

**PRESIDENCY OF THE TURKISH PARLIAMENT**

The Proposal for a Law on the Recognition and Protection of Human Rights Defenders is attached hereto with its justification.

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## RATIONALE

'Human rights', which protect and promote the inherent dignity, freedom and equality of individuals, serve as a moral and legal framework for just societies, ensuring that individuals have the freedom to live their lives without interference from governments, institutions or other individuals. Not only the existence of rights, but also the pursuit of compliance with international standards and laws in the exercise of those rights contribute to the functioning of democratic and just societies.

While holding governments and institutions accountable for their actions, human rights advocacy participates in this process through numerous functions such as promoting human rights, establishing accountability and transparency, ensuring access to justice, and supporting freedom of expression. It is a well-known fact that governments suppress rights defenders and their related activities/institutions, which function as indirect oversight mechanisms for precisely these reasons, by force, intense pressure and, in some cases, violence.

The oppression of human rights defenders in Turkey, which has become increasingly systematic in recent years, became visible in the "Report on the Oppression, Obstacles and Difficulties Faced by Human Rights Defenders in Turkey in 2022" published by the Human Rights Foundation of Turkey (HRFT) on 20 September 2023 with the following statements; "At least 22 civil society organizations (16 associations, 5 professional organizations and 1 foundation), including Migration Monitoring Association, Health and Social Service Workers' Union, Turkish Medical Association, Rosa Women's Association, Human Rights Association, Association of Lawyers for Freedom, Platform to Stop Femicide, Tarlabası Community Support Association, Diyarbakır Bar Association and Izmir Bar Association, were directly or indirectly subjected to judicial harassment in this period within the scope of investigations and prosecutions initiated against their executives, employees and/or members. Between 1 January 2022 and 31 December 2022, a total of 4819 individuals were subjected to one or more of the following interventions: judicial harassment, administrative harassment, physical violence, threats, targeting and reprisals. In the same period, 16 associations, 5 professional organizations and 1 foundation were directly or indirectly targeted and subjected to judicial and administrative harassment due to their human rights activities. A total of 311 peaceful meetings, demonstrations and marches were prevented in 34 different cities."

The mandate of the United Nations (UN) Special Rapporteur on the situation of human rights defenders is based on the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted by the UN General Assembly in 1998 (UN Declaration on Human Rights), While the European Union Guidelines on Human Rights Defenders established by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE - ODIHR) were put on the agenda of the international community a quarter of a century ago as documents and institutions created by these risks, it has become an obligation to create a legal basis to eliminate this systematic pressure in Turkey.

In order to ensure the full and effective implementation of international declarations and guidelines on the protection of human rights defenders and to outline the State's responsibility

to protect human rights defenders, the "Proposal for the Law on the Recognition and Protection of Human Rights Defenders" was prepared by adapting the *model law* prepared by the International Service for Human Rights (ISHR) in 2016 and presented to the world community.

# RECOGNITION AND PROTECTION OF HUMAN RIGHTS DEFENDERS

## LAW PROPOSAL

### **Purpose and scope**

**ARTICLE 1-** (1) The purpose of this Law is to regulate the principles regarding the recognition and protection of human rights defenders in the light of international declarations and principles.

(2) This Law applies to all human rights defenders within the territory and jurisdiction of Turkey, without any discrimination on the grounds of sex, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic status, property status, marital status, birth, disability, sexual orientation, gender identity, sex characteristics

### **Definitions**

**ARTICLE 2-** (1) In this Law;

- a) Ministry: Ministry of Justice,
- b) Unit: Protection of Human Rights Defenders Unit
- c) Fund: Fund for the Protection of Human Rights Defenders
- ç) Human rights defender: A person who, individually or in association with others, promotes, protects or acts or strives for the protection and realization of human rights and fundamental freedoms at the local, national, regional or international level,
- d) Institution: The Human Rights and Equality Institution of Turkey.

### **Rights and responsibilities of human rights defenders**

**ARTICLE 3-** (1) Everyone has the right, individually or in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the local, national, regional and international levels.

(2) Everyone has the right, individually or in association with others, to form, belong to and participate in groups, associations and non-governmental organizations, formal or informal, registered or unregistered, for the purpose of promoting and striving for the protection and realization of human rights and fundamental freedoms.

(3) Everyone has the right, individually or in association with others, to request, receive and utilize governmental, intergovernmental or private resources, as well as domestic and international resources, including donations, for the purpose of promoting and striving for the protection and realization of human rights and fundamental freedoms.

(4) Everyone, individually or with others,

a) To receive, seek, access, obtain and retain information on all human rights and fundamental freedoms, including information on how these rights and freedoms are given effect in the legislative, judicial and administrative systems,

b) Seeking to access, obtaining and retaining information from commercial entities that may be necessary to exercise or protect, or assist in the exercise or protection of, human rights or fundamental freedoms,<sup>1</sup>

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c) To publish, transmit or disseminate freely opinions, information and knowledge concerning all human rights and fundamental freedoms,

ç) The right to study, debate, formulate and participate in opinions and discussions on the observance of all human rights and fundamental freedoms in law and practice in order to draw public attention to them. This right may be exercised orally, in writing, in print, in the form of works of art or through any other media, online or offline.

(5) Everyone has the right, individually or in association with others, to develop, discuss and advocate the adoption of new ideas and principles concerning human rights and fundamental freedoms.

(6) Everyone has the right, individually or in association with others, to communicate freely with civil society, State and inter-State organizations and diplomatic missions, including subsidiary bodies, mechanisms or experts with mandates relating to human rights and fundamental freedoms.

(7) In accordance with applicable international instruments and procedures, everyone has the right, individually or in association with others, to unhindered access to and to communicate and cooperate with international and regional human rights bodies and mechanisms, including treaty bodies and special procedures or special rapporteurs.

(8) Everyone has the right, individually or in association with others, to participate effectively in the conduct of public affairs, including participation on a non-discriminatory basis in the government of his or her country, in relation to human rights and fundamental freedoms. This right

a) To criticize or make suggestions to any public authority, institution or organization concerned with public affairs, with a view to improving its functioning in relation to human rights and fundamental freedoms,

b) Advise any public authority on legislative or regulatory changes relating to human rights and fundamental freedoms,

c) drawing the attention of any public authority to any aspect of his or her work that may impede or delay the promotion, protection and realization of human rights and fundamental freedoms,

ç) drawing the attention of any public authority to the acts or omissions of any actor, private or public, which may involve or contribute to violations of human rights or fundamental freedoms,

d) the right to freely publish, transmit or distribute to others any information submitted to any public authority in the exercise of the rights referred to in this paragraph.

(9) Everyone has the right to meet or assemble peacefully, alone or in association with others, free from arbitrary or unlawful interference by public authorities and private actors, at the local, national, regional or international level, and to take part in peaceful activities relating to human rights and fundamental freedoms. This right includes the right to plan, organize, participate in and disseminate information on peaceful activities relating to human rights and fundamental freedoms, including demonstrations, protests, seminars and meetings, whether held in a public or private place.

(10) Everyone has the right, individually and in association with others, to assist, represent or act on behalf of another person, group, association, organization or institution in

the promotion, protection and enjoyment of fundamental rights and freedoms, including at local, national, regional and international levels. This right

a) Complain to local judicial, administrative or legislative authorities or other competent authorities, by petition or other appropriate means, about the policies and actions of public authorities relating to violations of human rights and fundamental freedoms,

b) Offering and providing professional legal assistance or other relevant advice and assistance in the defense of human rights and fundamental freedoms,

c) Participation in public hearings with a view to forming an opinion on their compliance with national law, human rights and fundamental freedoms,

d) to submit contacts and information of the type referred to in paragraph 7.

(11) Everyone has the right to privacy, individually or in association with others. This right includes the right of a human rights defender to protect his or her privacy, including through encryption, and to be free from arbitrary and unlawful intrusion and interference with his or her family, home, workplace, possessions and correspondence, both online and offline.

(12) No one shall be subjected, individually or in association with others, to threats, physical violence, targeting or reprisals of any kind because of or in connection with his or her status, activities or work as a human rights defender.

(13) No one may be subjected to any form of defamation, stigmatization or other harassment by public authorities or private actors in connection with his or her status, activities or work as a human rights defender.

(14) Everyone has the right, individually or in association with others, to the unhindered exercise of his cultural rights in his activities and to work as a human rights defender and to the free and full development of his personality. This right includes the right to challenge and change traditional forms of behavior and practices that violate human rights and fundamental freedoms.

(15) Everyone, individually or jointly with others, has the right to an effective remedy and full compensation in the event of a breach of rights and obligations under this Law. Everyone whose rights have been infringed or who has been adversely affected by a breach of obligations has the right to apply to a competent court or tribunal to obtain such effective remedy and full compensation.

(16) In exercising his or her rights under this Law, a human rights defender, individually or in association with others, shall be subject only to such reasonable, necessary and proportionate limitations as are prescribed by law in accordance with international human rights obligations and standards, in order to ensure due recognition and respect for the human rights and fundamental freedoms of others and to meet the requirements of public order and general welfare in a democratic society.

(17) Where there are different provisions in national or international legislation on the recognition and protection of human rights defenders, the more favorable provisions shall apply.

(18) Everyone has an important role and responsibility to promote and strive for the protection and realization of human rights and fundamental freedoms. No one may participate, by act or omission, in the violation of human rights and fundamental freedoms or in the undermining of democratic societies, institutions and processes.

#### **Obligations of public authorities**

**ARTICLE 4-** (1) Public authorities,

- a) The effective guarantee and safeguarding of human rights and fundamental freedoms enshrined in Article 3,
- b) That all laws, policies and programs are consistent with Article 3 rights,
- c) It is obliged to ensure that human rights defenders can work and carry out their activities in a safe and enabling environment free from restrictions.

(2) Public authorities shall take all necessary measures to facilitate and protect the exercise of the rights under Article 3. These measures shall include,

a) Allow and facilitate access, in accordance with the law, to places where a person is deprived of liberty,

b) Allow and facilitate access by human rights defenders to the places and information they need to exercise their rights under Article 3 in accordance with the law,

c) Provide information on violations of human rights or fundamental freedoms that may have occurred on Turkish territory or in places subject to its jurisdiction,

ç) Develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms,

d) obligations to recognize and publicly acknowledge the role, function, activities and work of human rights defenders as legitimate and important.

(3) Public authorities are obliged to make the following freely available and accessible, both offline and online

a) International and regional human rights instruments

b) Constitution, laws and regulations

c) Research, studies, reports, reports, data, archives and other information and materials on human rights and fundamental freedoms held by public authorities

ç) Reports and information submitted to international and regional human rights institutions and mechanisms

d) Minutes, reports and correspondence of international and regional human rights institutions and mechanisms dealing with Turkey

e) Documents and information relating to decisions or activities of competent national authorities in the field of human rights and fundamental freedoms

f) any other information that may be necessary for securing or enabling the exercise of any human right or fundamental freedom under Article 3 or for access to remedy in the event of a violation of such right

(4) Public authorities shall not disclose or require the disclosure of the identity of sources used by human rights defenders. However, public authorities may disclose the identity of sources used by human rights defenders in accordance with international standards if both the source and the human rights defender concerned consent in writing or if required to do so by an independent and impartial court.

(5) Any act of threat, physical violence, targeting or reprisal by a public or private actor against a person because of or in connection with his or her status, activities or work as a human rights defender is a criminal offence and shall be investigated by the competent authority and punished in proportion to the gravity of the offence in accordance with the relevant provisions of the Turkish Penal Code No. 5237 of 24/9/2004 and international treaties. Public authorities

shall take all necessary measures to prevent and protect against any threat, physical violence, targeting or retaliation by a public or private actor.

(6) Public authorities shall take all necessary measures to ensure that human rights defenders are protected from arbitrary or unlawful attacks and interference with their family, home, workplace, possessions and correspondence, both offline and online. These attacks and interferences include any surveillance, recording, search and seizure of a person, without his or her consent, in connection with any person's legitimate activity or work as a human rights defender.

(7) Where there are reasonable grounds to believe that a human rights defender has been killed, disappeared, tortured, ill-treated, arbitrarily detained, threatened or any of the rights under Article 3 has been violated by a public authority or private person on Turkish territory or in places subject to its jurisdiction, the competent authority shall ensure that a prompt, thorough, effective, independent and impartial investigation is conducted with due diligence and shall initiate proceedings in accordance with the relevant legislation. An investigation to be opened accordingly shall take into account the following points.

a) Whether there is a motive to violate the rights of the human rights defender, including his or her status, activity or work as a human rights defender,

b) Whether there have been previous violations of the rights of human rights defenders or systematic violations of the rights of similarly situated human rights defenders,

c) Whether there is more than one person committing, aiding and abetting or supporting the breach.

The competent authority shall seek the opinion of the Institution during the investigation and shall inform the family and relatives of the victim. It may request assistance from relevant international or regional human rights bodies or mechanisms as necessary for the conduct of the investigation.

(8) Public authorities shall take all necessary measures to ensure that an effective remedy and full reparation are possible and ensured in the event of a violation of the rights under Article 3 and failure to fulfill the obligations under this Article.

(9) Public authorities shall encourage, facilitate and provide adequate resources for education and training on human rights and fundamental freedoms for public servants in all public institutions. Such education and training programs shall include information on this Law and the important and legitimate work of human rights defenders.

(10) Public authorities are obliged to take all necessary measures for the full and effective implementation of the protection and emergency protection measures set out in Article 5.

(11) Public authorities are obliged to take all necessary steps within their competence, in accordance with national and international obligations and standards, to provide assistance to a human rights defender abroad who is or may be subjected to threats, physical violence, targeting or reprisals because of his or her status, activities or work as a human rights defender. Such assistance may take the following forms, depending on the nature of the threat, physical violence, targeting or reprisals and the nationality of the human rights defender

a) receive the human rights defender at the diplomatic mission in that country or visit the human rights defender at his or her home, place of work or place of deprivation of liberty,



- b) Making public or confidential official statements concerning the human rights defender,
- c) Participating in or observing hearings or legal proceedings involving the human rights defender,
- ç) To monitor and report on the situation of the human rights defender,
- d) To issue emergency or replacement travel documents,
- e) Providing medical care,
- f) Providing information of local lawyers,
- g) Providing information of local interpreters,
- h) Contact with family members of human rights defenders,
- i) Arrange for someone to accompany the human rights defender to a safe place or help her to relocate,
- j) Providing financial assistance,
- k) Provide emergency funding to enable the human rights defender to travel to a place of safety.

### **Protection of human rights defenders**

**ARTICLE 5-** (1) The Ministry shall establish the Protection of Human Rights Defenders Unit within its organization to coordinate the protection of human rights defenders. The Unit shall carry out its functions in close and collaborative consultation with the Institution and civil society. The Unit will perform the following functions.

- a) To work to prevent threats, physical violence, targeting and reprisals and to ensure the protection of human rights defenders from them,
  - b) Assist in the investigation and accountability for acts of threats, physical violence, targeting and retaliation,
  - c) Facilitate inter-agency coordination and ensure cooperation to investigate and ensure accountability for acts of threats, physical violence, targeting and retaliation,
  - ç) Promote and publicly recognize the legitimate and important role, function, activities and work of human rights defenders.
- (2) In the exercise of its functions, the Unit;
- a) Monitor and respond to the situation of human rights defenders in the country, including risks to their safety and legal and other obstacles to a safe and enabling environment for their work.
  - b) consult and work closely and in cooperation with human rights defenders in the implementation of this Law.
  - c) Coordinate the implementation of this Law.
  - ç) Conduct risk, vulnerability or conflict assessments at national, regional or local levels to identify specific needs for the protection of human rights defenders, including by conducting gender-based and collective risk assessments.
  - d) assist in investigations and provide information for the prosecution of offenses under Article 4, paragraph 7.

e) Monitor existing and draft legislation and inform on the impact or potential impact of legislation on the situation, activities and work of human rights defenders and, where necessary, propose amendments to legislation.

f) It may make recommendations on the design and implementation of policies and programs to secure and protect the rights of human rights defenders under this Law.

g) Monitor and prepare annual reports on the situation of human rights defenders in the country, including addressing the root causes of violations against human rights defenders, and make recommendations to the relevant authorities on appropriate measures to create a safe and enabling environment for their work and to reduce and prevent the risks they face.

ğ) Propose and implement or ensure the implementation of prevention and protection measures to safeguard the life, integrity, liberty, security and work of human rights defenders, paying particular attention to the situation and protection needs of women human rights defenders.

h) Receive and consider applications for protection measures and implement appropriate protection measures, including emergency measures, in coordination with other relevant authorities.

ı) Inform the public about protection programs for human rights defenders, how to access them and the work of the unit.

i) The UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and the vital and legitimate role, function and work of human rights defenders.

j) Prepare reports and statements on the situation of human rights defenders in Turkey and submit them to relevant international and regional human rights bodies and mechanisms.

(3) The Unit shall respect and protect the confidentiality of personal data collected on human rights defenders. The Unit shall, together with independent experts and in consultation with civil society, develop mandatory information management and digital security policies for its own staff and all other officials with access to information received by the Unit.

(4) The Unit, together with independent experts and in consultation with civil society, shall conduct periodic reviews of the implementation of this Law and the effective functioning of the Unit.

(5) The Ministry shall consult with human rights defenders and other civil society actors on all aspects of the Unit's work.

#### **Financing the protection of human rights defenders**

**ARTICLE 6-** (1) The Ministry shall provide sufficient financial resources for the Unit to fulfill its functions and exercise its powers fully and effectively.

(2) In order to realize the objectives of this Law and to obtain additional financial resources to those referred to in the first paragraph, the Ministry shall establish and operate the Fund for the Protection of Human Rights Defenders.

(3) Fund resources shall be used exclusively for the implementation of protection and prevention measures and other dispositions authorized under this Law.

(4) Provided that there is no actual or apparent incompatibility with the functions, purposes and interests of the Unit, the Unit may accept the following as income to the Fund.

a) Grants and loans from the public or private sector

b) Contributions from local and foreign individuals, groups, associations, institutions and organizations

(5) The Fund may be used by the Unit or by other entities authorized by the Unit.

(6) The Fund shall be managed with full transparency and a report on the use of the Fund shall be included in the Unit's annual report.

(7) The procedures and principles regarding the administration and representation of the Fund for the Protection of Human Rights Defenders and its service units and duties shall be regulated by a regulation to be issued by the Ministry.

#### **Provisions on personnel**

**ARTICLE 7-** (1) The Ministry may assign or employ contracted personnel to work in the Unit from among the personnel in its own central and provincial organization, whom it deems appropriate for the purposes, duties and functions of the Unit. The procedures and principles regarding the assignment or contractual employment of personnel shall be regulated by a regulation to be issued by the Ministry.

(2) Persons who will work in the Unit shall be trained by the Ministry before they start to ensure the full and effective implementation of this Law. This training shall include topics related to human rights and fundamental freedoms, including the situation and protection needs of victims and human rights defenders, in particular those working on issues of sexual orientation, gender identity and gender characteristics.

**ARTICLE 8-** This Law shall enter into force on the date of its publication.

**ARTICLE 9-** The President shall execute the provisions of this Law.