

FREEDOM OF ASSEMBLY IN TURKEY

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In Turkey¹, freedom of assembly is safeguarded by the Article 34 of the Constitution. In addition, Constitution explicitly states that there is no requisite to seek prior permission to hold meetings or demonstrations. No restrictions have been made regarding the subject of this right or the purpose of its exercise.

In terms of restrictions, Article 34 of the Constitution stipulates that the freedom of assembly can be restricted “on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others”. These grounds are in complete compliance with international standard and ECHR Article 11 specifically in light of all the cited points it is seen that there is no need for a constitutional amendment in terms of the freedom of assembly.²

However, Constitution of the Republic of Turkey is not the only mean that is supposed to regulate the exercise of freedom of assembly in Turkey. In addition to the 1982 Turkish Constitution, the primary legislation that regulates the freedom of assembly is *Law No. 2911 Law on Meetings and Demonstrations*, which was adopted on October 6, 1983.

Secondary legislation that regulates the implementation of Law No. 2911 includes *The Regulation on the Implementation of Law on Meetings and Demonstrations*, which was adopted on August, 8, 1985; Law No. 2559 on the Duties and Discretion of the Police; Law No. 3713 on The Prevention of Terrorism Acts and Law No. 5326 on Misdemeanours.

Even though the freedom of assembly on a constitutional ground is in line with the international standards, the above mentioned secondary legislations are mostly in breach of the Constitution and international standards, because they establish arbitrary limitations like execution of the notification obligation in the form of permission or granting police forces with excessive use of power or delegating governors’ the authority to decide whether the protest is lawful or not before the free exercise of the freedom of assembly. Besides, the conditions foreseen for banning, postponing or terminating a meeting or demonstration are drafted in a very vague manner in these

Article 34

“Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.”

¹ The text is prepared based on information of the report Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations http://www.siviltoplum-kamu.org/usrfiles//files/MevzuatRaporu_TR.pdf

secondary legislations, causing forth arbitrariness in restriction of the exercise of freedom of assembly.

Therefore, it should be noted that the points that will be raised regarding the Law on Meetings and Demonstrations particularly indicate that introducing amendments to this law is inadequate for the advancement of freedom of assembly. In order to abolish these restrictions that make the exercise of the right almost impossible, there is a need for a new law in the framework of a title such as “Law on the Freedom of Meetings and Demonstration Marches” that will approach the issue not from the basis of restrictions but rather with a view to safeguard the right.

NOTIFICATION AND AUTHORIZATION: Article 3 of *The Law on Meetings and Demonstrations* (TGYK) states that everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission for certain purposes that are not considered a crime by law. Thus, the subject of the right is everyone.

For foreigners: However, the second paragraph of the Article introduces a restriction that almost abolishes this right for foreigners. According to the paragraph, “Foreigners must request an authorization from the Ministry of Interior to organize meetings and demonstration marches.” It is quite difficult to fulfill the condition of permission from the Ministry of Interior, since this would necessitate applying for permission a long time before the meeting and demonstration march is to be organized. There are also certain restrictions as to the exercise of the right upon the acquirement of this permission. According to the paragraph, “It is possible for foreigners to address groups in meetings and demonstration marches arranged according to this Law and to carry posters, banners, pictures, flags, signs, tools and equipment by informing the most senior local civil servant of the district where the meeting will be held at least 48 hours prior to the meeting.” Thus a notification obligation has been introduced for foreigners for all sorts of activities that can be undertaken in meetings and demonstration marches. Even though a notification rather than a permission obligation has been stipulated, such an obligation requires any meeting or demonstration to be previously planned and designed almost like a theatre play and keeping all attending participants under control.

Indoor meetings: Article 4 of the Law regulates which events fall outside the scope of the Law and particularly defines indoor meetings organized by political parties, vocational chambers that qualify as public institutions, trade unions, foundations, associations, commercial partnerships and other legal entities in accordance with their statutes to fall outside the scope of the law. There is no permission requirement for these meetings.

ORGANIZERS: Regarding meetings to be organized in scope of the Law, TGYK Article 9 states that an organizing committee must be established and the members of the committee should be over 18 with the capacity to act and meet a number of other preconditions. Therefore the right to organize outdoor meetings and demonstrations has only been granted to individuals over 18 years of age. Even though children’s associations do not need to get any permission to hold indoor meetings, they do not have the right to organize outdoor meetings.

According to Article 9 of TGYK, there has to be an organizing committee comprised of seven people over 18 years of age and with the capacity to act for the organization of a meeting, and according to Article 11 it is obligatory for these people to participate in the meeting.

Besides, according to Article 10 a notification signed by all members of the organizing committee formed as per Article 9 should be given to the province or district governorship of the place where the meeting will be held during working hours at least 48 hours prior to the meeting. In the notification the organizers must provide:

- *the purpose of the meeting;*
- *the date and the place of the meeting along with the starting and ending time;*
- *the IDs of the chair and members of the organizing committee;*
- *information regarding their occupation;*
- *their residence certificate and if available the address of their work.*

Moreover, it has been stipulated that alongside the notification additional documents may be requested through bylaws. This allows for the further hindering of the exercise of the right through the request of other documents in addition to the obligation for organizing committee members to collect a large number of documents. As per Article 23, if the notification is not submitted prior to the meeting, the meeting becomes illegal and this in turn gives security forces the authority to intervene according to Article 24. Such provisions clearly present an infringement on the freedom of assembly.³

SPONTANEOUS ASSEMBLIES: The condition of notification 48 hours prior to the meeting makes spontaneous meetings and demonstration marches directly against the law.

RESTRICTIONS ON ASSEMBLY: A rather lengthy Article of TGYK, Article 23, enumerates grounds upon which a meeting or demonstration march can become illegal in most all situations: holding a meeting or march without notification, or holding it at a place other than the specified places or the notified venue or before or after the notified date and time, or outside daytime; bearing any kind of firearms, explosives, cutting and perforating tools, stones, sticks, iron or rubber bars, contusing or strangling tools like wires or chains, or caustic, abrasive, wounding chemicals or all other types of poisons, or all types of fog, gas and similar materials; as well as symbols of illegal organizations, or attires resembling uniforms with these symbols; partially or completely covering faces to prevent identification; carrying banners, posters, placards, pictures, signs, tools and equipment defined to be illegal by the laws, or chanting or broadcasting with a sound device slogans of this nature; transgressing its own aims as stated in the notification or with purposes defined to be a crime by law, holding it before the end of the postponing or banning period; continuing the meeting after government official has terminated it; noncompliance with provisions on foreigners, all make a meeting or demonstration march illegal. As such any meeting or demonstration can be considered in breach of the law.

Besides the Article 19 of TGYK that gives the administration the authority to postpone and ban all meetings in cities and districts for up to one month, another important power given to the administration is assigned to governorships and district governorships. According to Article 17 of TGYK "(...) the governor or district governor may postpone a specific meeting for up to a maximum of one month for reasons of national security, public order, prevention of crime, protection of public health, public morality or the rights and freedoms of others, or may ban the meeting in case there is a clear and imminent threat of a crime being committed." Furthermore, TGYK Article 18 states,

³ *Samüt Karabulut v. Turkey*, Appl. No. 16999/04, 27.01.2009.

“The organization of the meeting at a later date than the day of postponement is conditional to a new notification by the organizing committee in accordance to Article 10”, thus requiring the above mentioned bureaucratic notification procedure to be repeated in case the meeting is to be organized again. The authority to ban the meeting in case “there is a clear and imminent threat of a crime being committed” in the Article gives the administration the authority to ban meetings whenever it likes by claiming there is such a ground. Contrary to the decision to postpone, the decision to ban is valid indefinitely.

In addition, the authority to determine the venues has been given to governorships and district governorships as well. According to TGYK Article 6/2, “The squares and outdoor venues or roads where meetings and demonstration marches can be held in cities and towns and other places deemed necessary, and the sites of assembly and dispersion for these meetings and marches and routes and directions to be followed are decided by governors and district governors and announced beforehand.” This makes it against the law to hold meetings and demonstration marches in places other than those designated by administrative authorities.

Article 22 of TGYK bans the organization of meetings and demonstration marches in many public places. These include general roads, intercity roads, parks, temples, and buildings that provide public services and their premises, and the area surrounding one kilometer of the Grand National Assembly of Turkey. Another striking restriction in TGYK pertains to the time and duration of meetings and demonstration marches. According to Article 7 of TGYK, meetings and demonstrations have to be held during daytime. This regulation is an infringement of the ECHR and the Constitution.

Last but not least, Article 26 of the Law introduces restrictions on the exercise of freedom of expression before and during meetings and demonstrations. The Article makes it obligatory for the inclusion of the names and surnames of organizing committee members on the materials calling or propagating the meeting, and prohibits the use of “text or pictures encouraging or inciting the public to commit a crime” on these materials. The statement in question is rather vague and it is not possible for people who want to use these materials to foresee how they should act. Also in Article 27 of the Law it is prohibited to use various materials to encourage participation and provoke meetings and demonstrations considered to be unlawful.

POLICING: All regulations in TGYK afford the administration with unlimited power of interference to the exercise of the freedom of assembly. According to Article 13 of the Law, a government official will be appointed to each meeting or demonstration. The official is equipped with some important authorities. The first authority is that the government official can be at any place he deems appropriate at the meeting venue and have the meeting recorded with equipment such as technical sound recording devices, photograph or film cameras. The second and more important power is the authority to end the meeting if order and peace is disrupted by exceeding the aim stated in the notification in a manner to make the continuation of the meeting impossible and the meeting assumes a criminal quality with verbal or physical assaults. The possibility of video recording of the meeting by authorities can have a deterrent effect for people who want to exercise their freedom of assembly. The conditions foreseen for terminating the meeting such as the meeting going beyond its aim and disruption of peace and order have been drafted in a rather vague manner. Such an instance can bring forth arbitrariness in the restriction of the freedom of assembly.

The meeting or demonstration can be identified to have become against the law by the government official. In such an instance, according to Article 24 of TGYK, the appointed security administrator in charge, “warns the crowd to disperse in line with the law and violence will be used in case they do not comply. If the crowd does not disperse it is dispersed by force. These developments are noted by the government official in official reports and consigned to the highest local authority as soon as possible... if there is an actual attack on security forces or resistance or a state of assault on places or persons they are protecting, force may be used without warning.”

Another legal regulation that relates to TGYK is Article 16 of the Law on Duties and Powers of the Police. The clause that reads “In cases of resistance by persons whose arrest is necessary or by groups whose dispersal is necessary or of their threatening to attack or carrying out an attack, the police may use violence to subdue these actions. Use of violence refers to the use of bodily force, physical force and all types of weapons specified in the law and it gradually increases according to the nature and level of resistance and attack in such a way as to restore calm” makes it legal to interfere with all types of demonstrations held without notification and to physically interfere where individuals exercising their freedoms of assembly do not want to disperse. While Article 16 of the Law on Duties and Powers of the Police does not create a problem directly in terms of freedom of assembly, because TGYK considers meetings and demonstration marches without notification to be against the law, this often leads to disproportionate police intervention.

LIABILITY: TGYK Articles 28 through 34 stipulate rather extensive punitive measures. These crimes and sanctions define a large number of actions as crimes and foresee heavy penalties for these crimes. Almost all these sanctions are disproportionate, and have a deterrent effect on individuals who want to exercise their freedom of association. For example, according to Article 9 of TGYK, there has to be an organizing committee comprised of seven people over 18 years of age and with the capacity to act for the organization of a meeting, and according to Article 11 it is obligatory for these people to participate in the meeting. If these people fail to meet this obligation, as per Article 28 they may be sentenced to imprisonment for six months to two years.

However, one of the provisions among the sanctions is a clause that can also be used to protect the people exercising their freedom of assembly. As per TGYK Article 29, “The person who obstructs the meeting or demonstration march or violates the meeting or march with schemes forestalling its continuation is sentenced to nine months to one year and six months unless the act constitutes a separate crime necessitating a higher sentence.” The Article refers to possible outside interferences to the people exercising this freedom, and if it is implemented in this manner, retaining it is possible according to international standards.

NATIONAL LAWS AFFECTING THE SECTOR:

- *Constitution of the Republic of Turkey* https://global.tbmm.gov.tr/docs/constitution_en.pdf
- *Law No. 2911 Law on Meetings and Demonstrations*, which was adopted on October 6, 1983, available at:
http://www.ttb.org.tr/mevzuat/index.php?option=com_content&view=Article&id=18:toplantj-ve-qterylkerkanunu&Itemid=28
- *The Regulation on the Implementation of Law on Meetings and Demonstrations*, which was adopted on August, 8, 1985;
 - *Law No. 2559 on the Duties and Discretion of the Police*, available at:
www.mevzuat.gov.tr/MevzuatMetin/1.3.2559.doc
 - *Law No. 3713 on The Prevention of Terrorism Acts*, available at:
http://www.istanbulbarosu.org.tr/Document.asp?DocumentIndex=cmuk/mev_3713.htm
 - *Law No. 5326 on Misdemeanours*, available at:
<http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf>