16.10.2019

To the attention of Ms. Nathalie Prouvez

This written contribution has been prepared by the Association for Monitoring Equal Rights (AMER) with regard to the request for contributions from civil society organisations for the preparation of a report on “The promotion and protection of human rights in the context of peaceful protests” by the High Commissioner.

The Association for Monitoring Equal Rights (AMER), has been monitoring freedom of assembly in Turkey since 2015 and to date remains the sole civil society organisation which systematically monitors freedom of assembly in Turkey. The monitoring methodology follows Organization for Security and Co-operation in Europe (OSCE)’s Handbook on Monitoring Peaceful Assemblies to the extent possible. Due to Turkey’s climate, it is not possible to implement “on-site monitoring” in Turkey at the moment. Therefore, AMER will provide information in this written contribution, on the questions (1), (4) and (5).

While Article 34 of the Constitution of Turkey provides “*Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission*” and is in line with international standards governing freedom of assembly; Law No. 2911 on Assemblies and Demonstrations allows governorates and district governorates to issue bans and restrictions, or delay such events in an entire province or district(s). However, Law No. 2911 does not provide safeguards for the arbitrary exercise of this powers afforded to public authorities. As such, in practice, this power is exercised to the extent that in certain provinces, freedom of assembly has been restricted to a point that it is impossible for the enjoyment of this right. For example, in the province of Van through continuous renewal of bans which last from 15 to 30 days, as of September 2019, any activity within the scope of freedom of assembly has been prohibited for 1053 days straight.[[1]](#footnote-1)

Such governorate bans are usually announced on the relevant Governorate or District Governorate’s website, and lately in 2019 on the Security General Directorate’s website. However, after a certain amount of time, varying from weeks to months, these decisions are removed, making it impossible to reach this data. Further, often in the case of such bans with a general scope, they are not even announced on the websites, resulting in the participants of an assembly being informed of such a ban, right before the interference with an assembly.

Such ban and restriction decisions, where it includes a provision that all assemblies, demonstrations and such events are subject to obtaining a permission from the governor or the district governor, also often include a section which states: “*it is respectfully announced to the public that, all assemblies and such activities will be monitored by security forces through audio and video recording, for the identification of persons who might disrupt the atmosphere of peace and trust as well as the detection of crimes which might be committed; those who might breach this decision and those who continue their breach despite warnings will be taken within the scope of illegal assemblies and be subject to proceedings under Law No 2911 on Assemblies and Demonstrations as well as other relevant legislation.*”[[2]](#footnote-2) As the costs of such recording and its storage continue to fall, combined with the issue that it is unknown to the public where, for how long and by whom these audio and video recording of persons who attend assemblies is stored, the inclusion of this issue and such practice, creates a chilling effect for the future participants of any assembly. There have been reports of the use of previous recording from other assemblies being used in court for evidence for the criminalisation of freedom of assembly. Safeguards must be established to prevent arbitrary use of such recording and information as well as being effectively enforced by law for the protection of assemblies and its participants. While the use of biometric data is not commonly in effect with regards to the assemblies in Turkey just yet, video and audio recording, especially through drones by security forces is commonplace.

Social media, which is highly significant and functional for the mobilisation of masses in the world is an important tool in Turkey for the enjoyment freedom of expression and freedom of assembly. Within the context of fundamental rights, social media as a new platform of communication experiences three problem areas:

Governorates often issue bans/restrictions where individuals or organising committees are in the process of dissemination information regarding an assembly, with the justification of "opposing views" on social media. Not only opposing views, but also regarding instances where groups which announce that they will stage a counterdemonstration or intelligence received on the possibility of hate crime leads to governorates issuing ban decisions as a "preventative measure", instead of fulfilling positive obligations on protecting and facilitating assemblies as well as its participants. This pattern is most commonly observed with regards to the assemblies or events which are organised by LGBTQ or LGBTQ organisations.

Counterdemonstrations and other assemblies scheduled to take place are accepted as a "valid justification" for restricting the enjoyment of this right. However, the threats and hate speech which assembly organisers are subject to, is almost always never investigated.

As such, the lack of a human rights based approach in the regulation of communications technologies by the State both creates a sphere if impunity as well as resulting in a negative impact for the enjoyment of freedom of assembly.

Social media posts concerning organising a protest or participation in one, has also become reason for charges of terror propaganda or membership of a terrorist organisation. This is an important indicator of the narrowing space for both freedom of speech and for freedom of assembly.

 After the removal of mayors in the provinces of Diyarbakır, Van and Mardin and their replacement with trustees, daily protests have commenced primarily in these three aforementioned provinces. Following that, the internet access in mainly these three provinces and in others where there is a height number of Kurdish population has been severely restricted. On the first two days of the protests, (19 and 20th August), there was no access to Twitter and Facebook. While this is not the sole example of restriction of access to new communication platforms, it is the most commonly used one.

The most commonly used “*non-lethal weapons*” in the context of dispersing assemblies in Turkey are, pepper gas, pressurised water and plastic bullets.[[3]](#footnote-3) While these are classified as non-lethal weapons, their manner of use by security forces in dispersing assemblies leads to many wounded participants which have even led to their deaths after their hospitalisation. The most common example is the case of Berkin Elvan, a 12-year-old boy who was shot in the head with a pepper gas canister by the security forces during the dispersal of a protest within the scope of Gezi Park Protests in 2013. It bears mentioning that he was not part of the assembly (just passing through on his way to the market), he was comatose for 269 days and died in 2014 due to his injuries. Most commonly reported in the Gezi Park protests, tear gas canisters have been observed at the site of protests, which have exceeded their expiration date.[[4]](#footnote-4) Further, participants of assemblies also complained of irritation after being subject to pressurised water which raised suspicion of chemicals added to the water. Pepper gas is heavily used, but more importantly aimed directly at the participants’ faces, or used in close proximity to cause harm. While the use of disproportionate force, improper use of non-lethal weapons is a widespread issue in Turkey[[5]](#footnote-5), the lack of a fully functioning independent oversight mechanism results such cases to result in impunity. Any soft-law documents, whether issued by the United Nations, accepted formally as principles and on a national level, circulars issued by the Interior Ministry or Regulation on Duties and Discretion of the Police (and Law No. 2559), are not implemented nor are they taken into consideration. The use of non-lethal weapons in Turkey in a manner which is far from a human rights based approach leads to lethal results.

1. Evrensel, “Another 15 day Assembly Ban from the Van Governorate: Bans Add Up to 1053 days”, 25.09.2019, https://www.evrensel.net/haber/387586/van-valiliginden-15-gunluk-eylem-ve-etkinlik-yasagi-daha-yasak-1053-gune-cikti [↑](#footnote-ref-1)
2. Mardin Governorate, “Press Release”, 10.05.2019, http://www.mardin.gov.tr/10052019-basin-duyurusu [↑](#footnote-ref-2)
3. For more information see. The Association for Monitoring Equal Rights, Reports on Monitoring Freedom of Assembly (2016 and 2017 (2018 forthcoming)), https://www.esithaklar.org/publications/. [↑](#footnote-ref-3)
4. Physicians for Human Rights, “Contempt for Freedom: State Use of Tear Gas as a Weapon and Attacks on Medical Personnel in Turkey”, 2013,pg.11 [↑](#footnote-ref-4)
5. Oya Ataman v. Turkey (app. no. 47738/99), European Court of Human Rights, Judgment of 22 August 2007. [↑](#footnote-ref-5)