

Turkey

Human Rights and Equality Institution of Turkey

Accreditation status and SCA recommendations

The Human Rights and Equality Institution of Turkey is a non-accredited, associate member of ENNHRI. As such, the institution has committed taking proactive steps towards applying for accreditation and complying with the UN Paris Principles.

In 2019, a capacity assessment of the institution took place, led by the United Nations Development Program (UNDP) and in cooperation with OHCHR and ENNHRI. The main purpose of the capacity assessment was to identify the challenges and institutional needs of the institution in developing their capacities and to develop strategies for ensuring compliance with the UN Paris Principles.

The Institution has demonstrated interest in applying for accreditation and ENNHRI will continue to support it in its efforts to enhance compliance with the UN Paris Principles.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Presidential Development Plan, which is aimed to be implemented until 2023, provides that human rights shall be protected and promoted more effectively and awareness of people regarding human rights shall be increased.

The government decided in December 2020 that the Human Rights and Equality Institute of Turkey (HREIT) shall gain the status of the “National Reporting” institution for the Group of Experts on Action against Trafficking in Human Beings (GRETA). Experts of HREIT are being trained to that effect.

The recently announced Human Rights Action Plan – which was prepared in consultation with multiple state institutions and NGO’s –stresses the importance of the existence and development of the HREIT. The Human Rights Action Plan includes several regulations regarding HREIT:

-In terms of institutional recommendations and decisions, attention has been paid within the Action Plan to the reports issued by the Ombudsman Institution, the Personal Data Protection Authority and the Human Rights and Equality Institution of Turkey.

-The structure of the Human Rights and Equality Institution of Turkey will be made compliant with the UN Principles relating to the Status of National Institutions and its accreditation by the Global Alliance of National Human Rights Institutions will be secured.

-The decisions of the Ombudsman Institution and the Human Rights and Equality Institution of Turkey will be made available for public access while ensuring protection of personal data.

-The periodic reports prepared by the Penitentiary Institution and Detention House Monitoring Boards will also be sent to the Ombudsman Institution, the Human Rights and Equality Institution of Turkey, and the execution judgeship concerned. In our country, regular inspections can be held in relation to the conditions of custody centres and interrogation rooms as well as of persons in custody by chief public prosecutor's offices and administrative institutions. The Committee on Human Rights Inquiry of the Grand National Assembly of Turkey, the Ombudsman Institution and the Human Rights and Equality Institution of Turkey each have the authority to examine, inquire and inspect these places.

-The Department of Human Rights of the Ministry of Justice will draft the "Annual Implementation Report" on the Human Rights Action Plan and submit it to the Monitoring and Evaluation Board for approval. The Annual Implementation Report will be assessed by the Human Rights and Equality Institution of Turkey and the Ombudsman Institution, who will submit the results to the Presidency of the Republic and the Grand National Assembly of Turkey.

References

- Presidential Development Plan 2019–2023 https://www.sbb.gov.tr/wp-content/uploads/2020/03/On_BirinciPLan_ingilizce_SonBaski.pdf
- Action Plan on Human Rights <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>

Enabling space

In accordance with the law No. 6701, HREIT has the status of a public legal entity and administrative and financial autonomy, which ensure the institution's capacity to act independently. Furthermore, the aforementioned code provides that HREIT monitors and evaluates the legislative work related to its field of duty and informs the relevant authorities of its opinions and suggestions. In that regard, HREIT presents annual reports and gives advice to the Grand National Assembly of Turkey (TBMM) and the Presidency, collaboratively acts with the Human Rights Commission and the Commission of Equal Opportunities for Men and Women of TBMM. All of this cooperation provides enlarged capacity for HREIT's recommendations to be implemented effectively.

Moreover, HREIT is asked expert opinions by courts in legal cases which are related to human rights law. There is a growing number of references being given to HREIT Board Decisions by different courts in their verdicts. Law No. 6701 states that the Institution may start an ex officio investigation on the relevant case if necessary. To facilitate this process, state bodies are providing HREIT technical, logistical and informative assistance. HREIT has a mandate to demand related documents from relevant persons in its ex officio investigations.

References

- <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf>

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

HREIT started a Capacity Assessment (CA) program. It was conducted by TIHEK, facilitated by the Asia Pacific Forum of National Human Rights Institutions (APF) and the European Network of National Human Rights Institutions (ENNHRI), the United Nations Development Programme Istanbul Regional Hub (UNDP IRH) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) in August 2019. HREIT was the first National Human Rights Institution (NHRI) ENNHRI member to undertake a comprehensive CA in Europe. In the capacity assessment report it was identified that HREIT's physical capacity has to be increased for a more effective operating capability. In this regard, HREIT acquired a new building and nearly doubled its physical capacity. Moreover, HREIT recruited 25 new assistant experts to increase the capability and currently 158 persons work in HREIT. In Addition to this, the HREIT organised a training program

for assistant experts and the programs are still in progress. We have strengthened the dialogue with our counterparts and international organizations. The number of multilateral meetings we attend increased and varied so that via sharing of best practices we had the opportunity to find ways to better address problematic issues.

Human rights defenders and civil society space

In the institution's efforts of protection and promotion of elderly people's rights in Turkey, related states bodies facilitate HREIT's outreach to elderly people, data collection. According to the law, HREIT has a power to independently cooperate with international organizations. Thus, she has strong cooperation with ENNHRI, GANHRI, Council of Europe, OSCE etc. HREIT's accreditation process to GANHRI is supported economically and politically by the government.

-To activate the Provincial and Sub-Provincial Human Rights board, HREIT carried out studies. In this context, a meeting was held in Sakarya with the participation of representatives of non-governmental organisations.

-Representatives from Universities and civil society were invited to the symposiums and workshops organised by HREIT and publications prepared regarding our studies were distributed to these Institutions.

-HREIT made contributions to the Human Rights Action Plan which is prepared by Ministry of Justice and will come into effect in 2021.

- According to article 9 of the Law No 6701, the HREIT prepares an annual report related to the protection and promotion of human rights. In order to prepare the annual report, the HREIT requests views and statistics for over 100 non-governmental institutions.

References

- <https://www.tihek.gov.tr/tihek-il-istisare-toplantilarinin-ucuncusunu-sakaryada-gerceklestirdi/>
- <https://www.tihek.gov.tr/siddetin-onlenmesi-calistayi/>

Checks and balances

Complaint mechanisms

Many non-judicial complaint mechanisms have been established in Turkey in different qualifications and characteristics. These mechanisms carry out human rights audits of administrative nature. One of the bodies that carry out human rights controls of administrative nature is the provincial and sub-provincial human rights boards. Another one is the Ombudsman Institution. Anyone who thinks that they are victimized or wronged by the actions and procedures of public institutions and organisations (administration) and the attitudes and behaviour of public officials can lodge a complaint to the Ombudsman Institution before going to court. The purpose of the Institution is to establish an independent and efficient complaint mechanism regarding the delivery of public services and investigate, research and give recommendations about the conformity of all kinds of actions, acts, attitudes and behaviour of the administration with law and fairness under the respect for human rights. Natural and legal persons including foreign nationals may lodge complaints to the Ombudsman Institution.

One of the non-judicial complaint mechanisms is offered By the "Presidential Communication Center" (CIMER). CIMER offers an electronic public service tool created for the use of the right to petition and information. All applications made to CIMER, created by using information communication technologies, can be followed by the Directorate of Communication. CIMER is carried out under the responsibility of the Presidency Directorate of Communications Department of Public Relations (operating under the Directorate of Communication). Having many different institutions treating the same applications/complaints can lead to the fragmentation of some functions. In particular, the inability to collect data on human rights and the multi-headed human rights issues affect the efficiency and functioning of the institutions.

NHRI's role in the system of checks and balances

Within the scope of the mandates listed in the Law No. 6701 (Law on Human Rights and Equality Institution of Turkey) it has been ensured that HREIT is an important component of the checks and balance system in Turkey. In the paragraph (e) of Article 9 of Law No. 6701, "Following and assessing development of legislation on issues falling under its mandate and submitting its opinions and proposals thereon to relevant authorities" is listed among the duties of the Institution. In this context, in 2020, HREIT has been included in the national policy studies carried out within the scope of the National Action Plan for the Elimination of Violence Against Women and the Human Rights Action Plan and submitted its opinions and proposals.

Apart from these studies, some examples of the initiatives that HREIT has carried out as a part of the checks and balances system are following;

- The 17th High Criminal Court requested an opinion regarding repatriation of an Azerbaijani citizen within the scope of the principle of non-refoulement and the prohibition of torture, and our institution presented its views to the court in this context.
- HREIT requested participation as third party in the European Court of Human Rights (ECtHR) case *Abdi İbrahim v Norway*, but this request was not accepted due to the limitation of time.
- In order to prepare a national legislation and an international agreement on elderly rights, the HREIT Elderly Rights Working Group has been established and activities continue for this purpose.

Related to the coordination with regional actors, the application made by an Afghan immigrant Şefika Nazari to the institution was one of the prominent topics in 2020. After opening Turkey's border gates with Greece, irregular migrants and asylum-seekers headed to Edirne Border in an attempt to cross the border from different points. This led to a chaotic situation. On April 4, 2020, Afghan mother Şefika Nazari made an application to HREIT. Nazari stated that in her application, her 3-year-old daughter Elif Naz and her son Ferit Ahmet were trapped in Greece. The HREIT took up the application and took actions and contacted many national and international institutions such as the Directorate General of Migration Management, the Ministry of Foreign Affairs, the UN High Commissioner for Human Rights, the Greek authorities, UNICEF and the Afghanistan Embassy. Finally, with the contribution of the Turkish Red Crescent and the Red Cross cooperation, 75 days after the incident, the children were returned back to the family at the Edirne Pazarkule border gate.

References

- <https://www.cimer.gov.tr/>
- <https://www.ombudsman.gov.tr/>
- <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6701.pdf>
- <https://www.tihk.gov.tr/yunanistanda-kalan-cocuklarina-kavusan-afgan-aileden-tiheke-tesekkur-ziyareti/>
- <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep-eng02-03-202115-16.pdf>

Corruption

In Turkey, in addition to the National Human Rights Institution, the Ombudsperson Institution is also treating human rights questions. Corruption is an issue addressed within the scope of the working area of the Court of Accounts and the Ombudsman Institution.

In article 5 of the Law No. 6328 (Law on the Ombudsman Institution) Duties of the Institution stated as "The Institution shall be responsible for examining, investigating, and submitting recommendations to the Administration with regard to all sorts of acts and actions as well as attitudes and behaviour of the Administration upon complaint on the functioning of the Administration within the framework of an understanding of human rights-based justice and in the aspect of legality and conformity with principles of fairness."

In Article 5 of Law No. 6085 On Turkish Court of Accounts, duties of the Turkish Court of Accounts are listed as follows;

- a) Audit the financial activities, decisions and transactions of public administrations within the framework of accountability and submit accurate, sufficient, timely information and reports to the Turkish Grand National Assembly on the results of these audits;
- b) Audit whether or not accounts and transactions of public administrations within the scope of the general government with respect to their revenues, expenses and assets are in compliance with laws and other legal arrangements, and take final decision on matters related to public loss arising from the accounts and transactions of those responsible,
- c) Submit the Statement of General Conformity to the Turkish Grand National Assembly,
- d) Perform the duties of examining, auditing and taking final decision prescribed by laws.

References

- <https://www.ombudsman.gov.tr/English/law/Law.pdf>
- <https://www.sayistay.gov.tr/tr/?p=2&CategoryId=92>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The HREIT closely monitors the process of the COVID-19 pandemic, which has transformed into a humanitarian crisis in a short time and affects fundamental rights and freedoms, and continues to monitor the loss of rights caused by the pandemic and the impact of the measures taken to combat the pandemic on rights and freedoms. In this context, the HREIT prepared the thematic report entitled "The COVID-19 in the Context of Human Rights" and examined the pandemic process in our country. The aim of this study, was to record good practice examples in the efforts made for the protection of the right to life and the right to health in our country, and to find out deficiencies and offer suggestions. The Report is due for publication shortly.

References

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Most important challenges due to COVID-19 for the NHRI's functioning

The most important challenges the Institution faced during COVID-19 outbreak related to the exercise of its duties as National Preventive Mechanism. The first case of COVID-19 was reported in Turkey in March 2020 and the process of combating the COVID-19 pandemic has intensified in our country as in the whole world. Detention centres were among the places where special measures were taken during the fight against the pandemic. Both within the scope of the measures taken and in accordance with the "do no harm principle", which is the basis of the National Prevention Mechanism, the frequency of visits planned for 2020 has necessarily decreased. We were able to carry out visits to detention centres including prisons, custody

centres, removal centres where foreigners under administrative detention are placed, homes for the elderly and Care centres for children.

Because of the COVID-19 pandemic, some of HREIT's visits, within the scope of National Preventive Mechanism were suspended, but in line with the recommendations of the CPT, SPT, and APT, alternative monitoring method named SEGBIS were developed in order to continue to perform the NPM mission. The SEGBIS system is a system in which audio and video are transmitted in electronic environment at the same time, and which was created for the purpose of carrying out judicial services in electronic environment. The SEGBIS system has been integrated into the NPM unit.

HREIT organised an online training program for public institutions and organisations on human rights issues during COVID-19 pandemic. At the same time the Institution's staff participated to online symposiums and meetings organised by various national international organisations on human rights issues.

References

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- <https://www.tihek.gov.tr/tihek-heyeti-ankara-ataturk-cocuk-kampusune-ziyaret-gerceklestirdi/>
- <https://www.tihek.gov.tr/ulusal-onleme-mekanizmasi-kapsaminda-eskisehirde-ziyaretler-gerceklestirildi/>

