order of the district's highest civil servant, areas where plays are conducted, presentations given, films or videos shown that will damage the indivisible unity of the state with its territory and nation, constitutional order, or general security or common morality can be closed by the police or have their activities stopped.*

#### **Law on Radio and Televisions - establishment and broadcasting**

*Article 4 - Broadcasts cannot be contradictory to the following:b) The national and spiritual values of society...d) The general morality, civil peace, and structure of the Turkish family; Must be conducted in accordance with: h) The general goals and basic principles of Turkish national education and the development of national*

*Article 31-obligation to play Turkish popular and art music*

#### **Law No:2954 on Radio and Television of Turkey**

*Article 5 - to accord with basic view, aim and principle of the Turkish national education*

*Article 9 - development of national education and national culture, protection of national security policy of the state, protection of national and economic interests of the state, to assist to establish of the public opinion in the direction of principles of the Constitution, freely and healthy*

#### **Decree on the Organisation and Duties of the Culture and Tourism Ministry**

*Article 11 - obtaining written arts and documents related with Turkish culture*

#### **Constitution of the Republic of Turkey**

*Article 136 - the Department of Religious Affairs*

**Law on Establishment and Duties of the Department of Religious Affairs,**

*Article 1*, titled Duties which read as the Department is established to execute its work limited with the Islam religion and belong to the Prime Ministry,

*Article 14*, concerning maintenance and conservation of places used for religious services in Mosques, worships and offices of mufti

**Law on Closure of Dervish Lodges and Cells and Tombs and Prohibition and Abolishing of Office of tombs and some titles**

*Article 1* of the Law together with its Additional articles should be rearranged in a way to recognise freedom of religion and belief and in accordance with the laicism principle and to prevent the abuse of freedom of religion and belief

**Law on the Obligatory Use of Turkish in Economic Enterprises,**

*Article 1*, which extends compulsory use of Turkish towards individual relations (treatments, contract and communication)

**Law on the Acceptance and Practicing Turkish Letters,**

*Article 2* which regulates the obligation to accept letters written with Turkish letters and put into action in company, society and private establishments

*Article 4* concerning the obligation to write and print newspapers, journals and books with Turkish letters

**The Law on Abolishing Titles and By-Names such as “Efendi, bey, pasha”,**

*Article 1*, prohibiting the use of nicknames and titles in private lives , except the section enabling men and women to be named vis-à-vis laws and in official documents with their names

**The Law on the General provisions of Election and Voter Registries**

*Article 58 – concerning forbidence of* use any other language or script than Turkish in propaganda disseminated in radio or

television as well as in other election propaganda.

**c) State Secrets and Confidentiality in the implementation of Openness principle**

**Law on National Security Council and Secretariat General of the National Security Council No: 2945**

Provision concerning that minutes and discussions shall not be declared and published in *Article 10*

Provision concerning that names of personnel appointed to the Secretariat of General of the National Security Council shall not be published in the Official Gazette in *Article 16*

Provision concerning the confidentiality of cadres in *Article 17*

Provision concerning that “all ministries, private and legal entities (company, association, foundation, trade union) have to provide all their confidential and non confidential documents and information whenever requested by the Secretariat –General” in *Article 19*

Provision concerning that “decree on the implementation of the Law shall be confidential” in *Article 21*

**State Intelligence Service and National Intelligence Department Law (2937)**

The provision concerning that “regulations shall be prepared by the National Intelligence Department, shall be put into force by the approval of the Prime Minister and shall not be published in the Official Gazette” in *Article 32*

**Law on Establishment and Trial procedures of the Constitutional Court**

Provision concerning that “the administration organ may not provide information, documentation and papers to the court by reason of state security and high interest and the decision of the administration shall be decisive” in *Article 43*

**Administrative Trial Procedures Law No.2577,**

The provision concerning that “Minister or Prime Minister may not provide documents, information or papers requested by the Council of State or Administrative Court by reason of state security

and high interests, *in Article 20*

**Civil Servants Law No.657,**

Not providing information about civil servants to the press in *Article 15*

The provision concerning that “civil servants, even when they are out of the duty, cannot disclose confidential information without obtaining permission of relevant Ministers” in *Article 31*

**Law on the Establishment and Duties of the Military High Council No.1612**

Provision concerning that “meetings are confidential and contents of discussions and decisions are forbidden to be disclosed and printed” in *Article 8*

**(3011) Law on Regulations to be published in the Official Gazette**

Provision concerning that “regulations related with national security and having a rank of confidentiality cannot be published” in *Article 1*

**Turkish Penal Code,**

*Articles 132, 133, 134, 137, 136, 145* concerning punishments for disclosure of state secrets

**d) With respect to the principle of participation ,**

**The Constitution of the Republic of Turkey**

*Article 13* which contains a general limitation to the fundamental rights and freedoms of citizens

*Article 14* which contains prohibition of the abuse of fundamental rights and freedoms without seeking the condition of concrete action

*Article 15* which contains suspension of the exercise of fundamental rights and freedoms

*Article 91* which gives power to issue decree(having the force of law) in relation with fundamental rights and freedoms during martial law and state of emergency

*Article 104* which equips President of the Republic with

extraordinary authorities without recourse (this conflicts with characteristics of parliamentary regime)

*Article 117*, which subjects the Chief of the General Staff to be responsible to the Prime Minister in the exercise of his duties and powers.

*Article 68* which imposes prohibitions on political parties and regulates the State Aid to political parties

*Article 69* which regulates the principles to be observed by political parties and closure of political parties

*Article 76* on eligibility to be elected as a deputy which reads that "Persons who have been sentenced to a prison term totalling one year or more excluding involuntary offences, or to a heavy imprisonment; those who have been convicted ..... of offences related to the disclosure of State secrets, of involvement in ideological and anarchistic activities, and incitement and encouragement of such activities, shall not be elected deputies, **even if they have been pardoned.** "

*Article 83* on the parliamentary immunity which brings exception to the immunity with political reasons

*Article 87* which imposes limitations on the power of the legislative organ for general and special amnesty with political choices

*Article 118*, which regulates the establishment of the National Security Council - which conflicts with the principle of supervision of military and civil bureaucracy by elected civilians in democracies.

*Articles 119 and 120* which regulates declaration of governing procedures by reasons of economic crisis or of emerging indications that results in restriction of the exercise of fundamental rights and freedoms

*Article 122*, which introduces conditions of a military regime or martial law and, which enables Martial Law Commanders, to whom all authorities are transferred, to exercise their duties under the authority of the Office of the Chief of the General Staff.

*Article 127* which keeps local authorities under the executorships of the central administration, regulates the removal of mayors from

their office by the central administration, and brings a dual structure like Provincial Special Administration headed by the governor in local administrations.

*Article 130* which does not regard universities as administratively and financially autonomous bodies

*Article 131*, which enables universities, Council of Ministers and the Chief of General Staff to nominate members to the High Council of Universities.

#### **Law on Deputy Elections,**

*Article 10* regulating the eligibility to be elected as deputy

*Article 11* which includes thought criminals into the list of non-eligibles to become deputy

*Article 13* which imposes an obligation on political parties to nominate candidates for at least in the half of total number of provinces

*Article 33* which regulates that political parties not exceeding 10% of the total votes cannot be represented in the Parliament

#### **Political Parties Law**

*Article 4* regulates essentiality and quality of essentiality

*Article 11* regulates the membership to the political parties and forbids the thought criminals to become member

*Article 43* regulates that no language other than Turkish shall be used in propaganda and writings without regarding the specialities of electors

#### **Law on the General Provisions of Elections and Voter Registries**

*Article 58* forbids to use any other language or script than Turkish in propaganda disseminated in radio or television as well as in other election propaganda.

#### **State of Emergency Law**

*Article 1* - Section titled AIM on the declaration of the State of Emergency in the case of heavy economic crisis, indications on violent actions. We propose a rearrangement of Article by taking into consideration the following: emergence of concrete reason should be replaced with the word "indications"; the phrase "



*...when violent actions threatens the organised society life as a whole”* should be replaced with the term *violent actions*. We do not think that economic crisis can be a reason to impose the introduction of State of Emergency.

*Article 2* provisions concerning restrictions on and suspension of the exercise of fundamental rights and freedoms

*Article 4* provision concerning the regulation of the exercise of fundamental rights and freedoms by Decrees (having force of law)

*Article 10* imposing measures to be taken and undertakings in cases of heavy economic crisis – it can be done without declaration of the state of emergency

*Article 11* bringing obstacles to exercise fundamental rights and freedoms without judicial decision and existence of objective indicators

*Article 27* which subjects local administrations to be more dependent on the central government

*Article 33* regulating that in the opening of administrative cases, decision on the suspension of the execution cannot be taken

#### **Decree (having the force of law) No.285 on the establishment of State of Emergency Regional Governorship**

*Article 4* providing extraordinary powers to the administration to take decisions in the fundamental human rights issues i.e. evacuation of residential areas and displacing people, appointing public servants to other regions, and a power which is not given to the Prime Minister by legislative organ and not regulated in the Constitution to establish adjacent province of which definition is not made by law

*Article 7* regulating not to appeal for annulment of the administrative procedures related to the exercise of the power given to the State of Emergency Governor conflicts with the rule of law principle

#### **Decree (having the force of law) No.430 on The State of Emergency Regional Governor and Additional Measures to be taken during the continuation of State of Emergency**

*Articles (1,5,6,7,8)* with same reasons mentioned for the Decree no 285 above should be abrogated

## **Law on Meetings and Demonstration Marches,**

*Article 9* which brings the 21 age limit

*Article 10* foresees a 72 hours prior notice for meeting

*Article 13*, which provides extraordinary power to the government inspector and regulates the identification tools for the meeting (in practice it is done by police)

## **Associations Law,**

*Article 4* depriving thought criminals, civil servants to establish and to be members of associations

*Articles 5 and 6* preventing the exercise of freedom of expression, language and culture,

*Article 7* prohibiting international Actions,

*Article 12* regulating activities foreign organisations in Turkey

*Article 16* restricting right of membership to associations,

*Article 37* restricting activity areas of associations,

*Article 40* prohibiting to carry out educational and training activities about natural events like earthquake, fire, flood, (*Associations may not carry out educational and training activities in preparation for military service, or for national defence, civil defence or police services. They may not open camps or training places for such purposes.*)

*Article 43* which brings thresholds to establish relations with foreign associations and organisations, (*Invitations by associations to members of foreign associations and organizations, and visits abroad by association members or representatives to foreign associations and organizations in response to invitations therefrom are subject to permission from the Ministry of the Interior in consultation with the Foreign Ministry and other relevant ministries.*)

*Article 44* having the provision of censorship

*Article 48* providing power to police to apply pressure on associations,

*Article 54* facilitating the closure of associations,

*Article 58* which provides authority to Governor to suspend

activities of associations,

*Article 60*, which subjects associations in receiving grants from persons or incorporated bodies situated in foreign countries to the permission of the Ministry of Interior and gives a way to the Ministry to act arbitrarily .

*Article 68*, which authorises the Government Commissioner to follow meetings with various means (recording the proceedings of the meetings using sound recording equipment, photographs and film equipment) but, in practice, regulating the authority exercised by the police,

*Article 92* on the application of the restrictions and penalties imposed by the law to professional organisations (*The second paragraph of Article 21, and Articles 30, 37, 40, 42, 44, 45, 48, 65, 66, 67, 68, 69, 70 and 90 of this Law, shall also apply, together with the relevant penal articles, to professional organizations counted as public institutions, unions of workers and employers, and higher organizations thereof, provided that there are no provisions in special laws.*)

### **Law on National Security Council and Secretariat-General of the National Security Council**

The most important dimension of the participation into governance of the country is the dominancy of the people's free will which is reflected in the election of governors of the countries. This is the participation of people in decision-making mechanism. Countries, in democracies, are governed by elected people by votes of people in every case. It can only be the business of elected people and institutions by votes of people to identify, to make decision and to implement politics covering political, social, cultural and economic issues i.e. National Security and National Security Politics.

Content of concepts brought in *Article 2* of the Law, the structure and components of the organisation which takes decisions on requirements of those concepts in *Article 3* contravene to the principle of democracy. Equalisation of the ones who are

objectively not equal (elected ones by votes of people and bureaucrats supposed to be under the administration of elected ones) in democracies make the general vote or the will of people meaningless. For this reason, the HRA proposes, first of all, that the National Security Council should be eliminated from being a Constitutional body and, secondly, proposes an amendment of Article 2 which will define the Council as an advisory body and will foresee a reorganisation of the Council.

It is the TGNA which will define and identify the National Security and the National Security Politics. Governments then introduce the implementation of these. National Security Policy of the State cannot be defined and identified by hiding from the people, real owners of the state, and their representatives. This sort of understanding is nothing to do with democracy. As a result, the existing law should be annulled as a whole and an ADVISORY COUNCIL should be established with participation of also military authorities. *Articles 2, 3, 4, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21* of the Law are also against the principles of both participation and openness.



**Part II**  
**RULE of LAW**



## **RULE of LAW**

### **Evaluation and Suggestions with regard to the rule of law principle**

Legislative screening has revealed that there is neither unity of judiciary, nor judge independency and security. As an umbrella organisation for judges and prosecutors, the High Council for Judges and Prosecutors is an organisation with no budget belong to itself, where all services are executed by units of execution, of which chairperson is the Ministry of Justice and of which one of the members is an undersecretary of the Ministry. In the Council with 7 members, the execution with the support of the minority of its judge members has the power of disposal. It is the Ministry inspector to supervise prosecutors and judges. As long as the existence of the President's authority on the execution entrusted by the Constitution, it is inconvenient that the appointments to be made by the President to the high judicial organs.

The judicial system in Turkey has given place to the military judiciary. Military courts, as well as the Military Supreme Court of Appeal and Military High Administration Courts have lawsuits for civil persons not only during the war times but also in ordinary regime conditions. The Military judiciary does not have independence by nature. The Human Rights Association believes the necessity to remove the military judiciary completely without making any distinction between the war time and normal time. This is the orientation of the democratic societies. By being aware of eliminating all is rather difficult, Article 11 of the Law on rules and establishment of Military courts, which enable civilians to be tried at Military courts, should be abrogated as a priority.

The meaning of the existence of the principle of rule of law is to have the principle of the protection of human rights through law, which can only be ensured by the existence of the independent and impartial courts. Adjustments in relation to disposals of the execution and judiciary organs, which do not seek the supervision



of judiciary, should be eliminated.

The obvious result of the rule of law principle is that decrees, laws, regulations, communiqués and every administrative actions and procedures to be subject to the supervision of the judiciary. For this reason, State of Emergency (OHAL) decrees, authorities, actions and procedures should be subject to the control of judiciary. The implementation of secret legislation should be eliminated. Election of Generals and admirals to the constitutional court and to the other higher judicial organs should be terminated. Judicial and administrative organs should only be open for lawyers. Arrangements enabling administrative units to confiscate and to ban the distribution of the press materials should be abrogated. Standards should be taken from supranational human rights documents in limitation human rights and basic freedoms. Limiting human rights and fundamental freedoms should not be under the hands of the administrative organs and their units. Independent judiciary can only be ensured with the existence of independent bar associations and independent defence. Bar Associations should be freed from the trusteeship of the Ministry of Justice. Emergency administrative procedures due to economic crisis and the state of emergency should be lifted. In order to declare state of emergency concrete reasons rather than signs should be sought. Mandating the authority of the Emergency Governors to the Gendarmerie Security Commander cannot be accepted.

Provision imposing that Commanders of the martial law shall work under the mandate of the General Staff proves that the martial law regime is a military regime. Democracy conflicts with military regime, military regime conflicts with the rule of law.

## **RULE of LAW**

### **Constitution of the Republic of Turkey**

*With regard to Articles 13 and 14 which impose restrictions on Fundamental Rights and Freedoms*

**Suggestion:** Article 13 should be a provision, which provides general protection of the fundamental Rights and Freedoms.

Abuses of Fundamental Rights and Freedoms in Article 14 should be limited to *the occurrence of actions*.

*The provision regulating the suspension of the exercise of Fundamental rights and freedoms in Article 15,*

Martial law should be eliminated. The phrase *provisionally suspended* should be added. It should be written that contrary measures can only be taken in the framework of the limitations defined in the supranational human rights documents. The death penalty in Article should be eliminated and the category of untouchable rights should be inserted as it is both indicated in the UN International Convention on Individual and Political Rights and the documents regulating war law.

*With regard to duties and powers of the President of the Republic in Article 104 and Presidential Accountability and Non-Accountability in Article 105*

**Suggestion:** The Constitution provides power to the President in relation with execution. No appeal shall be made to any legal authority against the decisions and orders signed by the President conflicts with the rule of law. The President is also empowered to elect members of the Constitutional Court, which has the right to trail himself/herself with the name of High Court. This also conflicts with the rule of law principle. For this reason, the HRA, if this Constitution will stay in course, suggests the removal of the provisions providing the President power to elect members of the high judiciary institutions and the opening of the ways for appeal against decisions or orders of the President.

*With regard to the Power of inspection of the State Supervisory*

*Council regulated in Article 108*

**Suggestion:** Labour and employers organisations are private organisations. Professional organisations do not receive any allocation from the State budget. They work with their member's fees and contributions. Taking these organisations under the jurisdiction of the State Supervisory Council as if they are part of the administration (execution) can only be under administrative regimes but not the rule of law. These public professional organisation sand others are already under the supervision of relevant Ministries. It does not comply with the principle of rule of law to treat civil society organisations as if they are part of the central administration and, to conduct the supervision by a structure attached to the Presidency. It is not clear also whether or not the appeal to judiciary is available in relation to Actions taken by the President basing on a report issued by the Supervisory Council. Therefore, provision providing the power of inspection on civil society organisations which cannot be regarded within the administrative system should be abrogated.

*With regard to the National security Council mentioned in Article 118*

**Suggestion:** National Security Council should be eliminated from being a Constitutional body. A need for an organisation to deal with National Security should only be attached to the Government and should be at an consultative status. It cannot be compatible with the rule of law and democracy to have a Council which will give declaration to the government which is elected by vote of confidence of the Parliament which is formed by the national will and a Council superior to the Government. As the agenda and decisions of the National Security Council are confidential, appealing to the justice against decisions taken is not possible. It is only the Parliament and governments to identify and implement the national security policies in democratic countries. Arrangements emphasising a dominant willpower other than the people will through making state politics-government politics distinction cannot be accepted in the rule of law.

*With regard to provisions for the State of emergency regulated in Articles 119 and 120*

**Suggestion:** Declaration of the state of emergency in the event of the economic crisis should be excluded. A condition should be brought that the declaration of the a state of emergency on account of Laws of violence threatening the organised society life as a whole. It should be emphasised that the rule of law principle will be valid in the case of state of emergency.

Martial law regime should be lifted from the text of Article 122, in the case of not excluding, the provision concerning that *the Martial Law Commanders shall exercise their duties under the authority of the Office of the Chief of General staff* should be lifted and replaced with the phrase “*the Martial law Commander shall exercise their duties under the civil administrations*”.

*With regard to the principle recouring administrative procedures and Laws to judicial review regulated in Article 125*

**Suggestion:** It should be emphasised that there cannot be regulations which do not give any possibility for judicial review towards Laws and decisions of the President, Supreme military Council and the Supreme Judges and Prosecutors Council, the rule of law principle in any occasion including the extraordinary conditions and war times should be valid.

The paragraph in Article 129 subjecting the prosecution of public servants and other public employees for alleged offences to the permission of the administrative authority designated by law should be abrogated since it does not comply with the rule of law

The provision in Article 140 concerning that judges and prosecutors shall be attached to the Ministry of Justice insofar as their administrative functions are concerned is against the principle of rule of law.

*With regard to Article 143 regulating the establishment of the State Security Courts*

**Suggestion:** State Security Courts should be abolished

*With regard to Article 144 on the Supervision of Judges and Public Prosecutors by the Ministry of Justice inspectors*

**Suggestion:** This provision is against the principle of judge independency and judge security. For this reason, supervision of judges should be carried out by an autonomous judges organisation of which judges are to be members.

*Provision concerning Military Justice in Article 145*

**Suggestion:** HRA suggests that the Military justice should be removed. Military justice can only have a function of discipline court. All military members and civil persons should be tried by civil and independent courts for offences committed by them. However, there are military courts in various European countries to which our opinion is same. It is the opinion of the Human Rights Association that military courts should never try civilians. Secondly, military personalities have also the right to have fair trial. Therefore, there should be taken measures, which increase the independency and security of military judges vis-à-vis military administration at maximum level. It should also be prevented that civil personnel working for military and military areas to be treated as military member and these people should not be tried at military courts.

*Provision on the establishment of the Constitutional Court in Article 146*

**Suggestion:** The choice of the members of the Constitutional Court should not be made by the President of the republic. As it was indicated earlier, the President also takes decisions related with the execution. All members of the Constitutional court should be elected from and by the members of higher civilian courts like High Court of Appeals, Court of Cassation. In addition, the provision concerning that three members and one substitute member from among senior administrative officers and lawyers when it is compared with the founding law of the Constitutional Court reveals a dangerous situation. Article 3 of the founding law foresees the membership of generals and admirals to the Constitutional Court.

*The provision concerning that the constitutional amendments shall be examined and verified with regard to their form in Article 148*

**Suggestion:** This provision regulating the functions and powers of the Constitutional Court should be changed as it narrows the area of power of the Court. The provision concerning that no Action shall be brought before the Constitutional court alleging unconstitutionality as to the form or substance of decrees having force of law issued during a state of emergency, martial law or in time of war cannot be fit together with the principle of law state.

*The provision concerning the Annulment Action to the Constitutional Court in Article 150 should be changed*

**Suggestion:** The right to apply for annulment Action to the Constitutional Court should be also extended to the citizens and juridical persons.

*Article 154 concerning High Court of Appeal*

**Suggestion:** With the reasons we put for higher courts, the provision enabling the President to elect members should be abrogated as the election of the Chief Public Prosecutor of the Republic by the members of High Court Appeal fits together with the principle of Law State.

*Article 155 concerning the High Court of Appeals*

**Suggestion:** The provision which gives the power to the President of the Republic in the election of members of the High Court of Appeals should be abrogated.

*Article 156 concerning the Military High Court of Appeals*

Military judgement should not take place in the Constitution.

*Article 157 concerning the High Military Administrative Court of Appeals*

**Suggestion:** With regard to our objection towards the military justice, the Military justice can only be engaged with disciplinary functions. In addition, giving duties in the courts officers not belong to the judiciary is not accorded with the principle of rule of law.

*Article 159 concerning the Supreme Council of Judges and Public Prosecutors*

**Suggestion:** This Article should be abrogated as a whole. Placing the Minister of Justice and undersecretaries cannot be accorded with the principle of being a law state. Because in a Council formed by 7 members, two members representing the execution organ may get the majority by taking votes of at least two other members (which represents minority). In addition, by bearing in mind the powers of the President on the execution organ, it cannot be accepted that the members of the Council are to be elected by the President. No appeal to any judicial instance against the decisions of the Council is not accorded with the principle of Law State. For that reason, Article needs to be rewritten for an independent Supreme Council vis-à-vis the organs of judiciary and the execution having an autonomous budget and secretariat by taking the independency of the judiciary into consideration

*Article 174 on Preservation of reform Laws*

**Suggestion:** The provision concerning that no provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws takes the society and laws as static. Referred Reform laws listed in Article although some of them can be understood, some is not needed to have a law and consolidated in the society in due course. Some of them, however, have infringing characteristics with regard to the individual rights, freedom of religion, conscience and belief. For this reason, some of those referred laws needs to be adjusted in accordance with human rights law and some needs to be abrogated. Taking under constitutional protection of the laws as a block is not accorded with the principle of rule of law.

*Provisional Article 15 providing legal protection to the Military intervention of 12 September,*

**Suggestion:** This article is not accorded with the principle of rule of law. The ones who had power to enforce hundreds of laws and decrees by help of the intervention has taken the right to appeal to the judiciary and to the protection of human rights by laws away

from citizens and on the other hand, obtained immunity from to be tried which cannot be occurred in any democratic country. Therefore these people have secured both themselves and their laws from legal auditing.

### **Law on Establishment of Constitutional Court and Trial Procedures**

*Article 3 regulating the compatibility to be elected to the Constitutional court*

**Suggestion:** Ones who are chairman and members of the Military Court of Appeal and Military High Administrative Court to be elected as members of the Constitutional Court is not compatible with the principle of rule of law. With regard to independency and judge security due to the Constitution and their special laws, military judges and prosecutors do not have enough legal guarantees before the administration. Our opinion for the election of governors and the ones having similar status to the Constitutional Court is the same as for the election of admirals and generals. As it can be observed below regulations on the retirement rights, military judges and prosecutors, as being member of the Military elected to the Constitutional Court and retired from the Court are belong to the same retirement statute which is designed for the military members. Therefore, these members both during their period in the Constitutional Court are not out from the hierarchical structure of the administration defined as rank and seniority hem de their retirement has been organised with their previous status Within given conditions, this is inconvenient in terms of the independency and impartiality principles (rule of law) of the Constitutional Court as the highest judicial organ.

*With regard to the selection of members in Article 4*

**Suggestion:** With reasons raised previously, Article should be rearranged with regard to elections of military judges and prosecutors and the power of appointment of the President

*With regard to the retirement right in Article 15*

**Suggestion:** Provided that the rights of military judges and



prosecutors together with the superior ranks of the Turkish Armed Forces kept reserved due to their membership to the military shows the inconveniency their membership to the Court.

*With regard to the provision no appeal can be made in Article 19*

**Suggestion:** this provision which conflicts with the principle of rule of law obtains its basis from the Constitution and it should be abrogated as the provision in the Constitution

*With regard to Article 20 – ones having the authority to appeal*

**Suggestion:** As it was referred in the Constitution, the power to appeal should be extended to individuals, and organisations (associations, foundations, professional organisations)

*With regard to Article 21- Action for nullity based on disfiguration*

**Suggestion:** Action for nullity, as a matter of form, cannot be considered in the courts and the restriction on that the Constitutional changes can only be the subject of a limited examination is not compatible with the rule of law principle Citizens should be able to bring objection to form into courts.

*With regard to Article 24 –Claiming that the Revolution laws are not compatible with the Constitution*

**Suggestion:** We repeat our opinion rose in the related Article of the Constitution (Article 174)

*With regard to Article 25 on the other documents of which incompatibility to the Constitution cannot be claimed*

**Suggestion:** We repeat our opinion for the related Article of the Constitution (Provisional Article 15)

*With regard to Article 43 concerning the responsibility to provide information, documents and papers*

**Suggestion:** Boundaries of the Security concept are indefinite. What is the high interest and what protects the high interest are indefinite questions. With the requirement of the law state Actions conflicting with the law can be preserved for the reasons of state secret or security or high interests. For this reason, there cannot be anything to hide by the executive organs of the state including

prime ministry or council of ministers from the Constitutional Court. For this reason this article should be abrogated. With the necessity of the rule of law and openness principles everybody should be stayed within the limits of the law. The scale that stays in the limits of law is the judicial supervision.

With regard to Article 51-Hearing witness and experts

**Suggestion:** With the reasons raised above, Article should be abrogated

**Law amending the decree (having the force of law) on the organisation and duties of the Ministry of Justice**

*With regard to Article 5 regulating duties and powers of the Minister of Justice*

**Suggestion:** “Politics of the national security expresses a concept that established outside the knowledge of the public opinion, that is not explained what it is about and not known where the limits start and end in the laws and the Constitution, but in practice, its scope can be extended from interest rates of bank credits to support for animal husbandry, from construction of sport arenas to border protection services or to take other security measures. Article 118 of the Constitution has given power to identify and to establish the national security policy to the National Security Council. As it can be observed from the law on National Security Council its agenda and decisions are confidential. The Ministry of Justice is responsible of execution of judicial services. Due to be a power to audit the judiciary of the The Ministry of Justice is responsible of execution of judicial services as a separate but an equal power from the execution, being intermingled with the judicial power and having units auditing judiciary is a situation cannot be accepted with a view to the rule of law principle. For this reason, the Ministry as a unit of the administrative organ can only have the power to implement identified policies. It cannot mix this to judicial services. With a more clear statement, powers given to the Ministry of Justice the law asks the formulation of the justice. It is obvious that this conflicts with the principle of rule of law. We

need to recall that, the chairman of the High Council of Judges and Prosecutors is the Minister of Justice and higher authority area has been identified with law. We should also state that with regard to all Ministries, the movement in the direction of national Security policies also exists in their founding Laws.

*With regard to Article 6 regulating duties and powers of the Undersecretary*

**Suggestion:** Undersecretary is a member of the High Council of the Judges and Prosecutors and as it is written clearly in Article is under the disposal of the Minister. The Undersecretary who has a hierarchical relation in the Ministry cannot be thought that he can Law independently at the High Council of the Judges and Prosecutors. For this reason both the duties and powers of the Minister and the Undersecretary should be rearranged in line with the principle of rule of law.

*With regard to Article 15 concerning duties and powers of the Inspection Council department*

**Suggestion:** The supervision of judges being made by a unit affiliated to the administrative organ cannot be compatible with the principle of the rule of law. This regulation threatening the independency and the security of judges should be annulled and the supervision should be given to an autonomous organisation to be established for judges and prosecutors.

*With regard to Article 16-Research, Planning and Coordination Council Department*

**Suggestion:** forensic medicine, inspection, examination and investigation of the Bars Associations of Turkey, is against the principle of independency. Bureau services of the High Council of Judges and Prosecutors should be carried out by subunits affiliated to the High Council.

### **Law on the Establishment of State Supervisory Council**

*With regard to Article 1, 2 and 6, concerning the Aim and Duties*

**Suggestion:** SSC is an organisation established for the

administrative organ work in harmony. Labour and Employers unions, associations, foundations are voluntary organisations. Supervision of these organisations by a unit affiliated to the Presidency conflicts with the rule of law principle. In fact, there is no need to have such a constitutional organisation like SSC under the authority of the Presidency. Civil society is already excessively supervised by the central authorities.

### **Law on High Council of Judges and Prosecutors**

*With regard to Article 1, 2 and 3 concerning Aim, organisation and independency of the organisation*

**Suggestion:** A Council of which chairperson is the Minister of Justice and of which one of the members is the Undersecretary attached to the Minister cannot be independent. Within given circumstances it is meaningless to have independency of the Council in 3 articles.

*With regard to Article 5 concerning election of Members*

**Suggestion:** When the powers given by the Constitution to the President is regarded the regulation's inconveniency is obvious. For this reason, it is more convenient with democratic and rule of law principles that members are chosen among and by the Court of Cassation and Court of Auditors. In addition as it can be observed from the State Supervisory Council Law. In addition as it can be observed from the State Supervisory Council Law, issues are transferred to the judiciary with a report prepared by the State Supervisory Council and judges appointed by the High Council of Judges and Prosecutors elected by the President look after cases. This is not compatible with the principle of rule of law. It threatens the independency of judiciary.

*With regard to Article 8 concerning chairmanship*

**Suggestion:** Minister of justice should not take part in the Council. Chairperson of the Council should be elected by the Council members among themselves.

*With regard to Article 10 concerning Meeting Place and Eligibility*

*to hold meeting*

**Suggestion:** Undersecretary should not take part in the Council. The Council should have its own building and secretariat. Works of Council should be carried out by the staff attached to the Council itself.

*With regard to Article 12 concerning to appeal*

**Suggestion:** Appeal should be made against decisions of the Council. It is the necessity to be a rule of law. The Minister should not take part in the council dealing with appeals.

*With regard to Article 19 concerning appointment and transfers*

**Suggestion:** A unit attached to the Council should make appointments and transfers. A unit attached to the Council should prepare the Draft.

*With regard to Article 20-Entrusting with a temporary authority*

**Suggestion:** Entrusting with temporary authority gives the way to abuse and makes judges to lose their regional and chair security. Ministry of Justice cannot be given such an authority. This authority given to the Minister himself in cases where delay should be given to the Chairperson of the Council which is to be restructured. Entrusting judges and prosecutors in the service of the Ministry should be impossible without the decision of the Council. This will enable to prevent establishing personal relations in the relation between judiciary and the execution. It is not enough only to have the approval of the judge, the organisation of judges also needs to know about the need and quality of the relation of the Ministry and needs to give its approval too.

*With regard to Article 23 regulating necessity cases*

**Suggestion:** All authorities regulated in this Article needs to be transferred to the Council as a necessity of being a rule of law principle.

## **Law on Judges and Prosecutors**

*With regard to Article 5-concerning the right to Supervision and control*

**Suggestion:** The last two paragraphs on the right to supervision and control on judges and prosecutors which is given to the Minister of Justice and Ministry of Justice and the attachment in terms of the administrative duties to the Ministry of Justice should be abrogated.

*With regard to Article 8 concerning qualifications of candidates*

**Suggestion:** The regulation in the paragraph (g) is significant to refer to a discrimination in terms of disabled citizens. A rearrangement should be made with a more clear expression. In the paragraph (h) except the abbreviated crimes, not to have received a sentence more than 3 months is problematic when the material fines laws are examined. Turkey has been governed with extraordinary governance methods in years. Holding a meeting against the Law to hold meetings and demonstration marches has a punishment of minimum 1,5 years sentence. The Punishment for a wall writings is one year sentence according to Articles 536 and 537 of the Turkish penal Code. In many areas, there are laws uncertain about the elements of crime and punishments, which are not suited with the weight of the Action alleged to be committed as well as unfair regulations. We are living in a country where thousand of people are in prison as they express their thoughts. Students of the Law Faculties are not exempted from these circumstances. Therefore, there is a need to re-evaluate the paragraph, which establishes a link with crimes committed against the personality of the State with a limitation of 3 month sentence.

*With regard to Article 11 regulating the documents to be arranged about Candidates*

**Suggestion:** Duties and authorities related with stages about candidates of judges and prosecutors should be given to the yet-to-be-restructured Supreme Council of Judges and Prosecutors. Preparing reports about Candidates for judges on stages by the Governors, as a unit of the executive organ shall not compatible with the principle of rule of law.

*With regard to Article 12 concerning the termination of duty*

*during candidature process*

**Suggestion:** The authority given to the Ministry of Justice should be given to the yet-to-be-restructured Council.

With regard to Article 24- State of Being papers by Inspectors

**Suggestion:** Inspectors are attached to the Ministry of Justice. Preparing “state of being” papers about judges by inspectors is not compatible with the principle of rule of law. Judges should be supervised by their auditing mechanisms.

With regard to Article 47 concerning entrusting with temporary authority

**Suggestion:** The authority of the Minister of Justice to entrust with temporary authority should be abrogated.

*With regard to Article 48 concerning other duties and works*

**Suggestion:** This provision obliges judges and prosecutors to take permission to express their thoughts cannot be accepted.

The permission of the Minister of Justice shadows the independency of judges. When a permission is needed it should be obtained from their own organisation- yet to be restructured Supreme Council of Judges and Prosecutors.

*With regard to Article 49- to be sent to foreign countries*

**Suggestion:** The authority given to the Minister of Justice in this Article should be transferred to the organisation of judges and prosecutors.

*With regard to Article 74-Application of Discipline punishments*

**Suggestion:** Discipline investigations about judges and prosecutors should be made and the Supreme Council of judges and Prosecutors to be restructured should apply punishments.

*With regard to Article 82 concerning investigation*

**Suggestion:** All authorities subject to the permission of the Ministry of Justice in above mentioned Article should be transferred to the Supreme Council of Judges and Prosecutors.

*With regard to Article 83 concerning cases need not permission to be taken*

**Suggestion:** Judges should be out of the auditing of the units attached to the Ministry of Justice. All authorities mentioned should be transferred to their organisation.

*With regard to Article 87 concerning finalising investigation*

**Suggestion:** All authorities herein should be transferred to the Supreme Council.

*With regard to Article 88 concerning Trial and Interrogation Procedures*

**Suggestion:** Although we find this article appropriate regulated to protect judges from the pressures of the administrative units, there is a need to remove the Martial law exception and instead of informing the Ministry it should read The Supreme Council of Judges and Prosecutors

*With regard to Article 89 concerning Decision on legal proceedings and first interrogation*

**Suggestion:** Ministry of Justice mentioned in this Article should be changed as Supreme Council of Judges and Prosecutors

*With regard to Article 94 concerning state of red-handed requires heavy punishment*

**Suggestion:** It should be told to the Supreme Council of Judges and Prosecutors instead of the Ministry of Justice

*With regard to Article 95 concerning declaration of law-suits*

**Suggestion:** Declaration should be made to the Supreme Council instead of the Ministry of Justice

*With regard to Article 100 concerning Justice Inspectors*

**Suggestion:** Inspection of the judges by the inspectors attached to the Ministry should be terminated.

### **Forensic Medicine Founding Law**

*With regard to Article 1-Founding*

**Suggestion:** Forensic Medicine organisation is the only and official



organisation to exercise law expert in justice affairs. This organisation should be autonomous rather than being belong to the Ministry of Justice.

### **Law on Establishment, Duties and Trial Procedures of Children Courts**

*With regard to Article 6 concerning Duty*

**Suggestion:** According to the Children's Rights Convention, ones below age of 18 are regarded as child. For this reason, the Law should be compatible with the Convention. The last paragraph of Article cannot be accepted and therefore it should be abrogated. Children should not be tried neither in military courts nor extraordinary courts (e.g. state security courts) whatever the conditions are including war times.

*With regard to Article 9 concerning committing crime collectively*

**Suggestion:** Regulation concerning the seperation of papers related with children after the preparatory interrogation shows that procedures applied to adults shall also be applied to children.. In fLaw the implementation is in this direction. When it is considered that conditions for detention under custody and informing families and relatives of children (e.g. Article 19 of the Constitution brings an exception for informing) the provision should be changed in a way that it is the Public Prosecutor to make the preparatory interrogation immediately, children will be directly transferred to the court, no handcuff will be put and cannot be detained under custody.

*With regard to Article 11- Precaution*

**Suggestion:** Above mentioned articles should be rearranged as the ones under the age of 18 are regarded as children

*With regard to Article 19-Intrerrrogation*

**Suggestion:** The age should be corrected as 18

*With regard to Article 41-*

**Suggestion:** The age should be corrected as 18

## **Law on Establishment and Trial Procedures of the State Security Courts**

HRA defends that both Constitutional base and the Law itself should be abrogated.

*With regard to Article 5- Qualifications of Judges and Prosecutors*

**Suggestion:** In accordance with the Founding aim in Article 1, first rank judges and prosecutors are appointed without looking for any speciality. The courts is not regarded as specialisation court.

*With regard to Article 9-Duty*

**Suggestion:** Article 312 is a provision removing the freedom of expression of thought. There is nothing to the with the security of the State.

*With regard to Article 12-Entreating with oath to witnesses*

**Suggestion:** It shows that interrogation is also carried out by civil servants other than Prosecutors

*With regard to Article 16-Arrest and Detention*

**Suggestion:** Regulation on Length of detention on remand and discussion with the advocate (not benefitting the legal counselling) is conflicting with Articles 5 and 6 of the European Human Rights Convention with regard to the Personal Liberty and Security Right and the Right to receive legal counselling

*With regard to Article 22-Suspected not to be present at hearing*

**Suggestion:** Judgement given in default is against the right to defend

*With regard to Article 23- Discipline and punishment of the hearing*

**Suggestion:** provision on the final judgement is against the rule of law and the right to defend

*With regard to Article 26- Refusal of Judges*

**Suggestion:** Discussion on the demand for refusal by the refusers is not compatible with the principle of rule of law.

*With regard to Article 33- Auditing*

**Suggestion:** Auditing by the Ministry inspectors is conflicting with the principle of independency of the judges.

### **Advocates Law**

*With regard to Article 8 –Acceptance to the profession*

**Suggestion:** It should be abrogated due to the infringement of the independency of bar associations and advocates since Article subjects advocates to be under the executorship of the Ministry

*With regard to Article 20-Decision*

**Suggestion:** the condition of being decisive with the approval of the Ministry of Justice of a decision given with the complaint of the Union of Bars association conflicts with the independency of bars associations.

*With regard to Article 77-Sanctions of the Ministry of Justice on Bars Associations*

**Suggestion:** The above mentioned provision is not compatible with the principle of independence of judiciary (independence of advocates is the independence of judiciary, the organisation of advocates should also be independent.)Actions of governors attached to the administration takes the Bars Association under threat. For this reason the provision is clearly conflicting with the principle of rule of law.

*With regard to Article 110-Tasks of the Union*

**Suggestion:** regulation laying down the condition to get permission of the Ministry for opening representations of bars associations in abroad conflicts with the rule of law as well as the independency of bars associations.

*With regard to Additional Article 4*

**Suggestion:** regulation the executorships of the Ministry on bars associations conflicts with the rule of law principle as well as independency of bars association.

### **Law on Fight Against Crime Organisations Aiming at Intrest**

*With regard to Article 3-Hiden follow*

**Suggestion:** It is inconvenient with regard to the principle of the secrecy of the private life as well as to the principle of the personality of all sort of offences and punishments in households.

#### **Council of State Law**

*With regard to Article 8-Qualifications of the Council of State*

**Suggestion:** regulation facilitating the membership of generals and admirals to the Council of State is against the rule of law principle.

*With regard to Article 9-Member Elections*

**Suggestion:** Election by the President is inconvenient due to his/her functions in relation with the execution, elections by the Supreme Council of Judges and Prosecutors is problematic due to the existence of the Minister and Undersecretary in the Council.

*With regard to Article 49- Delivery of Papers and hearing authorities*

**Suggestion:** By reason of state security and high interest not providing papers and documents is not compatible with the rule of law principle.

#### **Administrative Trial Procedures Law (1)**

*With regard to Article 2 not being able to appeal against President's Actions*

**Suggestion:** It is the necessity for the principle of rule of law to be able to appeal against decisions of the President of the Republic as long as his/her authorities are sustained as the Court of Cassation takes the suitcases opened against the Prime Ministers decisions.

*With regard to Article 3 ve 20- confidential document- state secret*

**Suggestion:** Article should be changed in the light of Principles of rule of law and openness and the way to rule of law should not be closed with reasons like state security, state interest.

#### **Chief of Staff-Duties and Jurisdiction Law**

*With regard to Article 2-Duties, powers and responsibilities*

**Suggestion:** The Chief of General Staff should definitely be at the

disposal of the civil administration. Because of this “informs the Ministry of National defence” should be changed as “presents to the approval of the Ministry of National defence”

*With regard to Article 4-Competitions of the Chief of General Staff*  
**Suggestion:** It should be rearranged as “organises through the Ministry of National defence”.

*With regard to Article 7- Responsibility to the Prime minister*  
**Suggestion:** It should be changed as “to the Minister of National Defence”

### **Ministry of National Defence-Duties and Organisation Law**

*With regard to Article 2-Duties and Powers*

**Suggestion:** As it is about Duties and Powers in the title of article, Article talks about only duties

*Article 4-Execution of duties*

**Suggestion:** Whatever the form and content of the the powers given to Ministers in orther Ministries Laws in terms of civil servants under their authority) the form and the content of Duties and powersgiven to the Ministry of National Defence should be rearranged in the light of OSCE Copenhagen Document As it can be observed the Chief of Genral Staff is not mentioned but the Commanders are.

### **The Law on Establishment and Duties of the High Military Council**

*Article 2-Chairman*

**Suggestion :** In the first paragraph of Article, Deputy prime Ministers and Minister of National defence should follow the Prime Minister. In the case of the prime Minister’s absence in the meetings the rule that deputy prime Ministers or the Minister of National Defence should chair the meetings.

*Article 3-Duties*

**Suggestion:** Minister of National defence should follow after the Prime Minister.

*Article 4-*

**Suggestion:** It should be said that “ in the time that the Chief of General Staff to propose and the Minister of the National defence will approve. It should also said that “ High Military Council may convene again when it is proposed by the Chief of General Staff and approved by the Minister of National defence.

**Law on Military Judges (1)**

*Article 1-Conditions to become Military Judges and Prosecutors*

**Suggestion:** Identification of not having a bad record in terms of moral is conflicting with the secrecy of private life.

Record in Article 12, rank in Article 14, transfer in Article 16, substance rights in Article 18, discipline punishments in Article 29 are conflicting with the principle of independency of judiciary and judges objectively.

**Law on Internal Service of the Turkish Armed Forces (1)**

*Article 2- Fundamental principles*

**Suggestion:** Article should be rearranged in a way that the Military service in order to protect the independency of the Republic is to learn the war art and is to conduct as its principles are defined by the Constitution. This will therefore highlight the principle of voluntarism. And also to show respect to the opposition right according to the Copenhagen document.

*Article 35-General Duties*

**Suggestion:** This Article has been shown as legal basis in the 12 March and 12 September military interventions. For this reason it should be abrogated. With an addition to the Constitution it should be emphasised that interventions and orders and laws as result of the intervention will not be put into force. If Article is not to be abrogated and only to be amended then it should be underlined that the governance shall not be handed over for the sake of protection and looked after and the superiority of the civil governance is to be highlighted. The interventions should not be legitimised and it should be written that to the concept of protection and looking after

cannot be given that sort of meaning.

*Article 39-Loyalty*

**Suggestion:** Beside the loyalty to the Republic, the word to the democracy should be added. Therefore, the Armed Forces shall not show consideration and respect to anti-democratic republican understandings.

**Law on Military Service**

*Article 1- Obligation*

**Suggestion:** the obligation of military service should be flexible by taking the right to conscience oppose into consideration and taking into consideration that the military service should be voluntary

**Statutory Charge of Armed Struggle Against Internal Enemy Law**

Either the Law should be abrogated or the name of the Law should be changed as a first step. An understanding to see citizens as enemies should be abandoned.

In addition, it cannot be accepted that children will be taken into arm as imposed in Article 1. According to the Children Convention states cannot take children below the age of 18 into military. For this reason the concerned article of the Law should be amended as above the age of 18.

**Law on Mobilisation and State of War**

*Article 3 – Definition of the Mobilisation*

**Suggestion:** There are rights and freedoms which cannot be limited by laws. Prohibition of torture, right to live, right to establish family, right to give name of a child. For this reason Article should be rearranged in the framework of the respect to human rights.

War: In order to acquire national targets contrary to the War law. For this reason it should be redefined.

State of War: Definition infringes the existence of rights which cannot be touched in war and war laws and principles. For this reason it should be redefined.

**Law on Establishment and Trial Procedures of Military Courts**  
HRA demands the abolishment of military courts. Independent and impartial court principle is valid for all. Unity of the judiciary principle is the necessity of this. However, if our suggestion is not accepted due to present conditions, civilians' trial at military courts should be ended in any case. In total 14 crime counted at Article 11 of the Law No:353, Articles 55,56,57,58,59,63 64, 81,93,94,95, 100 and 102 of the Military Penal Code, and total 16 crimes in Articles 188, 190, 191, 254, 255, 256, 257, 258, 260, 266, 267, 268, 269, 271, 272, 273 of Turkish Penal Code civilians are tied in military courts. In addition other crimes referred in Articles 155,135,153,161 trials are taken place in military courts.

### **Military Court of Appeals**

We demand the abolishment of military court of appeal

### **Law on Military High Administrative Court**

We demand the abolishment of the military high administrative court

### **Martial Law**

An extraordinary governance regime like martial law should be abrogated from the Constitutions and Laws.

*Paragraph (a) of Article 3 on Duties and Powers*

**Suggestion:** Martial Law is not compatible with the principles of rule of law. Military authorities as units of the administrative organs has to apply principle of rule of law. Regulation of the authorities by laws does not mean neither the realisation of the principle of rule of law nor the adaptation of these principles. Above mentioned is an example of infringement of the principle by the law. Arrangement of Article does not recognise many human rights. From reading personal letters, to searching people and domiciles and without having strong testimonies about commitment of a crime giving these authorities is conflicting with the principle of rule of law.



*Paragraph (b)*

**Suggestion:** Censorship is against the freedom of communication. It cannot be accepted. Moreover, it cannot be also accepted to give authority to the administrative authorities (i.e. Martial Law Commanders) to stop publication

*Paragraph c*

**Suggestion:** These sort of authorities including annihilation which is not recognised in any democratic countries is openly conflicting with the principle of rule of law.

*Paragraph d*

**Suggestion:** Compelling citizens by administrative decisions to live in residential areas away from their region defined and specified by administration is against to the human rights and not compatible with the rule of law principle.

*Paragraph f*

**Suggestion:** Syndical rights are among the human rights and cannot be suspended for ever.

Article 6: With Article making the Martial law Comander responsible to the Chief of Staff the it is openly accepted that Martial Law regime is a military regime.

With Articles 13 and 15 the civil society life as a whole has been brought to the concern area of the military judiciary.

## **Law on Gendarmaire Organisation, Duties and Powers**

*Article 9-Limitation of the Service*

**Suggestion:** A regulation which enables the gendarmiere officers to take up the duties of governorship or sub governership cannot be accepted. As it cen be observed from the examination of the Law, the view that the gendarmaire is attached to the Ministry of Interior is a fictitious.

*Article 10- Responsibility area of the Gendarmaire*

70% of Turkey is under the responsibility of gendarmaire. When the urbanisation is taken into consideration, this situation needs to

be urgently rearranged.

### **State of Emergency Law**

*Article 4-Decree in force of Law*

**Suggestion:** There is an exemption in Article 91 regulating that Fundamental rights and freedoms can only be restricted by law. This exemption is against the human rights law.

*Article 9:* does not foresee appeal to the judiciary to suspend the execution of measures taken with this Article.

*Article 11-Measures to be taken in violent Actions*

**Suggestion:** This regulation cannot be accepted as it restricts human rights and freedoms by an administrative decision

### **DECREE (having Force of Law) on the establishment of Regional Governorship of State of Emergency (no. 285)**

recognising of the authority to evacuate residential areas, transfer of authorities to the Gendarmaire Commander (a military personality) in Article 4

No appeal towards procedures is against the principle of rule of law in Article 7

### **Decree Law No. 430 on the Governorate of the State-of-Emergency Region and on Additional Measures to Be Taken During the Period of the State of Emergency**

The number of decrees (having force of law) issued in relation with State of Emergency is 19. Except decrees No. 201, 259 and 387 none of them has been discussed in the Grand national assembly. According to Article 148 of the Constitution no Action can be brought before the Constitutional Court alleging unconstitutionality of decrees having force of law issued during a state of emergency. However, as it has been stated in the decision of 1990/25b-91/1 of the Constitution Court, lack of judicial supervision and removal of the examination of the Turkish Grand National assembly in confronted with the principle of rule of law. For that reason, Decrees having the force of law in relation with the state of

emergency should be discussed in the Turkish Grand National assembly in accordance with the principle of rule of law and judiciary should be open.

Prohibition of the entrance of printed materials into the region, secondment of persons outside of the region and suspension of trade union Activities in Article 1, provision that prosecutors will obey the orders of governors, Taking under custody of prisoners in order to be re-interrogated in Article 3, not being able to open file against the Ministry of Interior, Regional Governor of the state of emergency and provincial governors all confronted with the principle of rule of law.

### **The Law on the Duties and Powers of the Police**

We think that,

Dubiouty of the Boundaries of the authority given to the police in Article 2

Subjecting the organisation of cultural events such as cinema and theatre to the permission of the police in Article 7,

Providing the authority to the police to close down associations, trade unions and public professional organisations and the authority to intervene universities in Article 8 infringes the principle of rule of law.

The provision in Article 11 which imposes the obligations to submit sound records, video cassettes and sound tapes to the highest civil officer of the place before they are released on the market is conflicted with the principle of rule of law.

We also regard that ,

The authority given to the police which infringes the right to have personal liberty and security in the Article 13,

The authority to use gun in Article 16,

The provision which requires requires individuals or groups to file an application at least 48 hours in advance with the highest civil officer of the place for permission to stage a play or other show in Additional Article 1;

The provision which authorises the police to ask individuals not to

leave their homes or workplaces in the Additional Article 3  
**are contrary to the rule of law**

#### **Civil Defence Law**

The age limit for children in relation to civil defence should be changed from 15 to 18

#### **Law on to Hold Meeting and Demonstration Marches**

It is seen that the exercise of the right to hold meeting and demonstration marches is subject to the permission of the Ministry of Interior. The practice to subject the participation of foreigners in meetings or marches to the permission of the Ministry of Interior should be stopped.

Exceptional provisions in Article 4 are provided for associations and public professional organisations. According to the understanding of the administration, whereas the right to hold meetings and demonstration marches is given to certain associations or societies, others are subject to the permission. For example, in the general practice of the Directorate of Security in Istanbul even reading a written press release can be prohibited for the reason that it breaches the Law on to hold meetings and demonstration marches. In short, the right to hold meetings and demonstration marches is exercised within the limits and on the subjects that is allowed by administrative organs

#### **Trial of Civil Servants and Other Public Officials Law**

Because of the significant problems in prevention of torture, we propose that Articles 3,5,7,8 and 9 of the law which subject the opening of interrogation of crime allegations about civil servants to the permission of administrative authorities should be exempted for civil servants who committed torture crime.



**PART III**  
**HUMAN RIGHTS**



## HUMAN RIGHTS

### **Evaluation ve Suggestion:**

Since the establishment on 17 July 1986, the Human Rights Association puts the emphasis on human rights and democratisation as Turkey's fundamental problems. In this framework, it takes the democracy, rule of law, human rights and minority rights referred in the Copenhagen Political Criteria under a single category. In fact, the indivisibility of all human rights and their integrity are related to the principle that all rights are interrelated and one cannot be preferred to the other. The Human Rights Association participated in a meeting organised by the State Ministry in responsible for Human Rights on 14 October 1999 and presented a 24-page report which was reflecting its views vis-à-vis Copenhagen Political Criteria. These views are still preserved by the HRA.

*In the context of the right to live*, the report gives reference to four separate Laws and provisions of articles therein which impose death penalty (see annexes). We want the death penalty should be eliminated without making any distinction between war time and peace time from all laws and Turkey should sign the Additional protocol no. 6 of the European Convention on Human Rights.

One of the steps to be taken to prevent the torture applications, which are widespread and systematic, is to amend Article 129 of the Constitution, which gives the opportunity to the administration to provide permission for civil servants to be interrogated. The Law No: 4483 on the Trial of Civil Servants and other public Servants has also introduced the permission mechanism to the administration empowered by the relevant Article of the Constitution. There should not be any judicial immunity on the torture allegations. The Administration should sincerely establish internal supervision mechanisms; Public Prosecutors should be sensitive towards torture allegations and whenever a crime of torture is committed Criminal Procedures Code should be applied.



Another way to prevent torture is to establish a structure like public referee, which will be formed by independent individuals and organisations

Article 19 of the Constitution violating the right of personal liberty and security, provisions of the Constitution, Criminal Procedures Code, Martial Law, State Security Courts Law and State of Emergency Law imposing period of detention longer than standards should be annulled. Legal counselling by the advocate is applied differently for legal and political offences. In political offences, legal counselling is provided after a certain stage of the detention period and is only limited to discussion. In legal offences, the advocate provides it in the form of legal aid. The legal aid by the advocate should be provided for everybody as soon as the personal liberty is limited. Articles of the Police Duties and Authorities Law, Martial Law, Laws and Decrees of the State of Emergency which all enable restriction of the personal liberty as a general practice by using the excuse “ in case of the delay is deemed prejudicial” and which empower the administrative organs to restrict freedoms should be abrogated.

With regard to fair trial, contrary provisions to the fair trial have been explained in the section titled Rule of Law. Existence of independent and impartial judiciary as well as defence is for everybody. The judicial unity should be ensured. Arrangements should be made in accordance with Article 6 of the European Human Rights Convention.

With regard to freedom of expression, in a study carried out by the Press Council in 1990, it was specified that more than 700 articles in 152 Laws impose restrictions and punishment on freedom of expression, These provisions which are in conflict with freedom of communication in general should be reviewed and freedom of expression should be taken under protection. There is a need to arrange general rules for radios and televisions. Permissions and licences should be regarded as technical issues and provisions concerning preliminary controls and the authority entrusted to the

administrative organs to close down radio and televisions should be abrogated. Article 13 of the Constitution which brings a general limitation should be rearranged in the form of protection of human rights. Article 14 of the Constitution should take the occurrence of action as a basis. Articles 26,27,28 including prohibitions on expression, language and culture together with provisions of Article 42 concerning prohibition on education in the mother tongue should be amended. The most widely used Articles 155, 158, 159, 311 and 312 of the Turkish Penal Code should be either abrogated or rearranged by taking universal standards into consideration.

With regard to principles of fair trial and rule of law, the HRA demands the annulment of both the State Security Courts and Anti terror Law as a whole. Articles 6,7,8 of the Anti terror Law restrict the freedom of expression. Anti terror Law increases the punishment by one half, brings the condition to execute the punishment by three fourths (for legal offences this rate is by 40%). Moreover, the Law by Article 16 introduces a model of prison with one to three persons, not for providing a right for convicts and prisoners but as an isolation. In given circumstances, allocation of a chamber for convicts and prisoners regarded as a right in the supranational human rights documents, but in Turkey's practice and in the framework of the Anti Terror Law it is regarded as a way of cutting the communication and correspondence off.

Placing the Religious Affairs Department within the general administration as a constitutional organisation contradicts to the principle of laic- foundation – State. These are all in contradiction with the freedom of religion and beliefs as well as laicism principle that the Department is established to perform the task related to beliefs, worship and moral values of the Islam religion as written in the founding Law and compulsory religious courses in primary and secondary education institutions as imposed by the Constitution.

Provisions in the freedom areas of organisation, holding meeting and demonstration marches (Associations Law, Law on Meetings and Demonstration Marches, Trade Unions Law) should be taken under review as a whole. These three freedom areas normally to be exercised without being subject to any permission have in reality been subjected to a permission system by procedures and mechanisms created in laws.

With regard to economic and social rights, Trade Unions Law, Law on Strikes and Lock-Outs and all legislation regulating the working life should be reconsidered and restructured in the light of ILO conventions, European Social Charter and UN International Convention on Economic, Social and Cultural Rights. For this reason, arrangements imposing restrictions on organisation of workers (labourers and civil servants) and not ensuring judicial security on service contracts (lack of job security) should be examined one by one and should be reformulated with participation and contributions of the organisations working in this field.

**Human Rights**  
**CONSTITUTION OF THE REPUBLIC OF TURKEY**

Following needs to be changed:

*Preamble* restricting freedom of expression

*Article 5 on Fundamental Aims and Duties of the State*

as it does not have any provision on the protection and development of different languages and cultures with regard to the pluralistic and ethnical structure of the country as Aims and Duties of the State,

*Article 13 on Restriction of Fundamental Rights and Freedoms*

as it includes provision to restrict Fundamental Rights and Freedoms and it does not contain any provision for the inviolability of the Fundamental Rights and Freedoms

*Article 14 on the Prohibition of Abuse of Fundamental Rights and Freedoms*

as it does not relate the abuse of Fundamental rights and freedoms with any Action/movement and creates a category for prohibited thoughts

*Article 15 on the Suspension of the Exercise of Fundamental Rights and Freedom*

as it does not imposes temporary suspension of the exercise of Fundamental Rights and Freedoms and contains provisions conflicting with the Supranational Human Rights standards.

Provision on death penalty in *Article 17 on the Personal Inviolability, Material and Spiritual Entity of the Individual,*

the provision concerning detainees or convicts to be forced to work in *Article 18 on the Prohibition of Forced Labour*

*Article 19 on Personal Liberty and Security* as it has restriction on the notification of person arrested to her/his relatives and foresees detainee periods conflicting with supranational human rights standards

*Article 20 on the Privacy of the Individual's Life* as it contains exceptions in cases where delay is deemed prejudicial which enable the person or private person or private belongings shall be searched and seized.

*Article 21 on Inviolability of Domicile* as it has an exception for cases where delay is deemed prejudicial which enables any domicile can be searched or the property can be seized.

*Article 22 on Freedom of Communication* as it provides possibility with the exception in cases where delay is deemed prejudicial

*Article 23 on Freedom of Residence and Movement* as it has a restricting provision for the freedom of residence and movement by administrative organs without obtaining judge decision.

*Article 24 on the right to freedom of conscience, religious belief and conviction.* As It has provision enabling the State to intervention to the freedom of belief by making the religious instructions compulsory in primary and secondary education and training institutions, and restricting the freedom of religious and belief by making reference to Article 14.

*Article 26 on regulating freedom of expression and dissemination of thought*

As it kills the exercise of the right by imposing restriction (*for the purposes of preventing crime, punishing offenders, withholding information duly classified as a State secret, protecting the reputation and rights and the private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary*) and it brings the distinction on adopted thought and nonadopted thought as well as creating the forbidden language category and empowering administrative organs to seize any written and printed documents

*Article 27 on the freedom of science and arts*

As it significantly restricts the exercise of the right through exceptions imposed therein and it empowers the administrative organs to give permission to printed materials published in foreign

countries to enter the country

*Article 28 on the Freedom of the Press*

As it brings prohibition of the use of any language prohibited by law. As it creates the category of thought crime. As it empowers the administrative organs to seize periodicals and non-periodical publications with a reason in cases where delay is deemed prejudicial.

*Article 30 on the Protection of Printing Facilities,*

As it regulates the restriction of the freedom of press rather than protection of it by imposing exceptional provisions in the protection of printing facilities

*Article 31 on the Right to Use Mass Media Other Than the Press Owned by Public Corporations*

As it restricts the exercise of the right by making reference to the general restrictions in Article 113 of the Constitution

*Article 33 on the Freedom of Association*

As it binds the establishment of associations to the permission system with conditions imposed and empowers the administrative organs to suspend or dissolution with a reason in cases where delay is deemed prejudicial

*Article 34 on the Right to Hold Meetings and Demonstration Marches* which includes restrictive provisions for associations, foundations, trade unions and public professional organisations not to organise any meeting or marches related to issues which is not defined in their aims through providing authority to administrative authorities both to permit and to postpone meetings and demonstration marches

*Article 42 on the Right and Duty of Training and Education* No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The

provisions of international treaties are reserved. 42. Articlesi,

*Article 51 on the Right to Organise Labour Unions*

Which limits the right to organise labour unions with the permission system and makes the exercise of the right by bringing the condition to have worked as a labourer at least 10 years

*Article 53 on the Right of Collective Bargaining* which subject public workers to have only collective discussion right

*Article 54 on the Right to Strike, and Lockout*

Which sees the right to strike equal to the right to lock-out, which does not bring ban on lock-out and which subjects the right to strike to ban with arbitrary decisions, which bans political, solidarity and general strikes

These provisions include contrary regulations to supranational documents

*Article 58 on the Protection of Youth*

Which aims at bringing up and developing the youth for a certain view

*Article 66 on the Turkish Citizenship* which does not pay regard to the pluralist ethnic structure of the Republic of Turkey, which refuses the constitutional citizenship with ethnic definition, which makes a gender discrimination through the phrase “*The citizenship of a child of a foreign father and a Turkish mother shall be defined by law.*”

*Article 68 on the Forming Parties, Membership and Withdrawal From Membership in a Party*

Which brings restrictions on programmes and regulations of political parties with subjective indicators, which band membership of civil servants to political parties and regulates financial aids to political parties from the Treasury

*Article 76 on the eligibility to be elected as deputy*

which specifies the age to be elected as 30, which restricts to be elected with offenses decyphering state secrets, participation in

ideological or anarchist Actions and incitement

*Article 83 on the Parliamentary Immunity*

Which does not have an objective criterion to judge due to political reasons members of parliament or not to do.

*Article 87 on the General provisions for Functions and Powers of the Turkish Grand National Assembly*

Which restricts the authority of the executive organ on the proclamation of amnesties and pardons, by referring exceptions in Article 14

*Article 91 on the Authorisation to Enact Decrees Having Force of Law* which makes possible the issue of decree having force of law including the exercise of fundamental rights and freedoms in cases such as state of emergency or martial law

*Article 100 on the Parliamentary Investigation*

Which enables to proceed according to political preferences

*Article 104 on the Duties and Powers of the President* which empowers the President with extraordinary authorities in judicial, executive and legislative fields

*Article 108 on the State Supervisory Council* which provides authority to the State Supervisory Council to audit public professional organisations, labour and employers union, public benefit associations and foundations

*Article 118 on the National Security Council*

Which is contrary to the principle of superiority of the public will in the democracy,

*Article 119 on the States of Emergency* which puts forward the declaration of state of emergency in cases of heavy economic crisis

*Article 120 on the Declaration of a State of Emergency on Account of Widespread Laws of Violence and Serious Deterioration of Public Order*

Article 120 which regards the appearance of serious indicators satisfLawory to declare for the state of emergency, rather than the



concrete Actions in relation to the violence

*Article 122 on the Martial Law, Mobilisation and State of War*

Which institutionalise the martial law, which attaches martial law commanders to the Chief of general staff instead of to civil administration.

*Article 125 on the Recourse to Judicial Review*

Which introduces restrictions on the Actions and procedures of the administration (e.g. keeps the Laws of the President of the Republic in his own competence, and the decisions of the Supreme Military Council outside the scope of judicial review) and restricts the issuing of stay of execution orders in cases of state of emergency, martial law, mobilisation, and state of war, and for reasons of national security, public order, and public health.

*Article 127 on the Local Administrations*

The administrative trusteeship of the central administration over the local governments introduced in Article is conflicted with the European Urban Charter and the European Local Autonomy Charter.

Regarding the Provincial administration as local administration creates a double power in the field of local administration

*Article 129 on the Duties and Responsibilities, and Guarantees During Disciplinary Proceedings of the Public Servants*

Which regulates that civil servants shall not appeal to judiciary against warning and reproach punishments and which provides immunity for civil servants alleged crimes and which subjects the investigations about alleged civil servants to the permission of administrative authorities.

*Article 130 on the Institutions of Higher Education*

Which imposes restriction on the liberty of universities and teaching staff through the threats in relation to the protection of the existence and independency of the state, indivisibility of the nation and the country

which implies that universities do not have financial and

administrative autonomy

*Article 131 on the superior bodies of Higher Education* which contains provisions concerning the control, administration and orientation of universities

*Article 136 on the Department of Religious Affairs* which is contradiction with the principle of laicism

*Article 140 on the Judges and Public Prosecutors* which regulates that judges are attached in terms of administrative duties

*Article 143 on the Courts for Security of State* which gives the State Security Courts as an exceptional court a place in the Constitution

*Article 144 on the Supervision of Judges and Public Prosecutors* which subjects the supervision of judges and prosecutors to the Ministry of Justice

Article 145 on the Military Justice which is against the unity of judiciary, which does not include the independency and security of judges and which establishes courts having authority to try civilians to be tried in both extraordinary and ordinary periods

Article 146 on the The Constitutional Court Anayasa mahkemesinin kuruluşunu which enables the Militart judges and prosecutors as well as admirals and generals to be elected to the Constitutional Court and to the higher administration of the Court,

Article 148 on the Functions and Powers which contains provisions that no Action shall be brought before the Constitutional Court alleging the unconstitutionality as to the form or substance of decrees having force of law, issued during a state of emergency, martial law or in time of war, and which imposes that Constitutional amendments shall be examined and verified only with regard to their form and which does not allow citizens, associations, foundations, trade unions, public professional organisations to appeal to the Constitutional Court,

*Article 154 on the The High Court of Appeals* which foresees the election of members of the High Court of Appeal by the Supreme Council of Judges and Prosecutors which therefore providing opportunity to the Minister and the Undersecretary to elect members and which also gives the authority to the President to elect the Prosecutor of the High Court of Appeals

*Article 155 on the Establishment of the Council of State*  
With same reasons raised in Article 154

*Article 156 on the Military High Court of Appeals*  
Article 156 as it is mentioned in the Constitution is against of the unity of judiciary and at the same time it is deprived of judge independency and judge security

Article 157 on the High Military Administrative Court of Appeals  
With same reasons raised in Article 156

*Article 158 on the Jurisdictional Conflict Court*  
Rearrangement of Article by diminishing the phrase “military judiciary authorities” as having harmony with our opinion to demolish military judiciary

*Article 159 on the Supreme Council of Judges and Public Prosecutors*

*Article 174 on the Preservation of Reform Laws*  
Article 174 titled Preservation of Reform Laws and regulating that no provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws ( with the reason that restrictions should be removed in paragraphs 2, 3, 7 ve 8. in this Article regulation of the private life, name, title and by-names in private life and wearing of garments in private life)

### **Law on Radio and Television of Turkey**

*Article 5* regulating broadcasting principles – is contrary to the pluralism principle

*Article 15 on Advisory Councils* which regulates that advisory in relation with national security will be carried out by the Secretariat General of the National Security Council , a structure of which personnel is confidential and of which Secretary general is from Military

*Article 23* including regulations prohibition of broadcastings with regard to the national security and giving the authority to the Prime Minister of a Minister to limit freedom of communication,

*Article 31* enabling the supervision of boadcastings made by the administrative organs

### **Law on Civil Servants**

*Article 6 on Duties and Responsibilities* imposing ideological and political insistence to be loyal to the Turkish nationalism

*Article 7 on impartiality and loyalty to the State of Civil Servants* regulating not being able to become member to the political partiesDevlet memurlarının tarafsızlık ve devlete bağlılık başlığıyla siyasi partilere üye olamayacaklarını düzenleyen 7. Articlesi,

*Article 26* regulating the prohibition of collective actions of civil servants and prohibition of collective application and complaints

*Article 27 on Prohibition of Strikes* regulating also the prohibition of strike peopoganda and prohibiting to participate in any strike or initiative for strike

### **Anti-Terror Law**

HRA wishes the annulment of the Anti terror Law as a whole

*Article 1 on Definition of the Terror* which defines the boundaries of the terror very widely and the expression of the thought as terrorist Action.

*Article 5 on Increase in Punishments* concerning the increase of punishment by one half as well as exceeding the upper limit of the punishment.

*Article 6 on Explanation and Dissemination* which obstructs the freedom of press

*Article 7 on terrorist Organisations* which also identifies non-violent organisations and punishes and the ones who makes propoganda are sentenced

*Article 8* which takes written or oral propaganda, along with meetings, demonstrations, and marches, aiming at destroying the indivisible unity of the state with its territory and nation of the Republic of Turkey in the crime context

*Article 16* making discrimination in the execution of punishments, without taking the special conditions of convicts or prisoners into consideration with the aim of isolation, foreseeing special penal institutions built according to single bed or three-bed room system in conflicting with the innocence evidence foreseeing this penal institutions for prisoners, not approaching to the cahmber system as aright to arrange private life for convicts and prisoners and bringing into fore the aim of repunishment

*Article 17 on Probational Release* by creating inequality in the execution of the punishment foreseeing those who are punished by other terms of imprisonemnet upon the completion of three fourths of their terms shall be released on probation

#### **Turkish Penal Code**

*Article 155 on* “.. Those who makes people unwilling to serve in the military, shall be imprisoned ...”

*Article 158* “Whoever insults the President of the Republic face-to-face or through cursing shall face a heavy penalty of not more than three years.”

*Article 150 on insulting the State organs (Those who publicly insult or ridicule the moral personality of Turkishness, the Republic, the Parliament, the Government, State Ministers, the military or security forces of the state, or the Judiciary will be punished with a penalty of no less than one year and no more than six years of maximum security imprisonment....)*

*Article 162 on punishment to transport printed materials regarded as crime*

*Article 311 concerning the incitement to commit a crime*

*Article 312 regulating the crime to provoke people to feel hate and enemy by regarding class, religion, race, religious sect and regional differences(One who openly praises an action considered criminal under the law or speaks positively about it or incites people to disobey the law shall be sentenced....One who openly incites people to enmity and hatred by pointing to class, racial, religious, confessional, or regional differences will be punished by imprisonment of... If the incitement is done in such a way that could possibly be dangerous for public security, the punishment given to the perpetrator is increased from one-third to one-half. Penalties given to those who carry out crimes in the paragraphs written above by means outlined in the second paragraph of Article 311 will be increased accordingly. )*

### **State of Emergency Law**

*Article 1-* leading to the declaration of the state of emergency in cases of heavy economic crisis, instead of laying down the condition of threatening the organised social life as a whole bringing only the raising of serious indications for the declaration of the state of emergency.

*Article 2-* without referring to the prohibition to infringe the essence of the fundamental rights and freedoms, including provisions on how to limit the the fundamental rights and freedoms and how to suspend,

*Article 3-*By taking the reference point from heavy economic crisis and serious indications the provision regulating the declaration of the state of emergency and bringing condition to get the opinion of the National security Council,

*Article 4-* providing the opportunity to issue Decree(having the force of law) in against of the principle not allowing to regulate fundamental rights and freedoms by Decrees (having the force of law),

*Articles 9 and 11* resulting in the restriction of fundamental rights and freedoms by administrative decisions,

*Article 23* regulating the authority to use guns, and firing the gun without hesitating to the target,

*Article 27* laying down the condition on the enforcement of authorities of the local authorities with the permission of Provincial governors and subgovernors and therefore annulling the autonomy of the local governments,

*Article 33* – not allowing the Appeal to cancel the execution in the cases opened against administrative procedures with the use of authorities given to the Minister of Interior, Regional Governor of the state of emergency and provincial governors.

**DECREE (having Force of Law) on the Regional Governor of the State of Emergency**

*Article 4* which enables the Governor of the state of emergency to change the workplaces of public servants, which empowers the Governor of the State of Emergency to evacuate residential areas, subjecting the personnel under the order of the Governor to be treated in accordance with the Law on Trial procedures for Civil Servants

The provision concerning that the identification of the adjacent provinces under the State of Emergency shall be made by the agreement of the Prime Minister upon the demand by the Governor of the State of Emergency and the proposal of the Ministry of Interior, which also enables the transfer of some of authority of the Governor of the State of Emergency to the public order commander

Is contradicted with the rule of law and democracy

*Article 7* which imposes No appeal towards administrative procedures and the exercise of the authority of the Governor of the State of Emergency is against the principle of rule of law, human rights and democracy. In addition, the statute to be identified as adjacent province to the State of Emergency are not regulated by

laws or decrees. This lack of legal backing gives the opportunity to expand the boundaries of the State of emergency Region without requiring any decision from the Parliament

**Decree (Having the Force of Law) No. 430 on The Governorate of the State-of-Emergency Region and on Additional Measures to Be Taken During The Period of the State of Emergency**

*Article 1* which authorises the governor to ban the entry of publications into the region and to order individuals, without the need for a court decision, to leave the areas where they live; (For example, the distribution of the *Evrensel* newspaper in the SOE region has not been allowed for about 2 years now. The distribution of the *2000'de Yeni Gündem* newspaper in the region was banned one week after it started publication. There are also other magazines and newspapers not allowed in the region. This represents legislation and practice contrary to the right to information.)

*Article 2* which authorises the governor of the region to suspend union Activities or to subject them to permission;

*Article 3* which authorises the governor of the SOE region to second public officers to other regions and to request public prosecutors to bring legal Action, which provides that such request shall be carried out, which grants authority to take convicts and detainees into custody in prison and to search natural and legal persons and their homes and working premises, and which thus gives way to violations of human rights;

*Articles 5 and 6* which prescribe aggravated penalties for news reports and comments appearing in the media;

*Article 8* which provides that no claims of penal, financial and civil liability may be made against the Minister of Internal Affairs, the Governor of the State-of-Emergency Region and the province governors in connection with the exercise of the powers granted to them and that no application may be made to any judicial bodies for this purpose, which is against the rule of law;



## **The Law on the Duties And Powers of the Police**

*Article 2* which, while enumerating the duties of the police concerning general security, neglects the right of the citizen to personal freedom and security and which, using very general language, provides that oral instructions given by an authorised superior shall be promptly carried out;

*Article 5* which authorises the police to take people's fingerprints and photographs;

*Article 7* which provides that places where cultural events such as cinema and theatre are to be held may only be opened subject to prior permission and that places opened without such permission shall be closed down;

Article 8 which provides that workplaces, societies, trade unions and professional associations shall be closed down and barred from activity by the police if definite evidence against them is obtained by the police, without a court decision, and upon an order from the highest civil officer of the place;

*Article 9* which authorises the police to seize sound records containing songs or words not conformable to public morals, as well as films shown or obtained without permission and such writings and pictures and to search individuals and their vehicles and belongings in public places, in student hostels, at entrances and exists of cities or other settlements or on vehicles of transport traveling on main streets, for the purpose of ensuring the security of public meetings and demonstration marches and of the general assembly meetings of societies, professional associations and trade unions and ensuring the freedoms of travel and education and for purposes of security, and which provides the basis for the so-called "peace operations" carried out as an administrative practice in Turkey every week during certain periods in cities such as Istanbul, Ankara and Izmir, destroying the right of personal freedom and security and representing a violation of human rights;

*Article 11* which authorises the polices to prevent or prohibit, without the need for a court decision, those who are engaged in behaviour that is considered disgraceful or contrary to public morals or objectionable from the point of public order, those who perform such speeches, songs, music or similar Laws and those who produce or sell such films, sound records, video cassettes and sound tapes, and which requires that video and sound tapes should be submitted to the highest civil officer of the place before they are released on the market; and

*Article 13* which provides that, in situations where delay would be prejudicial, the police shall seize persons who are strongly suspected of having committed or attempted to commit a crime and that the seizure of such a person shall be promptly notified to his/her relatives unless this would endanger the safety of the investigation, while, as a general prLawice, relatives are not notified of the seizure,

**must be amended.**

*Article 16* which provides for the authority of the police to use arms and authorises the police to use arms without any concern of proportionality; and

*Article 17* which provides that the police may ask persons their identities for the purpose of preventing the commission of crime or seizing the perpetrators of crimes committed, a provision which threatens personal freedom and security,

**must be amended.**

*Article 20* which allows the police to enter into university buildings and their annexes;

*Article 21* which requires a certificate of authorisation, obtained in accordance with the Press Law, for being able to collect subscriptions for newspapers and magazines;

*Additional Article 1* which requires individuals or groups to file an application at least 48 hours in advance with the highest civil officer of the place for permission to stage a play or other show;

*Additional Article 3* which authorises the police to ask individuals not to leave their homes or workplaces, on account of criminal investigations under way concerning the integrity or general security of the State or the constitutional order, and which enables practices contrary to the rule of law;

### **The Law on Meetings and Demonstration Marches**

*Article 3* which subjects the right of assembly and demonstration marches, even before it is exercised, to the condition of certain purposes not considered criminal by the law and which requires the permission of the Ministry of Internal Affairs for foreigners to take part in assemblies or marches organised by citizens of the Republic of Turkey;

*Article 6* which provides that the place where an assembly or demonstration march is to be held shall be determined by the administration and that no assembly or demonstration march may be held elsewhere;

*Article 9* which makes it difficult to exercise the right to hold assemblies and demonstration marches, which stipulates the condition of having completed the age of 21 instead of 18, which requires an organisation committee consisting of at least 7 persons and which provides that the members of the organisation committee must document that they have their permanent domiciles in the place where the assembly is to take place;

*Article 10* which requires that the organisers of an assembly must give notice to the civil authorities at least 72 hours in advance; and

*Article 13* which provides for the presence of a government officer and for the powers of this officer and which states that this officer shall document the assembly through sound-recording devices, cameras and other technical equipment, a task which is performed in practice by the police as a product of the mentality of fabricating so-called “thought crimes”,

**must be amended.**

*Article 17* which provides for the prohibition or deferral of an assembly and results in the prohibition or deferral of the right to hold assemblies and demonstration marches simply on the basis of a probability must be abolished.

In addition, *Article 19* which authorises the regional governor, who is an administrative official, to ban all assemblies in provinces and districts and which shows that the right to hold assemblies and demonstration marches is not guaranteed;

*Article 21* which states that societies, foundations, trade unions and professional associations shall not hold assemblies and demonstration marches except in connection with their specific areas of Lawivity and for their specific objectives; and

*Article 23* which contains provisions concerning illegal assemblies and demonstration marches and defines an illegal assembly or demonstration march as one in which banners, placards, posters, pictures and signboards considered illegal by the laws are carried or such slogans are shouted or broadcast by sound equipment or one which is held for a purpose other than the one indicated in the notice or generally for such purposes as are considered illegal by the laws or outside academic, commercial or economic tradition or custom,

**must be amended.**

In fact, the Human Rights Association calls for a complete review of the Law of Assembly and Demonstration Marches because the right to hold assemblies and demonstration marches is a right that should be exercised without being subject to prior permission.

#### **Associations Law**

*Article 1* which provides that a society may be established for only one purpose;

*Article 4* which restricts the right to establish a society for civil servants and those who have committed thought crimes (Articles 312, 536 and 537 of the Penal Code);

*Article 6* which, under the heading “societies that cannot be founded”, contains provisions contrary to the democratic principles of participation and pluralism, bans the use of certain names and signs, and imposes linguistic and cultural prohibitions;

*Article 7* which imposes a ban on international Activities and is in contrast with the Law that human rights require international solidarity, surveillance and inspection;

*Article 11* which prescribes a system of permission for the Activities abroad of societies founded in Turkey and makes such Activities difficult;

*Article 12* which prescribes a similar system for the Activities in Turkey of societies founded abroad;

*Article 16* which restricts the right to membership of a society for judges and requires the permission of the Justice Minister for judges and the permission of the Ministry for other public officers;

*Article 37* which, under the heading of prohibited Activities, imposes restrictions on societies;

*Article 38* which restricts the objectives and Activities of student unions;

*Article 39* which restricts the objectives and Activities of societies to be founded by public officers;

*Article 40* which provides that societies shall not carry out education and training in civilian defence, a provision whose drawbacks became apparent following the Marmara earthquake of August 17;

*Article 43* which provides for relations with foreign societies and associations and requires permission for such relations;

*Article 44* which imposes censorship on statements to be issued by societies, requiring that such a statement be submitted to the public

prosecutor's office and the highest civil authority of the place before it is issued and providing that such statements shall not be issued before 24 hours have passed after submission;

*Article 48* which allows the police to enter at all times into the premises of societies and to intervene in the event of finding any written or visual materials that represent regimes, doctrines or ideologies prohibited by the laws;

*Article 53* which envisages the banning of societies that become a source of crime and makes it easier to ban societies;

*Article 54* which provides a basis for province governors to bar societies from Lawivity and which eliminates the possibility for the concerned society to take Action about the file submitted to the court on the basis of the governorate's unilateral allegations;

*Article 60* which requires the permission of the Ministry of Internal Affairs for a society to receive assistance from natural or legal persons abroad and which results in arbitrary interventions in relations of assistance;

*Article 68* which lays down the duties and powers of the government officer to be present in the general assembly of a society and provides that this officer shall record the proceedings of the assembly by means of technical equipment;

*Article 72* which subjects to national law even those societies founded by Turkish citizens abroad;

*Article 92* which provides that the law of societies shall apply also to professional associations and to unions of workers or employers;

The Human Rights Association's opinion is that the right to establish an association is not subject to the prior permission. Together with existing provisions the Association Law bases on a prohibitive regime as a whole. Therefore the law needs to be

rearranged.

### **Population Law**

Provision concerning that children shall be given to father's surname should be rearranged in the light of gender equality by birth, and the provision that names not compatible with national culture, customs and usage and moral values cannot be given to children should be rearranged by taking the characteristics of the multicultural structure of the society into consideration.

*In Article 23*, Provision on the Marriages which contains the word of wife and which regulates that husband cannot be registered in wife's state register should be changed by providing free choice of parties and in the light of gender equality

*In Article 47*, provision subjects change occurred, due to any defect, in the body to be registered in the state register of the person, is an infringement in terms of individual rights.

### **Surname Law**

Following provisions should be amended:

*Article 3* needs to be changed as it is conflicting with the multicultural structure of the society

*Article 4* which gives the right to choose surname to the husband is against the principle of gender equality

### **Law on Cinema, Video and Music Works**

Provision *in Article 3* imposing a supervision mechanism in contrasting to the freedom of science and art, provision *in Article 6* on Supervision which leads to censorship on art works,

provision *in Article 5* imposing the condition to be registered and licenced which lead to supervision,

provision *in Article 9* empowering administrative organs to prohibit distribution and display of art works and therefore contrast to the principle of rule of law.

### **Press Law**

“Age of 21” should be changed as “age of 18” concerning distribution of printed materials *in Article 5*

*Article 16 on Liability in Press* which punishes editors-in-chief imposes in against of personality of offenses and punishments and also brings language prohibition

*Article 31* which provides the opportunity to the Council of Minister to prohibit enterance and distribution of works published in abroad

*Additional Article 1* enabling the seizing of periodicals and books without obtaining decision of judiciary

### **Law on Establishment and Broadcasting of Radio and Televisions**

Following articles are in conflicted with human rights and the rule of law principle.

*Article 4 on Broadcasting Principles* regulating the permission system for establishment of private radio and televisions, not allowing to apply judiciary against decisions on licencing

*Article 35* as including uncertain boundaries of prohibitions, enabling examination of the content of programmes, attachement of the High Council of Radio and Television (RTUK) to the Prime Ministry, providing the opportunity for preliminary examination of programmes which leads to censorship, empowering the administrative organs to suspend broadcasting up to one year without obtaining judiciary’s decision.

*Article 28* empowering RTUK to punish television channels for not applying decisions of judiciary



### **Trial of Public Servants and Other Public Officials Law**

*Articles 3,5,6,7,8 and 9* of the Law which impose a system for public servants for alleged offences to be subject to the permission of administrative authorities create a significant problem in prevention of the torture. Public servants and employees committed torture crime should be excluded from the context of the Law in order to prevent torture.

**PART IV**  
**MINORITY RIGHTS**



## MINORITY RIGHTS

### **Evaluation and Suggestions for Minority rights**

There is no consensus in the world on the definition of the minorities rather than types of minority rights. However, it seems that there is a tendency towards the expansion in the list and the content of minority rights.

OSCE Copenhagen Document dated 1990 identified the rights of minorities. These include the rights of language, religion, culture, education and training.

As a result of the Lausanne Treaty of 24 July 1923, Greek, Jews and Armenian citizens in Turkey were accepted as minorities as a statute. Articles 37 to 45 under the heading of Protection of Minorities of the above mentioned Treaty regulates minorities and rights. Paragraph 4 of Article 39 of the Treaty reads that

*“No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meeting.”*

HRA defends that recognition of minority rights as defined in Copenhagen Document is both necessary for compliance with Lausanne Treaty and a necessity for having a democratic pluralistic society without proposing any statute for any part of the society.

Minority rights are given a special importance in the studies of international organisations like UN, Council of Europe, OSCE and the EU. The understanding that the minorities or to say that ones being different are the richnesses of the world or at least the society in which they live is getting established.

Diversity, on the other hand, is not seen at all as a danger for pluralistic societies but unifying and enriching factor. Development is towards giving the all rights acquired by the majority to minority or to the different.

In this framework, by observing developments in the world and from the departure point that the our country's pluralist ethnic and cultural structure is a source of richness, the necessary postitive adjustments should be made.

The supranational documents will be guidance in this issue. These documents are UN Convention on the Individual Rights of National or Ethnic, Religous and Language Minorities, Framework Convention of the Dcouncil of Europe on the Protection of National Minorities, European regional and Minority languages ConventișonTurkey should sign and ratify these international conventions.

## KURDISH QUESTION

### **We See the Kurdish Question as a Question of Human Rights and Democracy**

The Human Rights Association in its evaluations of human rights and democratisation problems of Turkey İHD, was defining following opinion: Turkey's fundamental problem is the question of human rights and democratisation. One of the important element of this problem is the Kurdish problem. This view point refuses the view point seeing Kurdish problem as a minority problem. Kurdish population in our country has been expressing that they see themselves as holders of equal rights with everybody. The Kurdish problem is a question that cannot be dealt with separately from the constitutional and legal system of Turkey as a whole. An armed conflict prolonged 16 years which created traumatic effects on everybody. Our society has been hurt. Having different ethnic origins does not mean that our sorrows are different. In this framework when the problems faced by our Kurdish origin citizens so far are examined, it is seen that following problems are being experienced:

The region has been subject to martial law and extraordinary governance methods since 1978, exercise of fundamental rights and freedoms have been restricted, economic and social conditions have stayed under average standards, uneven income distribution among individuals and social classes have sustained, regional disparities have been enormously high.

Existing constitutional and legal system of Turkey underestimates the principle of pluralism, does not recognise freedom of expression for all neither in general nor in political and organisational areas. The system is far from embracing pluralist ethnic and cultural structure of Turkey and from being a constitution that everybody feels free to express themselves and an understanding of citizenship which is defined by that constitution. This is why it is imperative to increase level of human rights and

democracy to universal level as soon as possible. There is a need in Turkey to have a constitution to embrace all people of Turkey, to enable all people to protect and develop their language and culture, to see all citizens equal and to enable all people to develop freely their opportunities and characteristics. All problems will be solved when the Kurdish problem is seen as a question of human rights and democracy, when appropriate arrangements are made on the basis of pluralism principle, when the state holds same distance towards different thoughts, beliefs, language and cultures. We believe that the solution shall be found with embracement of pluralist ethnic and cultural structure of the society at constitutional and legal levels. For this reason, making the requirements of the constitutional citizenship shall be the key factor in solution of problems. In this context, we make following suggestions to remove prohibitive provisions in the Constitution and laws and to reformulate the aim and tasks of the State in the light of protection and development of different languages and cultures.

- *State of Emergency should be lifted and normalisation of life in the region should be set up*
- *To respect to citizens' will to return villages and reconstruction of villages providing financial support*
- *To take appropriate measures to adjust income disparities, to expedite investments to remedy unemployment*
- *To abolish village guard system*
- *Starting from the Constitution, restrictions before the freedom of expression, freedom of language and culture, freedom of education and training in mother tongue.*

These suggestions are for all in Turkey (except removal of state of Emergency and guard system). These are for all different sections of the society.

## **MINORITY RIGHTS: Screening**

With regard to freedom of language, religion, culture, education and training, following rights could be linked with Copenhagen Criteria

### **Brief explanation**

Arrangements in this section took place also in the section on principle of pluralism. HRA believes that when the principle of pluralism is respected, human rights and freedoms can be realised for people having different position and situation in a society without assigning a minority statute or qualifying them as minorities. The trend in the world in fact is developing towards the adoption of the principle of pluralism. Because of this, the following laws and articles are compared with the Copenhagen Document of the OSCE(1990)

### **The Constitution**

*Provision in Article 26* concerning not being able to use any language other than Turkish in the expression and dissemination of thought

Freedom area which is restricted with science and art in Article 27

Provision in Article 28 prohibiting the use of any language forbidden by Law in broadcasting,

Provision in *Article 42* prohibiting teaching and learning of any language other than Turkish as a mother tongue to Turkish citizens in education and training institutions

### **Political Parties Law**

*Article 43* prohibiting the use of any language and writing other than Turkish

*Article 78*, the provision reads that “Political parties shall not aim at establishing a state regime basing on..... language, race, colour, religion and religious sect discrimination and shall not perform towards this aim; and ... Political parties cannot be based



on region, race, certain person, family or society, religion, religious sect and religious order and cannot use their names, political parties cannot aim at defending the domination of a social class on other social classes

Boundaries of these provisions are dubious and open for all sort of interpretation. It is difficult to comply with the principle of pluralism. Therefore there is a need to reformulate Article in the light of the pluralism principle.

*Article 81* setting afoorth there are minorities basing on the differences national or religious culture or religion sect or race or language, setting afoorth an aim to destroy national culturalism by creating minorities through protection, development and dissemination of cultures other than Turkish culture and cannot Law towards this direction In writing and disseminating of regulations in outdoor and indoor meetings, in propogandas any language other than Turkish cannot be used.,

*Article 82.* provisions concerning not being able to hold an aim of regionalism and not being able to Law towards the aim set up

*Article 89-* provision that could be contrued as prohibiting critical vews towards the Religious Affairs Department

#### **Associations Law**

*Article 5,* an association cannot be establish with the aim arguing that there are minorities basing on differences of race, religion, religious sect, language and culture or to protect, develop and disseminate languages and cultures other than the Turkish language and culture

*Article 6,* forbidding to use Languages forbidden by law, in their statute or in the writing of any other of the association's regulations or publications, in their general meeting, or in any of their private or official, open or closed meetings, and Any banner, sign, placard, audio or video tape, brochure, pamphlet, declaration or similar in a language forbidden by law in any meeting closed or open, organized by the association, or in which the association is participating,

**The Law amending the Civil Code No: 903**

*Article 74 on the Foundations* regulating that the registration of the Foundations aiming at supporting to political views against law, moral or national values or supporting to members of a certain race or society shall not be made.

**Population Law,**

*Article 16* – provision concerning the ban on the names not compatible with national culture, custom and usage

**Law on Provincial Administration**

*Article 2* provision on the change of the names of villages with non-Turkish names,

**Law on Foreign Language Education and Training**

*Article 2* having the provision that the mother tongue of Turkish citizens cannot be taught in any other language

**Law on Cinema, Video and Music Arts**

Provision aiming at bringing order and scale to cinema and music life with respect to national unity, integrity and continuity in *Article 1*

The phrase “Encouraging Turkish cinema, music and art works” in *Article 2*

Supervision of the compatibility with national culture, usage and customs in *Article 3*

Provision bringing authority to the administration to prohibit works non-conformed to usage and customs in *Article 9*

**Law on Fight Against Terrorism (Anti-Terror Law)**

*Article 6,7, and 8*, which leads to create crime of propaganda

**Press Law**

Giving the power to Prohibit the distribution, confiscate of printed material and close of newspapers and journals to the authority out of judiciary (prosecutor) in *Additional Articles 1 and 2*

Punishment of editor-in chief in responsible in *Article 16*

Prohibition of materials printed in abroad to enter into country in *Article 31*,

**Law of Duties and Powers of the Police**

*Article 8-* provision concerning the closure of places where drama, performance, film and video tapes are shown by the police with the reason not conforming to the Constitutional order.

**Law on Radio and Televisions-Establishment and Broadcasting**

*Article 4-* phrases on principle of development of national culture, to the Turkish family structure, to national values should be deleted

*Article 31* phrase “obligation to broadcast Turkish folk and art music” should be deleted

**Law No.2954 on Radio and Television of Turkey**

*Article 5-* the phrase “ to adopt Turkish fundamental views, aims and principles” should be deleted

*Article 9* - phrases for the developemnt of national education and national culture, of the nstate security politics, protection of national and economic interests and the provision concerning assistance to the formulation of free and healthy public opinion within the context of the principles of the Constitution, should be deleted and abrogated.

**Decree on the Organisation and Duties of the Culture and Tourism Ministry**

The phrase “Obtaining written arts and documents related with Turkish culture” in *Article 11*

**The Constitution**

*Article 24* – provision subjects the religious and moral intructions to be performed under the supervision of the State and , makes religious instructions compulsory in primary and secondary

education and training institutions  
*Article 136-* the phrase “of the Department of Religious Affairs”  
Should be abrogated.

**The Law on the establishment and duties of the Department of Religious Affairs**

*Article 1* entitled duty which declares that the Religious Affairs Department is established to perform its duties withinb the limits of Islam religion and is attached to the Prime Ministry

*Article 14* provision foreseeing the maintenance and conservation of mosques, mescit and müftülük

**Law on the Closure of Dervish Lodges and Cells and Tombs and Prohibition and Abolishing of Office of Tombs and Some Titles**

*Together with additional articles Article 1* needs to be rearranged to prevent the abuse of freedom of religion and belief and in a way to recognise the freedom of religion and belief basing on the laicism

**Law on Obligatory Use of Turkish in Economic Enterprises,**

*Article 1* extending the obligatory use of Turkish to the relations (contrLaw, communication) among persons

**The Law on the acceptance of Turkish Alphabeth**

*Article 2* regulating the obligation of the acceptance and appliAction of writings with Turkish alphabeth in companies, society and private organisations

*Article 4* regulating the obligation of printing newspapers, jornals and books in Turkish alphabeth

**The Law on Abolishing Titles and By-names such as “efendi, bey, pasha”.**

Except the section foreseeing the use of names of women and men citizens written in official documents and before the laws, provision prohibiting the titles and by-names in their private life in *Article 1*

**Law on General Provisions of Elections and Electors  
Registration**

Provision concerning propoganda broadcasting in television and radios and other elections propogandas use of any language other than Turkish is prohibited in Article 58.

**Priorities and Time Table Proposals  
for Accession Partnership and National  
Implementation Programme  
in the framework of the Copenhagen  
Political Criteria**

**20 September 2000  
ANKARA**



# **Priorities and Time Table Proposals for Accession Partnership and National Implementation Programme in the framework of the Copenhagen Political Criteria**

The Human Rights Association has developed a package of proposals for short and medium term-commitments to be undertaken by Turkey as a complementary study to *the Copenhagen Political Criteria and Turkey: Legislative Screening* publicised on 13 July 2000. Short term covers a period between October 2000 and 31 December 2001, medium term is defined as the period until 31 December 2003.

## **Undertakings in Short Term**

### *Changes in Constitution*

HRA demands the change of the Constitution in once and as a whole. HRA finds it useful to start legislative changes with the Constitution. However, this does not mean delaying changes to be made in other laws until the Constitution change takes place. We are well aware that Constitutional changes need a wider concensus. This is why we propose a six month period (from October 2000 to 31 March 2001) of discussion and preparation for a draft concerning Constitution changes. Participation of all parts of society should be ensured in the process of preparation of the Constitution. The draft should be discussed in the TGNA in April 2001.

HRA's demand is that the picture revealed in the study on Copenhagen Political Criteria and Turkey(Legislative Screening) should be taken into consideration during the preparation of the Accession Partnership document.



As the first thing of the TGNA is to elect President and presiding board when it is opened on 1 October 2000, the TGNA will be able to function only in the second half of October. In order to function productively and fast standing orders of the Assembly needs to be changed. In the beginning of November the EU-Turkey Accession Partnership will be publicised and the European Council will approve it in December 2000.

Therefore, we propose to devote a six month period till 31 March 2001 for preparation of a package of amendments in the Constitution on the one hand, and urgent changes in other laws should be started. In legislative activity, we propose to follow a mixed method in changing Constitution and other laws, on the other.

## Short Term: First Stage

### Urgent amendments in laws : 1 October 2000 – 31 March 2001

#### ***General Amnesty.***

Either in November or December, General Amnesty Law should be enacted. Society of Turkey needs such a start.

We consider that following amendments should be immediately made to the existing Amnesty Law:

- Article 169 of the Turkish Penal Code should be included in the Amnesty Law
- Articles 14 and 87 of the Constitution which limits the power of the TGNA on general amnesty should be abrogated,
- In case of any difficulty to amend the Constitution in a short time, Article 5 of the Anti terror Law which increase punishments by 50% for crimes committed in the context of this law, and Article 17 concerning implementation of the execution of the punishment by three fourth should be abrogated

#### **Freedom of Thought**

- Articles 155, 158, 159, 311 and 312. of the Turkish Penal Code,
- Articles 6,7 and 8 of the Anti terror Law should be amended,

#### ***Right to Live:***

- A law which lifts death penalty from laws should be enacted or ratification of the Additional protocol No 6 of the European Convention of Human Rights

#### ***Torture:***

In order to be able to prevent torture, administrative measures should be taken; implementation of measures should be supervised regularly, continuously and systematically. Complaints and allegations on torture should be seriously dealt with, petitions from victims and human rights organisations should be immediately

treated. Everybody who is under detention should be immediately taken to the judge, should be provided to reach legal counselling and relatives and human rights organisations should be informed immediately, the alleged crime should be known to the suspect. Everybody who has been taken under custody should have the right to choose medical doctors other than official medical doctor. Reports given by doctors or expert organisations other than Forensic medicine bodies should be accepted as evidences. Declarations taken under torture should be eliminated from dossiers and, interrogations and attributing offences basing on refused declarations should be terminated.

- By inserting an additional article to the Law on Trail of Civil Servants No: 4483 of 04.12.1999 it should be ensured that civil servants who are alleged to commit torture crime are excluded from the content of this Law and Public prosecutors directly opens interrogations for alleged civil servants.
- Article 129 of the Constitution should be amended in this direction.

***F-Type Prisons:***

- The Project for F-type prisons should be terminated. Article 16 of the anti terror Law and Article 13 of the Law no.4422 should be abrogated. Conditions in the existing prisons including physical ones should be improved. Rights of convicted and arresteds should be legally guaranteed. Execution judge system should be established. Food, health and shelter problems of convicts and arresteds should be immediately solved. Dual management system of prisons should be terminated, internal and external supervision of prisoners should be given to the Ministry of Justice.

***Kurdish problem and State of Emergency Governance procedures:***

Governance procedure of State of Emergency which was martial law between 1978 and 1987 and continued after 1987 with the

name of State of Emergency should be terminated in the South east Region.

- Decrees (having force of Law) Nos:285 and 430 should be abrogated or, at least, Article 7 of the Decree No: 285 which forbids appeal against the State of Emergency Governor decisions should be abrogated.

- Provision in Article 33 of the Law on State of Emergency No:2935 concerning not to appeal to cancel the execution in cases opened against administrative procedures with the use of authorities given to the Minister of Interior, regional Governor of the State of Emergency and provincial governors **should be abrogated**

- Provisions in the State of Emergency Law, Decrees 285 and 430 which gives power to administrative authorities to limit exercise of human rights and fundamental freedoms as these rights can only be limited by judiciary in a country where the rule of law is dominant.

- Village guard system should also be terminated together with the lift of the State of Emergency. Social security and other administrative measures should be taken for village guards for their adoption to a new life.

- Since the long-lasting armed conflict is ended, demining activities should be started in the region.

- Use of Pastures should be ensured in the region.

- Rapid economic, social and cultural initiatives should be introduced in the region.

- Victims of forced migration are millions of people who live in 3688 villages. For a safe return of these people back to their original places, first of all the security understanding should be inverted into the understanding of the human rights of these people. These people have not only experience a deprivation on the use of their possessions but also they are deprived of their accustomed cultural, social and natural environment. Because of this, these people should return to their original environment and should be provided with all sorts of incentives (credits, animal, tools, equipment etc.)

- A participatory approach should be adopted in return to village project.
- A distance should be kept against approaches neglecting language and cultural characteristics of the people in the region. A confidence should be developed to the people. The main element to eliminate the Kurdish problem is not to regard our Kurdish citizens as potential criminals, to show and give confidence to them. People in the region is an enriching part of pluralist ethnic and cultural structure of society of Turkey. There is a need to approach to the issue in that naturalism.

By taking into account that problems of children in the earthquake region and ones affected from armed conflict in the State of Emergency Region as well as disabled people are having priority, we propose that projects should be prepared, implemented together with civil society organisations and a special budget allocation should be made for solving problems in this field.

## **SHORT TERM: Second Stage**

### ***Other amendments to be done in the Constitution (31 March 2001-31 December 2001)***

In the Draft Constitution needs to be prepared until 31 March 2001, following articles of the existing 1982 Constitution should be amended by adopting approaches and provisions of supranational human rights documents. Following articles also includes the related concepts indicating why they need to be amended..

- 1) Article 5 on Fundamental Aims and Duties of the State (related concepts: citizenship, democracy, respecting rule of law)
- 2) Article 6 on Sovereignty (related concepts: democracy, citizenship)
- 3) Article 7 on Legislative Power (related concept: democracy)
- 4) Article 9 on Judicial Power (related concepts: rule of law, democracy)
- 5) Article 13 on Restriction of Fundamental Rights and Freedoms (related concepts: freedom of expression, pluralist democracy, human rights, limitation of human rights, boundaries of limitations)
- 6) Article 14 on Prohibition of Abuse of Fundamental Rights and Freedoms (related concepts: freedom of expression, pluralist democracy, human rights, limitation of human rights, boundaries of limitations, rule of law)
- 7) Article 15 on Suspension of the Exercise of Fundamental Rights and Freedoms ((related concepts: democratic society, limitation of human rights, boundaries of limitations, rule of law, death penalty)
- 8) Article 17 on Personal Inviolability, Material and Spiritual Entity of the individual (related concepts: inviolable rights, human rights, death penalty)
- 9) Article 18 on Prohibition of Forced Labour (related concepts: human rights hypothesis of innocency)
- 10) Article 19 on Personal Liberty and Security (related concepts: human rights, personal liberty and security right, rule of law,

*habeas corpus* rule)

11) Article 20 on Privacy of the Individual's Life (related concepts: human rights, rule of law)

12) Article 21 on Inviolability of Domicile (related concepts: human rights, rule of law, limitation of human rights, boundaries of limitations)

13) Article 22 on Freedom of Communication (related concepts: human rights, freedom to communicate, right to access to the data, dissemination and comment, limitations of human rights, boundaries of limitation, democracy, rule of law)

14) Article 23 on Freedom of Residence and Movement (related concepts: human rights, freedom to travel, freedom to reside, limitations of human rights, boundaries of limitation, democracy, rule of law)

15) Article 24 on Freedom of Religion and Conscience ((related concepts: human rights, freedom of religion and conscience, inviolable rights category, laicism principle, compulsory religion course, children rights, parents rights)

16) Article 26 on Freedom of Expression and Dissemination of Thought (related concepts: human rights, freedom of expression, use of language, language forbidden by law, cultural pluralism, limitations of human rights, boundaries of limitation, rule of law)

17) Article 27 on Freedom of Science and Arts (related concepts: human rights, freedom of expression, freedom to communicate, democracy, rule of law)

18) Article 28 on Freedom of the Press (related concepts: human rights, freedom of expression, freedom to communicate, use of language, language forbidden by law, democracy, rule of law, limitation of rights, boundaries of limitation)

19) Article 30 on Protection of Printing Facilities (related concept: freedom of press)

20) Article 31 on Right to Use Mass Media Other Than the Press Owned by Public Corporations (related concept: freedom of press)

21) Article 33 on Freedom of Association (related concept: human rights, right to establish association, freedom to organise, pluralistic and participatory democracy)

- 22) Article 34 on Right to Hold Meetings and Demonstration Marches (human rights, freedom of meeting and having demonstration marches, collective freedoms, pluralistic and participatory democracy)
- 23) Article 42 on Right and Duty of Training and Education (human rights, right to access public education and training, right to have education in mother language, use of language, language forbidden by law, protection of others in a society having pluralistic ethnic, language and cultural structure)
- 24) Article 51 on Right to Organise Labour Unions (human rights, pluralistic and participatory democracy, economic and social rights, freedom to organise, syndical rights)
- 25) Article 53 on Right of Collective Bargaining (human rights, syndical rights, economic and social rights)
- 26) Article 54 on Right to Strike, and Lockout (human rights, pluralistic and participatory democracy, syndical rights, economic and social rights)
- 27) Article 58 on Protection of Youth (human rights, duties of the State)
- 28) Article 59 on Development of Sports (human rights, social and cultural rights)
- 29) Article 62 on Turkish Nationals Working Abroad (human rights, citizens right, economic and social rights)
- 30) Article 66 on Turkish Citizenship (human rights, pluralistic democracy, protection of individual, citizenship, pluralistic society, ethnic and cultural differences, equality, gender equality, prohibition of discrimination, identity)
- 31) Article 67 on Right to Vote, to Be Elected and to Engage in Political Activity (human rights, democracy, citizens rights, free determination of economic, social, political and cultural system, participation right)
- 32) Article 68 on Forming Parties, Membership and Withdrawal From Membership in a Party (human rights, limitation of human rights, boundaries of limitations, pluralistic and participatory democracy, right to participate in governance, right to have political activity, )



- 33) Article 69 on Principles to be Observed by Political Parties (human rights, limitation of human rights, boundaries of limitations, pluralistic democracy, freedom of expression, freedom to organise)
- 34) Article 70 on Entry into the Public Service (human rights, pluralistic democracy, citizenship)
- 35) Article 72 on National Service (human rights, pluralistic democracy, conscience refusal)
- 36) Article 76 on Eligibility to be a Deputy (human rights, democracy, limitation of human rights, boundaries of limitations, participation in governance)
- 37) Article 81 on Oath-Taking (human rights, pluralistic democracy)
- 38) Article 83 on Parliamentary Immunity (human rights, equality, democracy, rule of law,)
- 39) Article 87 on General Provisions Functions and Powers of the Turkish Grand National Assembly(human rights, democracy, sovereignty)
- 40) Article 90 on Ratification of International Treaties (democracy,)
- 41) Article 91 on Authorisation to Enact Decrees Having Force of Law (human rights, democracy, limitation of human rights by law, boundaries of limitations)
- 42) Article 100 on Parliamentary Investigation (democracy)
- 43) Article 101 on Qualifications and Impartiality (democracy)
- 44) Article 104 on Duties and Powers (democracy, rule of law)
- 45) Article 105 on Presidential Accountability and Non-accountability (democracy, rule of law)
- 46) Article 108 on State Supervisory Council (democracy, rule of law)
- 47) Article 117 on Offices of Commander-in-Chief and Chief of the General (democracy, rule of law)
- 48) Article 118 on National Security Council (democracy, power of people(elections), bureaucracy)
- 49) Article 119 on States of Emergency, (human rights, democracy, governance procedures of state of emergency)

- 50) Article 120 on Declaration of a State of Emergency on Account of Widespread Acts of Violence and Serious Deterioration of Public Order (human rights, democracy, governance procedures of state of emergency)
- 51) Article 121 on Rules Relating to the State of Emergency (human rights, democracy, rule of law, limitation of human rights, boundaries of limitations)
- 52) Article 122 on Martial Law, Mobilisation and State of War (human rights, democracy, rule of law, limitation of human rights, boundaries of limitations)
- 53) Article 125 on Recourse to Judicial Review (human rights, democracy, rule of law, legal protection of human rights, limitation of human rights, boundaries and techniques of limitations)
- 54) Article 127 on Local Administrations (human rights, democracy, urban rights, autonomy of local governments, mandate of central government on local authorities)
- 55) Article 129 on Duties and Responsibilities, and Guarantees During Disciplinary Proceedings (human rights, democracy, rule of law, equality)
- 56) Article 130 on Institutions of Higher Education (human rights, pluralistic democracy right to education and training, scientificity, administrative and financial autonomy)
- 57) Article 131 on Superior Bodies of Higher Education (human rights, pluralistic democracy right to education and training, scientificity, administrative and financial autonomy)
- 58) Article 134 on The Atatürk High Institution of Culture, Language and History (democracy, duties of the state, pluralistic ethic and cultural structure of society)
- 59) Article 136 on Department of Religious Affairs (human rights, democracy, laicism, religious and conscience freedom)
- 60) Article 140 on Judges and Public Prosecutors (rule of law, independency of judiciary and judge guarantee, independency of the judiciary vis a vis executive organ)
- 61) Article 143 on Courts for Security of the State (human rights, rule of law, right to fair trial, legal protection of human rights, independent and impartial judiciary)

- 62) Article 144 on Supervision of Judges and Public Prosecutors (rule of law, independent and impartial judiciary) judge guarantee, independency of judiciary vis a vis executive organ)
- 63) Article 145 on Military Justice (rule of law, unity of judiciary, independent and impartial judiciary, trial of civilians, independency of judiciary vis a vis executive organ)
- 64) Article 146 foundation of The Constitutional Court (rule of law, independency of judiciary vis a vis executive organ)
- 65) Article 148 on Functions and Powers (human rights, democracy, rule of law, legal protection of human rights)
- 66) Article 150 on Annulment Action (human rights, rule of law, legal protection of human rights)
- 67) Article 154 on The High Court of Appeals (rule of law, legal protection of human rights, independency of judiciary vis a vis executive organ,)
- 68) Article 155 on Council of State (rule of law, independency of judiciary vis a vis executive organ, legal protection of human rights)
- 69) Article 156 on Military High Court of Appeals (rule of law, independency of judiciary vis a vis executive organ, trial of civilians, unity of judiciary)
- 70) Article 157 on High Military Administrative Court of Appeals (rule of law, independency of judiciary vis a vis executive organ)
- 71) Article 158 on Jurisdictional Conflict Court (rule of law, independency of judiciary vis a vis executive organ,)
- 72) Article 159 on Supreme Council of Judges and Public Prosecutors (rule of law, independent and impartial judiciary, independency of judiciary vis a vis executive organ, autonomous budget)
- 73) Article 174 on Preservation of Reform Laws (human rights, limitation of human rights, boundaries of limitations, pluralistic democracy laicism, religion and conscience freedom, cultural rights)
- 74) Preamble of the Constitution(human rights, democracy, rule of law, political, language, religious and cultural pluralism)
- 75) Provisional Article 15 ((human rights, democracy, rule of law, legal protection of human rights )

Proposals for legal protection of Human Rights and functioning of the rule of law principle (31 March 2001 – 31 December 2001)

In the field of Rule of Law

*Supreme Council of Judges and Prosecutors*, should be restructured. It should have its own secretariat, own budget and own mechanism to supervise judges and prosecutors.

Mandate of the Ministry of Justice on Bar Associations should be lifted. *Independency of Bar associations and advocates* should be ensured.

Article 11 of the Law on Military Courts Establishment and Trial procedure No: 353 which enables civils to be tried at military courts should be immediately abrogated..

Appeal against the decisions of the High Military Council should be ensured

Appeal against decisions of the High Council of Judges and Prosecutors should be ensured.

Maximum independency and security of the Military judiciary vis a vis the Ministry of National Defence and the General Staff should be ensured.

*Military judiciary-Civil judiciary duality should be ultimately terminated. As it destroys the judiciary unity.*

*State Security Courts should be abolished and cases should be transferred to civil judiciary.*

Anti terror Law should be abrogated.

In order to make independent and impartial judiciary to function, following laws need to be reviewed and the independency and impartiality of the judiciary towards executive organ should be guaranteed within 2001. As a result of short term amendments of laws and the Constitution, the first way of the protection of democratic standards in human rights and freedoms is the establishment of legal protection. It si impossible for a judiciary having deficits in impartiality and independency vis a vis the executive organ to protect human rights and freedoms.

- Law on the amended adoption of decree organisation and duties

of the Ministry of Justice

- Law on Judges and Prosecutors
- Supreme Council of Judges and Prosecutors
- Law on Establishment of Constitutional Court and Trial Procedures
- Military Judges Law
- Law on Establishment of Military Courts and Trial procedures
- Law on Military Court Of Appeals
- Law on High Military Administration Court
- Law on Establishment and Trial procedures of the State Security Courts
- Law on Council of State
- Law on Administrative Trial procedures

DEMOCRACY (31 March 2001-31 December 2001)

*Necessary amendments should be made in following laws in order to delete provisions limiting, forbidding and punishing expression/thought, language and cultural freedoms.*

Turkish Penal Code

Population law

Surname Law,

Law on Cinema and Music Works,

Law on establishment and broadcasting of Radios and Television,

Law on Radio and Television of Turkey,

Association Law,

Political Parties Law,

Law on Foreign Language Education and Training

To ensure the exercise of freedom to organise,

*Political parties Law*

*Trade Unions Law,*

*Association law, and*

*Law on Meetings and Demonstration Marches*

*National Security Council should be eliminated from being a Constitutional organisation.* In the case that there is a need to have such body , it should be formulated as a consultative body formed by civil and military bureaucrats to legislative and executive organs in a way that authority limits should be defined well. No confidentiality in decisions or activities of this body which will work under the authority of the government should take place. Therefore the laws on national security Council and the Establishment of the Secretariat general of the National Security Council should also be abrogated and replaced with a Law suitable with new proposed body.

MINORITY RIGHTS – Protection of Minorities (31 March 2001-31 December 2001)

Measures should be taken to protect and develop rights and to eliminate de facto restrictions on education, training, acquisition of assets, establishment of Foundations, management of Foundation assets, opening new religious places whenever is needed for our citizens belong to Greek, Jew and Armenian minorities as recognised in the Lausanne Treaty (of whom rights are defined in Articles between 37 and 45). For our citizens in the mentioned statute, arrangements should be made by taking legal arrangements as basis rather than verbal orders or circulars. In this context, 1936 Declaration which caused substantial unfair treatments should be abrogated.

Legal arrangements should be developed to take language, religion and cultural freedoms of citizens of Republic of Turkey under guarantee as it has already mentioned in Lausanne Treaty by taking the pluralist, ethnic, language, religious and cultural structure of Turkey in the light of pluralism principle of Turkey.

Ratification of International Conventions

Turkey, in this period, should ratify following international

documents,

- Additional Protocol No 4 of the European Convention of Human Rights (ECHR) concerning freedom to travel,
- Additional protocol No 7 of the ECHR concerning prevention of dual trial and punishment
- European Social Charter of the Council of Europe (amended),
- Additional protocol of the European Social Charter (concerning collective complaint system)
- European Council Framework Convention of Protection of National Minorities,
- European Convention on Regional Minority Languages,
- UN International Convention of Individual and Political Rights,
- Optional protocol of the UN ICIPR concerning individual communication right,
- Optional protocol No2 of the UN ICIPR concerning abolishment of death penalty
- UN International Convention on Economic, Social and Cultural Rights,
- International Convention on Prevention of All Kinds of Racial Discrimination,
- All ILO conventions especially including No.182 which prevents the child labour should be signed and ratified and especially Turkey should withdraw its reservations on Articles 17, 29 and 30 of the UN Convention of Children Rights

Turkey, in fact, should withdraw its reservations on supranational human rights documents (Charters, Conventions) signed and ratified until now.

## **MIDDLE TERM UNDERTAKINGS (until 31 December 2003)**

Middle term undertakings are, by harmonising laws with the new Constitution, to prepare the legal ground and develop means to ensure good functioning of the rule of law and democracy and respect to human rights and freedoms.(please see the study on Copenhagen Political criteria and Turkey Legislative Screening for details).

### *Rule of Law*

Abrogation of articles of the following laws harming rule of law and harmonisation with the new Constitution (assumed that it will have been done) needs to be made

- Law on the Organisation and Duties of the Ministry of National Defence
- Forensic Medicine Founding Law
- Law on Establishment of Constitutional Court and Trial Procedures
- Law On Military Judges
- Law On Establishment And Trial Procedures Of Military Courts
- Law on Military High Administrative Court
- Law on Military Court of Appeal
- Administrative Trial Procedures Law
- Advocates Law
- Chief Of Staff-Duties And Jurisdiction Law
- Law on Duties and Powers of the Police
- Law on Fight Against Crime Organisations Aiming at Intrest
- Law on High Council of Judges and Prosecutors
- Law on Internal Service of the Turkish Armed Forces
- Law on Judges and Prosecutors
- Law On Military Service
- Law on Organisation, Duties and Powers of Gendarmaire
- Law on the Council of State
- Law on the Establishment, Duties and Trial procedures of Child Courts



- Law On The Establishment Of State Supervisory Council
- Martial Law
- Military Court Of Appeals
- State Of Emergency Law
- Trial Of Civil Servants And Other Public Officials Law
- Turkish Penal Code

## **Democracy**

Laws in this section which we propose to be amended are related with the pluralism principle (ethnic, religious, language and cultural pluralism)of democracy.

- Population Law
- Surname Law
- Law on Cinema, Video and Music Works
- Law on Villages
- Decree on Private Education Institutions
- Law on Private Education Institutions
- Law on Foreign Language Education and Teaching
- Higher Education Law.
- Law on Atatürk High Institute of Culture, Language and History
- Law on Intellectual and Art Works
- Law on Radio and Television- Establishment and Broadcasting
- Law on Wireless Communication
- Law on Settlement
- Law on Turkish citizenship
- Law concerning ban on some garments
- Law on removal of by-names, titles such as master, pasha, bey
- Law on prohibition and Abolition of Dervish Lodge, Recluse's Cells and Tombs Guardian and Some Titles
- Law on Wearing Hat
- Decree (having force of law) on the Establishment of Sciences

Academy of Turkey

- Law on the Establishment of Scientific and Technical Research Council of Turkey
- Law on Radio and Television of Turkey
- Law on Civil Servants
- Turkish Penal Code
- Law on Meetings and Demonstration Marches
- Law on Associations
- Press Law
- Law on Art and Services Devoted to Turkish Citizens in Turkey
- Law on Residence and Travel of Foreigners in Turkey
- Law on National Security and Secretariat-General of the National Security Council
- Law on Primary Education
- Law on Trade Unions
- Law on Turkish Armed Forces Internal Service
- Law on Military High Administrative Court
- Law on National Basic Education
- Law on Criminal Procedures
- Law on Political parties

Pluralism principle with regard to the freedom of religion, language, education and training

- Political Parties Law
- Associations Law
- Law amending Civil Code No.903 –The section titled Foundations
- Population Law
- Provincial Administration Law
- Changing names of villages which are not Turkish in *Article 2*

With regard to the participation principle of democracy,

- Law on deputy Elections
- Political Parties Law

- Law on the General Provisions of Elections and Electorate Registration
- Should be rearranged.

### *Human Rights*

Our proposals in previous sections contain legal arrangements for different categories of human rights in short and medium term. In the medium term, in the field of communication there is a need to conduct a research similar to the study carried out in 1990 by Osman Dođru and Prof.Dr. Semih Gemalmaz on “Press Freedom Legislation in Turkey” which studies 152 laws and 700 articles.

In another study carried out by Hüsnu Öndül and Cengiz Çekiç in 1997 on “Urban citizens Rights Legislation” 415 legislation and hundreds of articles examined. Turkey, in general, should start reform efforts in the local governments area harmonised with the European Urban Charter and European Charter of Self-Government of Local Governments in the process to increase human rights and democratic standards. Strengthening local democracy will result in strengthening the democratic principles. Therefore, Article 127 of the Constitution needs to take into consideration above mentioned two European Charters in the field of local governments.

In this period, Turkish Civil Code should be reconsidered as a whole in the legislative organ and enacted in the light of women rights. The Human Rights Association takes individual and political rights together with economic and social rights basing on the understanding that indivisibility of human rights and interrelation whole rights. HRD identifies that the poverty is a threshold in the exercise of human rights. For this reason, we make a special emphasis on the social justice principle. The picture concerning income distribution among regions and various parts of the society indicates very clearly that social justice principle and equal opportunities do not function well enough. We believe that very fast steps should be taken for equal opportunities in the field

of access to education, shelter and health services by strengthening social state in order to fulfill the requirements of social justice principle. In this framework, all workers in public and private sector should be enabled to obtain syndical rights including rights of collective bargaining and strike. This means that the Law on Collective bargaining, Strikes and Lock-Out should be fully rearranged and harmonised with ILO Conventions, UN International Convention on Economic, Social and Cultural Rights and the European Social Charter. In addition, the Labour Law should be rearranged to cover all sectors, and provisions ensuring the health and security issues for workers should be arranged as a law rather than regulations.

#### Conclusion:

We have proposed amendments/changes in 77 Law and 421 Articles in our study on the Copenhagen Political Criteria and Turkey (Legislative Screening). These have excluded main laws like Turkish Penal Code and Turkish Civil Code which need to be dealt with as a whole. The Human Rights Association, perceives and understands the democracy as a system where the people's will is freely expressed, and where people participates in all aspects of life in order to determine economic, social, political and cultural system of the people. In fact, this definition covers the issues in Article 8 of the Vienna Document approved in 1993 World Human Rights Conference. HRA, shows an intensive effort to increase human rights and democratic standards of our country. These questions on human rights and democratic standards cannot be neglected. Laws establishing legal and political framework of Turkey are far from the human rights and democratic standards. Because of this, radical change and transformations in the system are imperative. Radical changes are expectations of the society of Turkey who demand a democracy with high standards. This demand originates from the need for human rights and democratic standards. The task of governors of Turkey is to respond to our society's demands.

HRA has identified problematic areas in the legal field and presented to the knowledge and attention of the public opinion. We, in this study, list the priorities. This study should be evaluated together with our previous study on the Copenhagen Political Criteria and Turkey. Reasons for amendments are in that study. As it can be observed from this Priorities and Time-Table study, in about three month-period, we propose to make changes especially in the following areas; freedom of expression, freedom of language and culture, right to live, torture, F-Type Prisons, Kurdish problem and State of Emergency Governing procedures, Constitutional changes, right to organise. As well as strengthening of the judiciary in its independency and impartiality via a vis executive organ in order to protect human rights and freedoms. HRA proposes an accelerated democratisation programme in all main legislation. This is a proposal and demand from a human rights organisation to legislative and executive organs. We wish and hope that it will be taken into consideration.

# **ANNEXES**



## LAWS IMPOSING DEATH PENALTY

### TURKISH PENAL CODE

**Article 125 – (Amended on 11 June 1936 by Article 1 of Law no. 3038).**

Whosoever commits any act aiming at putting the whole territory or part of the territory of the State under the sovereignty of a foreign State, of diminishing the liberty of the State or destroying the State's unity or separating some part of the territory under the State sovereignty from the State administration shall be punished with the death penalty.

**Article 126 – (Amended on 11 June 1936 by Article 1 of Law no. 3038)**

A citizen who has used arm against the State or accepted to serve in the army of any State which is in war with the State shall be punished with the life sentence. A citizen who commands foreign state forces or having a duty in relation to incite or to administer foreign state forces shall be punished with death penalty.

Whosoever committed any act has been in the territory of the enemy state during the war time and

(2) In cases which are less grave, it shall be permissible to impose life imprisonment or a heavy prison sentence of at least fifteen years, instead of the death penalty. If the intention has been achieved, the death penalty shall be imposed in any case.

**Article 127 - (Amended on 11/6/1936 by Article 1 of the Law no. 3038)**

A heavy prison sentence of not less than ten years shall be imposed on persons who has made an agreement with foreigner for the purpose of enabling the foreign State to open war against Turkey or to act hostile towards Turkey or who has acted to fulfill these aims. In case of the war takes place, a death penalty shall be imposed, in case of the hostile act heavy life sentence shall be imposed.



**Article 129 - (Amended on 11/6/1936 by Article 1 of the Law no. 3038)**

Whosoever agrees with a foreigner with the aim of facilitation the military movements of the enemy in against the State of Turkey during war time, or commits actions to fulfil the aim shall be punished with a heavy prisonment of not less than ten years. If the aim is succeded a death penalty shall be imposed.

**Article 131 - (Amended on 11/6/1936 by Article 1 of the Law no. 3038)**

Whosoever destroys ships, navigation means, transportation vehicles, roads, buildings, depots and other military installments, whether supplied or not, under the disposal of the State or the Military completely or partly or even for a while shall be punished with heavy imprisonment of not less than eight years.

Death penalty shall be imposed for following cases:

- 1- If the act is committed for the benefit of a state having a war with Turkey
- 2- If the act has endangered war preparations or war power and capability or military movements of the State.

**Article 133 - (Amended on 29/6/1938 by Article 1 of the Law no.3531)**

Whosoever obtains the information which needs to be confidential for the security or internal and international political interests of the State with purpose of political or military espionage shall be punished with heavy imprisonment of not less than fifteen years.

Death penalty shall be imposed for following cases:

- 1- If the act is committed for the benefit of a state having a war with Turkey
- 2- If the act has endangered war preparations or war power and capability or military movements of the State.

Whosoever obtains the information of which prose is banned by the authorities for the purpose of political or military espionage shall be punished with heavy imprisonment of not less than ten years.

If the above-mentioned act is committed in favour of a state having a war with Turkey, a heavy life prisonment shall be imposed.

If the act mentioned in above two paragraphs has endangered war preparations or war power and capability or military movements of the State, a death penalty shall be imposed.

**Articla 136-(Amended on 11/6/1936 by Article 1 of the Law no.3038)**

Whosoever discloses a secret information indicated in paragraphs of 2, 3, 4 and 5 of Article 132 shall be punished with heavy imprisonment of not less than five years.

If the act has been committed during war time and endangered war preparations or war power and capability or military movements of the State, the punishment of heavy imprisonment cannot be less than ten years.

**Addition 7 to Article 136 by a law enforced on 7 February 1991**

If perpetrator acted with the aim of political or military espionage, in the cases of the first paragraph of this Article a heavy life imprisonment, in the case of second paragraph a death penalty shall be imposed.

Indicated punishments shall be applied for the ones who obtains the information prescribed in this Article.

**Article 137 - (Amended on 11/6/1936 by Article 1 of the Law no.3038)**

Whosoever discloses the information of which prose is banned by the authorities shall be punished with heavy imprisonment of not less than three years.

If the act mentioned in above two paragraphs committed during war time or has endangered war preparations or war power and capability or military movements of the State, a heavy imprisonment of not less than ten years shall be imposed.

If the perpetrator acted for purpose of military of political espionage during war time a death penalty shall be imposed.

**Article 146 –**

Whosoever attempts to abolish, substitute or change the Constitution of the Republic of Turkey completely or partly and to dismiss or prevent from functioning of the Grand National Assembly by force shall be punished with death penalty.

Whosoever, either alone or together with a few people, incites to commit this crime using the ways prescribe in Article 65 by conspiring or writing or verbally or by printing material or speaking before public in streets, arenas or quarters the act shall be punished with death penalty

**Article 147 –**

Whosoever abolishes or prevents the Cabinet of the Republic of Turkey from functioning by force or incites others to do so shall be punished with death penalty

**Article 149 - (Amended on 29/6/1938 by Article 1 of the Law no. 3531)**

Whosoever incites people to revolt against the Government by using armguns or narcotic substances or burning gases or to battle people by armed against themselves shall be punished with heavy imprisonment of not less than twenty years. A death penalty shall be imposed on leaders and responsables in the case that the act is succeeded. ( The punishment shall be applied for offences betraying the State prescribed in Articles 125, 133, 141, 142, 146, 149, 150 and 163 of the Turkish Penal Code )

**Article 156**

Whosoever assassinates against the President or to attempt to do so, if the act is succeeded shall be punished with death penalty, if it is not succeeded shall be punished with heavy life prisonement.

**Article 450- Act of Murdering:**

- 1- is committed against somebody from ancestors or decendants;
- 2- is committed against one of the members of the Turkish Grand

National assembly, even the duty is completed due to this duty  
3- is committed with torture or harrasment or with ferocity  
4- if it is committed intentionally;  
5- is committed against more than one people;  
6-is committed by means like fire, flood and drowning defined in the first section of the seventh chapter  
7- even it is not succeded, if it is committed to prepare or facilitate or commit another crime;  
8- is committed to obtain a benefit resulting from a crime or to hide the preparations to fulfill the aim or by panicing by not being able to fulfill the aim  
9-if it is committed to hide a crime or to destroy its evidences and signs utterly or to get rid of punishment;  
10-is committed to take revenge;  
11-is committed against civil servants on duty or even if this person is out of the office due to his duty.;  
the perpetrator shall be punished with death penalty

## **MILITARY PENAL CODE**

Against the State

Article 54 – Military personalities who have committed offenses against the state shall be subject to provisions indicated Articles 125 to 145 of the Turkish penal Code.

War treason

Article 55 – (Amended on 21 August 1940 by Article 1 of Law no. 3914).

(1) Whosoever commits or attempts to commit any of the crimes indicated in the first paragraph of Article 129 of the Turkish Penal Code during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey shall be punished with the death penalty for the crime of war treason.

(2) In cases which are less grave, it shall be permissible to impose life imprisonment or a heavy prison sentence of at least fifteen years, instead of the death penalty. If the intention has been achieved, the death penalty shall be imposed in any case.

Betrayal of national defence

Article 56 – (Amended on 8 June 1959 by Article 1 of Law no. 7331)

(1) Whosoever commits or attempts to commit any of the Laws indicated in this Article shall be punished as follows for the crime of betrayal of national defence.

A) Whosoever commits any of the crimes indicated in Article 133 of the Turkish Penal Code or in paragraph 3 of Article 136 thereof which concerns political and military espionage shall be punished according to the Turkish Penal Code. Whosoever commits or attempts to commit any of the said crimes during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey shall be punished with the death penalty, except the cases

mentioned in the last paragraph of Article 136 based on negligence on the part of the perpetrator.

B) A heavy prison sentence of at least fifteen years shall be imposed on whosoever produces false documents, papers or other articles which, if authentic, would constitute military or political secrets for the purpose of betrayal of national defence or communicates or delivers such documents, papers or other articles to another person for the same purpose although he/she knows that they are false.

The perpetrator shall be punished with the death penalty if the Law is committed during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey.

C) If two or more persons join each other for the purpose of committing one or several of the crimes indicated in paragraphs (A) and (B) above, each of them shall be punished with a heavy prison sentence of eight to fifteen years. The perpetrators shall be punished with life imprisonment if the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey.

D) Whosoever requests another person to commit any of the crimes indicated in paragraphs (A) and (B) above or proposes his/her services to commit the same and whosoever accepts such request or proposal shall be punished with the same penalties indicated in those paragraphs. If such request or proposal or acceptance takes place in writing, the crime shall be deemed to have been committed upon the mere despatch of the writing in question.

E) Whosoever establishes, arranges and commands an organisation for the purpose of committing one or several of the crimes indicated in paragraphs (A) and (B) shall be punished with a heavy prison sentence of at least three years, and whosoever joins such an organisation with a heavy prison sentence of one year to three years.

If the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey, those establishing, arranging and commanding the organisation shall be punished with the death penalty, and those joining it with life imprisonment or a heavy prison sentence of at least fifteen years.

F) In the cases mentioned in paragraphs C, D and E, there shall be no punishment for an accomplice who, in whatsoever manner, prevents the commission of the crime.

G) Citizens who accept benefits or promises from foreigners against national interests indicated in paragraph 3 of Article 127 of the Turkish Penal Code and the foreigners who provide or promise benefits for this purpose shall be punished according to the provisions of the said paragraph.

The perpetrators shall be punished with the death penalty if the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey.

If the benefits in question are requested or accepted and undertaken through a statement in writing, the Law shall be deemed to have been committed upon the mere despatch of the statement.

The crimes indicated in this paragraph shall only be prosecuted at the request of the Minister of National Defence. It shall be permissible to withdraw the request.

2) In cases which are less grave, it shall be permissible to impose heavy life imprisonment or a temporary heavy prison sentence of at least fifteen years, instead of the death penalty.

Destroying means of national defence

Article 59 – (Amended on 21 August 1940 by Article 1 of Law no. 3914)

(1) Whosoever destroys, damages, abandons or renders useless any means or facilities of national defence, or manufactures, delivers or

takes delivery of the same with defects, or inflicts damage on the same in any manner whatsoever, for the purpose of weakening national defence shall be punished with a heavy prison sentence of at least eight years.

(2) Whosoever endangers the operation of an enterprise that is important for national defence by partly or completely breaking down or destroying any means needed by the said enterprise or preventing the functioning of the same, or renders it inoperative, for the purpose of weakening national defence shall be punished with a heavy prison sentence of at least eight years.

(3) If the Law is committed during a period of mobilisation or endangers the war preparations of the State or its war power or capability and military movements, the perpetrators of the crimes indicated in paragraphs 1 and 2 above shall be punished with the death penalty.

Prisoner of war released by promise

Article 60 – 1 – Death Penalty shall be imposed on perpetrator who committed the crime of Lawing against the Republic of Turkey as a prisoner of war by not keeping the promise he has given, or who committed the crime of Lawing together with enemy against Turkey as a foreigner serving the military of the Republic of Turkey - these will be regarded as felonious treason

2– A prison sentence of one year to five years shall be imposed on every Turkish soldier caught by enemy obtained freedom by promising not to use arms against the enemy.

Article 62 - 1 – Following military personalities shall be punished with death penalty:

A) A Fortified Place; Commandor of the fortified place who handed over to the enemy the fortified place without exhausting all means under his authority serving defence;

B) Commander who has left or handed over the place entrusted to him to the enemy by neglecting means of defence;

C) Commander who has made a contravention in the open field to surrender arms of the troops under his authority by not delivering



all required by the nature of his duty;

D) Commander of plane or ship who has handed over a military ship or plane or the crew to the enemy by not delivering all not to hand over required by the nature of his duty;

2- Perpetrators indicated in paragraphs B and C shall be punished with heavy fixed or life imprisonment by not less than five years in less grave cases

### SECTION THREE

Draft evaders, absentee conscripts, hidens and deserters

Article 63 – 1 – (Amended on 30 April 1945 by Article 1 of Law no. 4726)

A) (Amended on 16 February 1994 by Article 1 of Law no. 3970)  
In peacetime, draft evaders or hidens the first group of whose peers has been despatched and reserve conscripts who are called shall be punished with imprisonment for up to one month if, without an acceptable excuse, they turn up within seven days following the despatch of their peers, for up to three months if they are caught during the said period, for three months to one year if they turn up within three months following the said seven days, for four months to one and a half years if they are caught during the said period, for four months to two years if they turn up later than the said three months, and for six months to three years if they are caught later than the said period.

B) Conscripts indicated in paragraph (A) who turn up or are caught but run away before reaching their units shall be punished with imprisonment for one month to one year in addition.

2- (Amended on 15 June 1942 by Article 1 of Law no. 4257) In mobilisation, the persons indicated in the first paragraph above and those on leave shall be punished with imprisonment for one month to one year if they turn up within seven days following the despatch day, for four months to two years if they are caught during the said seven days, for at least two years if they turn up within three months following the said seven days, for at least three

years if they are caught during the said period, and with heavy imprisonment for at least five years if they turn up later than the said three months and with the death penalty if they are caught later than the said period. In cases which are less grave, life imprisonment or a heavy prison sentence of ten years shall be imposed instead of the death penalty and in other cases the penalties prescribed shall be reduced by half.

Penalties for reserve officers and military personnel\* who are called but fail to turn up

Article 64– (Amended on 15 June 1942 by Article 1 of Law no. 4257)

1-In peacetime, reserve officers and military personnel who are called for military service but fail to turn up at the recruitment office within the period ordered by the Ministry of National Defence under Article 15 of Law no. 1076 shall be punished with imprisonment for one month to six months if they are caught within fifteen days following the end of the said period and for six months to one year if they are caught within three months following the said fifteen days and with heavy imprisonment for up to five years if they are caught later than the said three months. The penalties for those who turn up of their own will within the said periods shall be reduced by half.

2 - In mobilisation, reserve officers and military personnel who are called but fail to turn up at the recruitment office within the required period shall be punished with imprisonment for three months to two years if they turn up within seven days following the end of the required period, for six months to three years if they are caught within the said seven days, for at least two years if they turn up within three months following the said seven days and for at least three years if they are caught within the said three months, with heavy imprisonment for at least five years if they turn up later than the said three months and with the death penalty if they are caught later than the same period.

3 - Reserve officers and military personnel who turn up at the

recruitment office upon a call for military service but fail to leave for their local destinations within twelve days in peacetime and within four days in mobilisation or spend on the way more than half these periods, excluding the travel period, and thus fail to join their places of duty in time shall be imprisoned for up to three months in peacetime and for three months to five years in mobilisation. The periods indicated in this paragraph and in Article 65 may be reduced or extended by the Ministry of National Defence according to the requirements of the situation.

In cases which are less grave, the provisions of the last paragraph of Article 63 shall also apply to the penalties prescribed in this Article.

4 - The cases indicated in Articles 13 and 15 of Law no. 1076 shall be taken into account also in the implementation of this Article.

Article 69 -1- Whosoever borders on to enemy side shall be punished with death penalty.

2- A heavy fixed or life imprisonment shall be imposed on whosoever escapes from enemy or besieged place. In grave cases, a death penalty may be imposed.

Article 70 -1- It will be regarded as desertion in cases of more than two military staff runs away collectively by making a beforehand decision.

2- A prison sentence of five years to seven years shall be imposed on instigators if perpetrators escape to a foreign country, a prison sentence of five years to ten years for instigators who are military servants or officers.

3- A prison sentence of two years to five years shall be imposed on instigators if perpetrators escape to the countryside, a prison sentence of five years to seven years for instigators who are military servants or officers.

4- Other perpetrators who are agreed together to escape shall be punished with imprisonment of one year to three years. If the

desertion is to abroad punishment will be doubled.

5- Instigators for desertion during war time shall be punished with death penalty, punishment for other perpetrators shall be increased by one-half of the defined punishment.

6- (Abolished on 14.6.1989 by Article 4 of the Law no:3574)

Article 75 - 2 – Whosoever gives an unsuitable document which will result in reduction in the military power shall be, for the first time, imposed a heavy imprisonment of from two years to five years. If the crime is repeated the punishment shall be death penalty.

Article 79 - 1 – Whosoever disables himself for not doing military services shall be punished with imprisonment of up to five years.

3 – If the act is committed during mobilisation punishment will be heavy imprisonment of up to ten years. If the act is committed before the enemy a death penalty shall be imposed.

Article 80 – whosoever commits the crime of making somebody disabled for not serving Military shall be punished with same punishments prescribed in Article 79

Incitement to mutiny and its punishment

Article 94 – 1. An inciter to mutiny is one who leads and incites several military persons as a whole to disobey or resist or attack their superiors or subordinates. If the crime has not been committed or attempted, the inciter to mutiny shall be punished with heavy imprisonment for at least five years.

2. If the incitement has resulted in significant damage to military service, the inciter to mutiny shall be punished with heavy imprisonment for at least ten years.

3. In mobilisation, the inciter to mutiny shall be punished with the death penalty.

#### Punishment of mutiny leaders

Article 101 – 1. The head or organiser or leader of a mutiny (Article 100) and the mutineers who inflict physical violence on superiors or subordinates shall be punished with temporary heavy imprisonment for at least ten years, unless the death penalty or heavy life imprisonment is called for by the crimes individually committed by them.

2. If the mutiny has taken place in mobilisation, the perpetrators in the first paragraph shall be punished with the death penalty.

#### Punishment of mutineers during war against enemy

Article 102 – In the event of mutiny (Article 100) during war against the enemy, the death penalty shall be imposed on all those who take part in the mutiny.

Article 126 - 1. A heavy fixed or life imprisonment of maximum ten years shall be imposed on perpetrator who committed to crime of plundering (Article 123) or Laws regarded as plundering (Article 125) towards a person by using force. If this act causes a damage on the body, perpetrator shall be punished with a heavy fixed imprisonment. If the act causes to death, perpetrator shall be punished with death sentence, in less grave cases, a heavy life imprisonment shall be imposed.

2. If more than one person is involved in above mentioned plundering, the leader and team and inciters shall be punished with death penalty. For the ones who has participated in the Law without committing assault and battery in plundering operation shall be imprisoned up to ten years heavy sentence.

#### Robbing goods of deads, woundeds and captives in battle field

Article 127 -

3. Whosoever tortures the wounded to rob or rewounds by robbing shall be punished with death penalty.

Article 136- Whosoever as a commander or officer for a special duty, by purpose or by negligent

A. if treats himself not to perform his duty

B. if leaves the duty place or oppose to the order  
C. In cases of these two results any injury shall be punished with detention on bread and water or with imprisonment of up to two years.  
If this act is committed during mobilisation the perpetrator shall be punished with imprisonment of not less than six months, if the act is before the enemy a death penalty shall be imposed, ....

Article 159 – Whosoever, either a Turk or a foreigner, commits crimes prescribed in Articles 55,56 and 127 in a war declared against the Republic of Turkey shall be punished with punishments prescribed in these Articles.

Rape to soldiers in the military operation zone :

Article 160 – Individuals who committed crimes prescribed in paragraphs 3 and 4 of Article 91 against soldier, gendarme, officers in the operation zone declared shall be applied punishments prescribed in the mentioned Article.

Additional Article 4

A) Whosoever commits a crime such as embezzlement, malversation, bribery, burglary or dishonesty in the works of production, construction, procurement, delivery or transportation connected with military needs or National defence instruments while performing a military service in the course of the existence of state of emergency, mobilisation and war shall be punished with a heavy imprisonment of not less than ten years and with a fine of not less than five hundred thousand Turkish Liras. The fine cannot be less than the cost of the benefit acquired.

B) Death penalty shall be imposed in grave cases.

Additional Article 5 -

Punishments prescribed in Article 1 (*referred to Additional Article 1*) of this Law shall be imposed by civil courts on non-military personalities who committed crimes prescribed in this law in performing duties entrusted to themselves according to private laws in the works related to national defense instruments or military needs

## **LAW ON BAN and PURSUE SMUGGLING**

Article 30- Whosoever murders an individual who has been on duty to ban and to pursue smuggling or an individual who assists the official on duty shall be punished by death sentence.

## **FORESTS LAW**

Article 110 - (Amended on 4/7/1995 by Article 4 of Law no. 4114)

Whosoever belong to a terrorist organisations sets State forests on fire shall be punished with heavy imprisonment of between 24 years and 30 years and with a fine of between five million Turkish Liras and ten billion liras. If the area of burnt forest is more than one hectare or the act puts an individual's life in danger, the punishment shall be life sentence. If the act causes death of an individual, death penalty shall be imposed on perpetrator or perpetrators.

The State Security Courts shall hear the case if the act is committed for the aim of terrorism.

Article 4 of the Law on the Execution of Punishments shall not be applied for offences imposed in this Article.

## **THE TRIAL OF CIVILIANS BY MILITARY COURTS (THE MILITARY PENAL CODE)**

### War treason

Article 55 – (Amended on 21 August 1940 by Article 1 of Law no. 3914).

(1) Whosoever commits or attempts to commit any of the crimes indicated in the first paragraph of Article 129 of the Turkish Penal Code during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey shall be punished with the death penalty for the crime of war treason.

(2) In cases which are less grave, it shall be permissible to impose life imprisonment or a heavy prison sentence of at least fifteen years, instead of the death penalty. If the intention has been achieved, the death penalty shall be imposed in any case.

### Betrayal of national defence

Article 56 – (Amended on 8 June 1959 by Article 1 of Law no. 7331)

(1) Whosoever commits or attempts to commit any of the Laws indicated in this Article shall be punished as follows for the crime of betrayal of national defence.

A) Whosoever commits any of the crimes indicated in Article 133 of the Turkish Penal Code or in paragraph 3 of Article 136 thereof which concerns political and military espionage shall be punished according to the Turkish Penal Code. Whosoever commits or attempts to commit any of the said crimes during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey shall be punished with the death penalty, except the cases mentioned in the last paragraph of Article 136 based on negligence on the part of the perpetrator.

B) A heavy prison sentence of at least fifteen years shall be imposed on whosoever produces false documents, papers or other



articles which, if authentic, would constitute military or political secrets for the purpose of betrayal of national defence or communicates or delivers such documents, papers or other articles to another person for the same purpose although he/she knows that they are false.

The perpetrator shall be punished with the death penalty if the Law is committed during a period of mobilisation or during an extraordinary period where there is a clear danger of war threatening the Republic of Turkey.

C) If two or more persons join each other for the purpose of committing one or several of the crimes indicated in paragraphs (A) and (B) above, each of them shall be punished with a heavy prison sentence of eight to fifteen years. The perpetrators shall be punished with life imprisonment if the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey.

D) Whosoever requests another person to commit any of the crimes indicated in paragraphs (A) and (B) above or proposes his/her services to commit the same and whosoever accepts such request or proposal shall be punished with the same penalties indicated in those paragraphs. If such request or proposal or acceptance takes place in writing, the crime shall be deemed to have been committed upon the mere despatch of the writing in question.

E) Whosoever establishes, arranges and commands an organisation for the purpose of committing one or several of the crimes indicated in paragraphs (A) and (B) shall be punished with a heavy prison sentence of at least three years, and whosoever joins such an organisation with a heavy prison sentence of one year to three years.

If the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey, those establishing, arranging and commanding the organisation shall be punished with the death penalty, and those

joining it with life imprisonment or a heavy prison sentence of at least fifteen years.

F) In the cases mentioned in paragraphs C, D and E, there shall be no punishment for an accomplice who, in whatsoever manner, prevents the commission of the crime.

G) Citizens who accept benefits or promises from foreigners against national interests indicated in paragraph 3 of Article 127 of the Turkish Penal Code and the foreigners who provide or promise benefits for this purpose shall be punished according to the provisions of the said paragraph.

The perpetrators shall be punished with the death penalty if the Law is committed during a period of mobilisation or during a period where there is a clear danger of war threatening the Republic of Turkey.

If the benefits in question are requested or accepted and undertaken through a statement in writing, the Law shall be deemed to have been committed upon the mere despatch of the statement.

The crimes indicated in this paragraph shall only be prosecuted at the request of the Minister of National Defence. It shall be permissible to withdraw the request.

2) In cases which are less grave, it shall be permissible to impose heavy life imprisonment or a temporary heavy prison sentence of at least fifteen years, instead of the death penalty.

Other Laws against national defence

Article 57 – (Amended on 21 August 1940 by Article 1 of Law no. 3914)

(1) Whosoever intentionally provides false information or refuses to provide information about his/her name, personal condition, capacity, occupation, domicile or nationality to an authority of the State, to an officer, or to a soldier, at a fortified place, at a war port or another military establishment or military zone, or on a ship of the navy or within the territorial waters of the State shall be

punished with imprisonment for three months to three years.  
Security zones officially delineated and announced and industrial establishments and storages allocated for the manufacturing or repair or keeping of goods and articles needed by the army shall be considered military establishments.

(2) Whosoever commits any of the Laws indicated in Article 135 of the Turkish Penal Code shall be punished with the penalties prescribed in the said Article.

#### Breaking down national resistance

Article 58 – (Amended on 21 August 1940 by Article 1 of Law no. 3914)

Whosoever commits any of the crimes indicated in Articles 153 and 161 of the Turkish Penal Code or the act of making publications or suggestions or delivering speeches with a view to discouraging the public from military service as provided for in Article 155 thereof shall be punished with the penalties prescribed in the said Articles for the crime of breaking down national resistance.

#### Destroying means of national defence

Article 59 – (Amended on 21 August 1940 by Article 1 of Law no. 3914)

(1) Whosoever destroys, damages, abandons or renders useless any means or facilities of national defence, or manufactures, delivers or takes delivery of the same with defects, or inflicts damage on the same in any manner whatsoever, for the purpose of weakening national defence shall be punished with a heavy prison sentence of at least eight years.

(2) Whosoever endangers the operation of an enterprise that is important for national defence by partly or completely breaking down or destroying any means needed by the said enterprise or preventing the functioning of the same, or renders it inactive, for the purpose of weakening national defence shall be punished with a heavy prison sentence of at least eight years.

(3) If the Law is committed during a period of mobilisation or endangers the war preparations of the State or its war power or capability and military movements, the perpetrators of the crimes indicated in paragraphs 1 and 2 above shall be punished with the death penalty.

Draft evaders, absentee conscripts, hidiers and deserters

Article 63 – 1 – (Amended on 30 April 1945 by Article 1 of Law no. 4726)

A) (Amended on 16 February 1994 by Article 1 of Law no. 3970)

In peacetime, draft evaders or hidiers the first group of whose peers has been despatched and reserve conscripts who are called shall be punished with imprisonment for up to one month if, without an acceptable excuse, they turn up within seven days following the despatch of their peers, for up to three months if they are caught during the said period, for three months to one year if they turn up within three months following the said seven days, for four months to one and a half years if they are caught during the said period, for four months to two years if they turn up later than the said three months, and for six months to three years if they are caught later than the said period.

B) Conscripts indicated in paragraph (A) who turn up or are caught but run away before reaching their units shall be punished with imprisonment for one month to one year in addition.

2– (Amended on 15 June 1942 by Article 1 of Law no. 4257) In mobilisation, the persons indicated in the first paragraph above and those on leave shall be punished with imprisonment for one month to one year if they turn up within seven days following the despatch day, for four months to two years if they are caught during the said seven days, for at least two years if they turn up within three months following the said seven days, for at least three years if they are caught during the said period, and with heavy imprisonment for at least five years if they turn up later than the said three months and with the death penalty if they are caught later than the said period. In cases which are less grave, life imprisonment or a heavy prison sentence of ten years shall be imposed instead of the death penalty and in other cases the penalties prescribed shall be reduced by half.

Penalties for reserve officers and military personnel who are called but fail to turn up

Article 64 – (Amended on 15 June 1942 by Article 1 of Law no. 4257)

1- In peacetime, reserve officers and military personnel who are called for military service but fail to turn up at the recruitment office within the period ordered by the Ministry of National Defence under Article 15 of Law no. 1076 shall be punished with imprisonment for one month to six months if they are caught within fifteen days following the end of the said period and for six months to one year if they are caught within three months following the said fifteen days and with heavy imprisonment for up to five years if they are caught later than the said three months. The penalties for those who turn up of their own will within the said periods shall be reduced by half.

2- In mobilisation, reserve officers and military personnel who are called but fail to turn up at the recruitment office within the required period shall be punished with imprisonment for three months to two years if they turn up within seven days following the end of the required period, for six months to three years if they are caught within the said seven days, for at least two years if they turn up within three months following the said seven days and for at least three years if they are caught within the said three months, with heavy imprisonment for at least five years if they turn up later than the said three months and with the death penalty if they are caught later than the same period.

3- Reserve officers and military personnel who turn up at the recruitment office upon a call for military service but fail to leave for their local destinations within twelve days in peacetime and within four days in mobilisation or spend on the way more than half these periods, excluding the travel period, and thus fail to join their places of duty in time shall be imprisoned for up to three

months in peacetime and for three months to five years in mobilisation. The periods indicated in this paragraph and in Article 65 may be reduced or extended by the Ministry of National Defence according to the requirements of the situation.

In cases which are less grave, the provisions of the last paragraph of Article 63 shall also apply to the penalties prescribed in this Article.

4 - The cases indicated in Articles 13 and 15 of Law no. 1076 shall be taken into account also in the implementation of this Article.

#### Fraud to escape military service

Article 81 – (Amended on 11 December 1935 by Article 9 of Law no. 2862)

1- Of persons who have reached the age of military service, those who change their names for the purpose of escaping military service partly or completely, send someone else to the medical examination or to military service, use the identity papers or military documents of someone else, use false documents or papers in affairs concerning military service or otherwise resort to fraud in such affairs or who Law fraudulently in order to evade their duties partly or completely after they have joined their units or another military establishment shall be punished with heavy imprisonment for up to ten years.

2- The penalties prescribed in the first paragraph above shall be imposed also on the accomplices, if any. In cases which are less grave, the penalty prescribed in this Article may be reduced to five years.

#### Inciters and their punishment

Article 93 – 1. An inciter is one who leads and incites a military person to disobey, resist or attack his superiors or subordinates.

2. If the crime has been committed, the inciter shall be punished with a short prison sentence.

3. If the crime has been attempted but not committed, the inciter shall be imprisoned for three months to two years and for six

months to five years in mobilisation. The punishment shall not be more severe than the punishment imposed on the person who has attempted to commit the crime.

4. If the crime has been committed, the inciter shall be an accomplice in the crime.

#### Incitement to mutiny and its punishment

Article 94 – 1. An inciter to mutiny is one who leads and incites several military persons as a whole to disobey or resist or attack their superiors or subordinates. If the crime has not been committed or attempted, the inciter to mutiny shall be punished with heavy imprisonment for at least five years.

2. If the incitement has resulted in significant damage to military service, the inciter to mutiny shall be punished with heavy imprisonment for at least ten years.

3. In mobilisation, the inciter to mutiny shall be punished with the death penalty.

Punishment of persons who assemble and negotiate for military affairs without authorisation

Article 95 – (Amended on 25 May 1972 by Article 1 of Law no. 1590)

1. A prison sentence of six months to three years shall be imposed on whosoever without authorisation:

- a) Assembles military persons for negotiations or consultations;
- b) Collects signatures for the purpose of making a collective statement or complaint;
- c) Makes collective statements or complaints; or
- d) Organises meetings or demonstrations in any manner whatsoever,

in connection with affairs related to military procedures, organisations, operations, facilities or arrangements.

2. Whosoever knowingly participates in an assembly of the type mentioned in paragraph (a) above or signs a statement or complaint of the type mentioned in paragraph (b) above shall be imprisoned for up to six months.

3. A prison sentence of six months to three years shall be imposed on whosoever without special authorisation issues a statement, writes an article or makes another disclosure concerning affairs related to military procedures, organisations, operations, facilities or arrangements of which they become cognisant on account of their duties and titles, unless a heavier punishment is called for by their Law.

4. A prison sentence of six months to three years shall be imposed on whosoever openly engages in derogatory or degrading Laws and Actions intended to damage superior-subordinate relations or to destroy confidence in supervisors or commanders.

5. The punishment shall be increased if the crimes indicated in this Article are committed through the press.

6. The crimes indicated in paragraphs 3 and 4 of this Article shall be prosecuted subject to permission from the Minister of National Defence.

#### Mutiny and the punishment for it

Article 100 – Mutiny means several military persons tumultuously or openly gathering and collectively attempting to disobey or resist or attack their superiors or subordinates (Articles 86, 90, 91). Each of those who participate in the gathering shall be punished with temporary heavy imprisonment for at least five years or for at least ten years in mobilisation.

#### Punishment of mutiny leaders

Article 101 – 1. The head or organiser or leader of a mutiny (Article 100) and the mutineers who inflict physical violence on superiors or subordinates shall be punished with temporary heavy imprisonment for at least ten years, unless the death penalty or heavy life imprisonment is called for by the crimes individually committed by them.

2. If the mutiny has taken place in mobilisation, the perpetrators in the first paragraph shall be punished with the death penalty.

#### Punishment of mutineers during war against enemy



Article 102 – In the event of mutiny (Article 100) during war against the enemy, the death penalty shall be imposed on all those who take part in the mutiny.  
Civilians working in the various departments of the armed forces.

## LAWS REQUIRED TO BE AMENDED

- 1) Law on the Organisation and Duties of the Ministry of National Defence
- 2) Forensic Medicine Founding Law
- 3) Law on Establishment of Constitutional Court and Trial Procedures
- 4) Law On Military Judges
- 5) Law On Establishment And Trial Procedures Of Military Courts
- 6) Law on Military High Administrative Court
- 7) Law on Military Court of Appeal
- 8) Administrative Trial Procedures Law
- 9) Advocates Law
- 10) Chief Of Staff-Duties And Jurisdiction Law
- 11) Cinema, Video And Music Works Law
- 12) Civil Code
- 13) Civil Defence Law
- 14) Civil Servants Law,
- 15) Decree (having the force of Law) on the establishment of Regional Governorship of State of Emergency
- 16) Decree (having the force of law) on the Establishment of Sciences Academy of Turkey
- 17) Decree on Private Education Institutions
- 18) Decree on the Organisation and Duties of the Culture and Tourism Ministry
- 19) Decree on The State of Emergency Regional Governor and Additional Measures to be taken during the continuation of State of Emergency
- 20) Higher Education Law.
- 21) Law concerning ban on wearing some garments
- 22) Law on Art and Services Devoted to Turkish Citizens in Turkey
- 23) Law on Associations,
- 24) Law on Atatürk High Institute of Culture, Language and History

- 25) Law on Cinema, Video and Music Works
- 26) Law on Closure of Dervish Lodges and Cells and Tombs and Prohibition and Abolishing of Office of tombs and some titles
- 27) Law on Duties and Powers of the Police
- 28) Law on Establishment and Duties of the Department of Religious Affairs,
- 29) Law on Establishment and Trial procedures of the State Security Courts
- 30) Law on Fight Against Crime Organisations Aiming at Intrest
- 31) Law on Fight Against Terrorism (Anti-Terror Law)
- 32) Law on Foreign Language Education and Teaching
- 33) Law on General Provisions of Elections and Electors Registries
- 34) Law on High Council of Judges and Prosecutors
- 35) Law on Intellectual and Art Works
- 36) Law on Internal Service of the Turkish Armed Forces
- 37) Law on Judges and Prosecutors
- 38) Law on Meetings and Demonstration Marches
- 39) Law On Military Service
- 40) Law On Mobilisation And State Of War
- 41) Law on National Basic Education
- 42) Law on National Security Council and Secretariat General of the National Security Council
- 43) Law on Obligatory Use of Turkish in Economic Enterprises,
- 44) Law on Organisation, Duties and Powers of Gendarmaire
- 45) Law on Political parties
- 46) Law on Primary Education
- 47) Law on Radio and Television- Establishment and Broadcasting
- 48) Law on Private Education Institutions
- 49) Law on Provincial Administration
- 50) Law on Radio and Television of Turkey
- 51) Law on Regulations to be published in the Official Gazette (3011)
- 52) Law on Removal of By-names, Titles such as master, pasha, bey

- 53) Law on Residence and Travel of Foreigners in Turkey
- 54) Law on Settlement
- 55) Law on the Acceptance and Practising Turkish Letters
- 56) Law on the Council of State
- 57) Law on the Elections of Deputies
- 58) Law on the Establishment , Duties and Trial procedures of Child Courts
- 59) Law On The Establishment Of State Supervisory Council
- 60) Law on the Establishment of Scientific and Technical Research Council of Turkey
- 61) Law on Trade Unions
- 62) Law on Turkish Citizenship
- 63) Law on Villages
- 64) Law on Wearing Hat
- 65) Law on Wireless Communication
- 66) Martial Law
- 67) Military Court Of Appeals
- 68) Population Law
- 69) Press Law
- 70) State Intelligence Service and National Intelligence Department Law (2937)
- 71) State Of Emergency Law
- 72) Statutory Charge Of Armed Struggle Against Internal Enemy Law
- 73) Surname Law
- 74) The Constitution of the Republic of Turkey
- 75) The Law On Establishment And Duties Of The High Military Council
- 76) Trial Of Civil Servants And Other Public Officials Law
- 77) Turkish Penal Code

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