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EUROPEAN SOCIAL CHARTER

Comments submitted by
the Association for Monitoring Equal Rights
concerning the 15th National Report on the implementation
of the European Social Charter

Report registered by the Secretariat
on 30 June 2023

CYCLE 2023



AMER's additional information to The European Committee
of Social Rights (ECSR)

Introduction

The Association for Monitoring Equal Rights - AMER (*Eşit Haklar İçin İzleme Derneği – ESHID*) was established in October 2010 to monitor and combat discrimination in society, to ensure everyone can access and enjoy human rights on a full and equal basis. AMER carries out all its monitoring and reporting activities in consultation and partnership with national and grassroots civil society organizations (CSOs) which work with various disadvantaged groups including women, persons with disabilities, different ethnic and religious minority groups in different parts of Turkey.

AMER has been observing every election since 2011 in terms of equal access of disadvantaged groups within society, as well as reporting discrimination with regards to the enjoyment of human rights. AMER is the sole CSO in Turkey which has been systematically monitoring freedom of peaceful assembly in Turkey since 2015. Since 2016, AMER has been working on access to justice for disadvantaged groups in Turkey.

Prior to this report, AMER has submitted a LoIPR and Shadow Report to CEDAW in 2021 and 2022 respectively, LoIPR to the UN HRCttee in May 2021, an Alternative Country Report on Turkey for the 21st session of the CRPD in 2019, and the 88th CERD Meeting in 2015. Additionally, AMER has contributed with submissions to the calls of UN Special Rapporteur on freedoms of peaceful assembly and association regarding women and girls, access to justice, access to resources for CSOs, crisis situations; UN Special Rapporteur on freedom of religion or belief; UN Special Rapporteur on minority issues and UN Special Rapporteur on the right to education.

This submission summarises the problems identified by our association with regard to Roma, persons with disabilities and homeless persons within the framework of Articles 7-17 and 31 of the European Social Charter in relation to the Turkey Report submitted to the Committee.

We will also endeavour to provide the Committee with detailed information on the Human Rights and Equality Institution of Turkey (TİHEK), which is frequently mentioned under all articles in the Turkey Report, and data on disadvantaged groups.

We are pleased to contribute to the Committee's efforts to collect alternative views on the relevant report.

Article 7/17 - The Right Of Children And Young Persons To Protection

Children and Young People with Disabilities

1. Turkey has signed the Convention on the Rights of Persons with Disabilities (CRPD or Convention hereinafter) in 2007, and ratified in 2008. Turkey has no declarations or reservations concerning this particular Treaty. The Optional Protocol has entered into force following signature in 2009 and ratification in 2015
2. Contrary to the Convention, Turkey uses a medical approach in the determination of disability and considers those who receive a report of 40% or more loss of function from health institutions as disabled. This situation is decisive in terms of the right to education and health and the right to work of children with disabilities.
3. Turkey fails to fulfil many obligations arising from the CRPD. The policies of the State Party on disability are formed on the axis of medical and charity approach. Domestic law has not been harmonised with the Convention, numerous legislation and regulations still contain discriminatory provisions on disability. Discrimination on the basis of disability has been prohibited in the Disability Act, but no penal sanctions for the perpetrators of discrimination is provided. While Article 122 of the Penal Code contains such penal sanctions, it is only concerning discrimination motivated by hate, which has a rather narrow scope.
4. In Turkey, persons with disabilities, do not have equal opportunity in access to fundamental rights such as education, employment etc. and are subject to discrimination. Women and girls with disabilities as well as LGBTI+ persons with disabilities are subject to multiple discrimination concerning access to human rights. Similarly, persons with disabilities who belong to ethnic and religious minorities are also subject to multiple discrimination.
5. According to official statistics, there are 4.882.841 persons with disabilities in Turkey which constitute %6,6 of the population; %57,2 are women and %42,8 men. While %10,9 men with disabilities are illiterate, this goes up to %32,4 in women. Among persons with disabilities in Turkey, a total of %23,3 is illiterate. Only %2,6 of persons with disabilities continue through higher education. There are no statistics concerning persons with disabilities who belong to ethnic and religious minorities.
6. The President of TİHEK defined ending of marriages as terrorism in 2018, he argued that especially restraining orders issued within the marriage union are a violation of rights, the term violence against women should not be used and lastly, he defended that there is a difference between "early marriages" and "forced marriage". In a presentation he made in the Parliament, the President of TİHEK argued that "15-year-

old marriages should be legally recognized". TİHEK cooperated with groups that supported withdrawal from the Istanbul Convention in 2021.

7. Women and girls with mental disabilities constitute one of the most disadvantaged fragments of society due to the lack of government policies and legislation. In Turkey, cases of sexual assault on women and girls with intellectual disabilities are often concluded with the verdict "the victim consented": "The victim had consent." The most recent example of these judgements is from 2018. In the case of S.S., who was sexually assaulted by 5 men, the court acquitted all 5 defendants on the grounds that the victim did not shout at the time of the incident.¹
8. The legal aid system is complex and not adequately regulated. Issues such as the provision of services, its scope and procedure is left to the initiatives of bar associations. A basic minimum of absolutes has not been set. In provision of legal aid, economic status is taken as the sole fundamental criterion, without taking disadvantages, or intersectionality into consideration. The scope of legal aid being narrower in civil cases means further obstacles arise for disadvantaged groups in accessing their economic and social rights. There are problems in the CMK system, regarding the guarantee of rights and freedoms in the cases of women and girls who are exposed to intersectional discrimination, since the criteria of expertise are not determined in the appointment of lawyers. Due to a deep gap regarding intersectionality in the judicial system, the decisions issued by the courts are also affected in this regard. Although these basic problem areas were included in the Strategic and Action Plan covering the years 2018 – 2021 drafted within the scope of the European Union Twinning Project on Strengthening Legal Aid Services in Turkey; as of 2022, when this report was written, no significant progress has been made in terms of legislation or practices pertaining to access to justice for disadvantaged women, LGBTI+ and girls. Disaggregated data on the operation of legal aid system is not collected or shared with the public which creates problems both in terms of forming target oriented solutions and monitoring the measures taken to improve the system.
9. Closed institutions are areas where violations are observed intensely, especially in the context of women, LGBTI+s, and girls' access to justice. Women in closed institutions, especially in prisons, have problems accessing information on their rights, seeking their rights, or ensuring the enforcement of decisions in their favour. Women who can access redress mechanisms on the other hand, have reservations about

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¹ <http://www.hurriyet.com.tr/yazarlar/ayse-arman/gerekce-bagirsaydi-cinsel-saldiri-olacakti-ama-bagirmamis-40773832>

initiating these processes due to the nature of closed institutions and the lack of transparency, for fear of reprisals. Closed institutions are not open to independent monitoring by CSOs. At the same time, disaggregated data on institutions is not collected by the State or not shared with the public. This constitutes an obstacle to revealing the true extent of rights violations and finding solutions to said violations.

11. The social security system does not cover all health expenditures of persons with disabilities. Unreimbursed treatment, medication, orthotics, prostheses, etc. affect the right to education as well as the right to health of children and youth with disabilities. For example, Spinal Muscular Atrophy (SMA) treatment costs are not covered by the state. In 2017, 20 babies diagnosed with SMA died within 4 months.²

12. Children with autism face inequality in access to education. Only 30% of autistic children, who should receive lifelong education, have access to special education. The rate of those receiving mainstreaming education is around 10%.
On 07.10.2021, Minister of National Education Mahmut Özer, who answered the written parliamentary questions of MPs at the Grand National Assembly of Turkey, stated that there are 33,816 people with autism in Turkey, 10,020 people with autism receive education in special education schools and 1,079 people with autism receive mainstreaming/integration education.³

12. The 2016-2019 National Action Plan for Individuals with Autism Spectrum Disorders (NAP), which was adopted and implemented in 2016, should be seen as an acknowledgment by the state that the problem is structural. Unfortunately, the NAP has not been implemented and has not contributed to equal access to education for people with autism.

13. Field research shows that persons with disabilities and their families face chronic poverty. The state does not have any solution policy for this situation. The pensions paid to persons with disabilities are far from meeting the needs of adequate nutrition, housing, heating, etc.

Roma Women and Girls

14. Roma women/girls experience intersecting discrimination due to both their ethnic identities and gender, and they face many issues in accessing their rights on an equal basis.

15. When Roma girls reach the age of 10-12, they have to take on certain responsibilities at home. This situation, with also the effect of exclusion in education, increases school dropouts and leads to forced marriages for children/child labour.

² <https://www.haberturk.com/saglik/haber/1478700-4-ayda-sma-hastasi-20-cocuk-ilac-beklerken-yasamini-yitirdi-ece-ile-zeynepi-yasatalim>

³ <https://www2.tbmm.gov.tr/d27/7/7-5204sgc.pdf>

16. Due to issues such as socio-economic problems and gender stereotypes, Roma girls are married off from the age of 14-15. It is observed that child marriages have increased during the pandemic. Another problem is the prejudice against Roma women. Prejudice cause Roma women difficulties in accessing employment. Even if they are employed, they are employed at lower wages than those doing the same job, there is a significant wage gap.

The representation of Roma women in decision-making mechanisms and CSOs is also very low. This prevents Roma women's needs to be identified and their messages to be relayed by themselves.

17. In 2016, the Strategy Action Document for Roma Citizens and the 1st Stage Action Plan (2016-2018) were published. The active participation of Roma in the preparation process of the plan was not ensured. In the plan,

- Roma women and gender inequality,
- Child marriages,
- Domestic violence for Roma women and Roma girls,
- Access to hygiene items, etc.

Related concrete targets are not included in the action document.

18. Both the Strategy Action Document for Roma Citizens and the 1st Stage Action Plan do not include measurable targets/scales and budgets in terms of targets. Again, in the 2nd Stage Action Plan published within the scope of the Strategy Action Document for Roma Citizens, targets related to Roma women and gender equality and child marriage were not included. The progress achieved in terms of the targets in the action plan was also not shared with the public.

19. Roma children do not have equal opportunities in education. Roma girls have a higher share of this inequality. Exclusion in schools or separate classes for them, etc. continue to be practiced.

20. The discrimination they face in the labor market and their lack of regular income leave Roma families in chronic poverty.

Article 31 Right to Shelter

21. The housing stock in which the Roma population lives does not meet many of the criteria of the right to healthy housing. Urban transformation projects carried out by TOKİ may result in the Roma community losing what they have.

22. TOKİ projects linked to urban transformation result in the dispossession of Roma. Roma whose slums in the urban rent-seeking areas are expropriated and who buy TOKİ housing on the outskirts of the city may return to the city as tenants after a while.

23. TOKİ projects are not affordable for the Roma population. Without a regular income, Roma cannot afford the monthly installments offered by TOKİ. For example, Roma in Bursa

who were sold TOKİ housing could not pay their electricity bills during the pandemic and were left without electricity for days.

24. Other determinants of the process are the lack of Roma participation in the planning process of urban regeneration projects and the fact that TOKİ projects are not suitable for the living culture of Roma.

25. The physical accessibility of the urban environment and the housing stock in Turkey is an important problem for people with disabilities. There are no statistics on how much of the housing stock is accessible.

26. Similar to the Roma, poverty is the most important factor in access to the right to housing for persons with disabilities.

27. No public authority in Turkey has statistics on homeless people. Basic information such as the age and gender distribution of homeless people is not collected by the state.

28. The circular mentioned in the Turkey Report was issued only to prevent these people from freezing to death in severe winter conditions. In January 2021, 65-year-old Sami Babacan froze to death in Kadıköy, Istanbul.

29. The state does not have any policy to reduce homelessness and does not allocate a share from the public budget to produce social housing for the homeless.

Data Collection and Statistics

Statistical Institute of Turkey (TÜİK) is in charge of preparing the country's official statistics program and to comply, evaluate and publish statistics on the country's economic, social, demographic, cultural, environmental and scientific issues. In addition, various ministries collect data related to their areas of responsibility. We would like to explain the problem of collecting statistics by giving an example from the perspective of persons with disabilities. In addition to TurkStat, the General Directorate of Services for Persons with Disabilities and Elderly (GDoAD) also collects statistical data on persons with disabilities.

TÜİK systematically publishes statistics in various areas. However, there is no statistical data on persons with disabilities in the fields of education, health, employment etc. For example, despite child marriage being a controversial area in Turkey, there is no data on how many children with disabilities who have experienced child marriages. Similarly, data on suicides or divorces for persons with disabilities remain unknown as well.

The data published by the General Directorate of Services for Persons with Disabilities and Elderly (EYHGM) is prepared based on the database formed by persons with disabilities who

have obtained a 40% disability medical report, and registered to the ministry database. This data is related only to social assistance. The General Directorate of Services for Persons with

Disabilities and Elderly (EYHGM) also publishes various other statistical data collected by other ministries.

Regarding the published data on persons with disabilities in Turkey, there are five main problems. First of all, there is no data collection policy and system with a human rights based approach. Numerical data is collected not for revealing access to human rights for different groups, but only for those who already have access to certain right and are able to benefit from social assistance. No data is collected or analyzed regarding the reasons of persons who cannot access their rights and the reasons behind it.

Secondly, the data is not disaggregated. The published data has information concerning only gender and types of disabilities. However, data on persons with disabilities who are at risk of multiple discrimination is either not collected at all or disclosed to the public.

Thirdly, the data is not comparable. TÜİK uses a sample group and The General Directorate of Services for Persons with Disabilities and Elderly (EYHGM) uses the data only based on persons with disabilities who have obtained a 40% disability medical report and registered to the database.

Fourthly, data is not collected systematically or by regular intervals. This situation makes it impossible to measure changes in the lives of persons with disabilities and to find out problematic fields. Finally, persons with disabilities, Civil Society Organizations and Disabled Persons Organizations cannot participate in the process of determining data collection policies.

No public institution including The General Directorate of Services for Persons with Disabilities and Elderly (EYHGM), which is the focal institution on this issue, knows about the current situation on the number of persons with disabilities, gender and age distribution, education and employment status, the obstacles they face, in which provinces or districts where they live in. The lack of data on the persons with disabilities, especially who live in rural areas, poses a significant problem in terms of identifying and meeting the needs of persons with disabilities living in these areas. Moreover, it is not possible to obtain data on persons with disabilities who are at risk of multiple discrimination. In this respect, the number of persons with disabilities who belong to a minority group, Roma or Kurdish persons with disabilities, refugees, asylum seekers who are persons with disabilities remain unknown, because the information is not available to the public.

In its Concluding Observations on the combined fourth to sixth periodic reports of Turkey dated 11th January 2016, the Committee on the Elimination of Racial Discrimination (CERD)

has recommended Turkey to collect data on minority groups to monitor access to justice for minorities.

The data on voting rates of voters with disabilities were shared in Replies of Turkey to the List of Issues. However, regarding the information given to Question 33(a), issues such as, how the data collected and which provinces and regions included were not mentioned, so these issues remain unknown. This data shared with the Committee is not publicly available or confirmable information. Official statements of the YSK are neither included in the website nor in the publications.

The database for persons with disabilities who have obtained a 40% disability medical report do not even include all the persons who have obtained a medical report; even though it has been 14 years since the database was formed by the General Directorate of Services for Persons with Disabilities and Elderly (EYHGM) in the year 2006.

While workshops and seminars which are frequently declared in the report are important, the results of these meetings have not changed the data collection policy.

The lack of data collection and the collected data not being shared with the public, makes it impossible for CSOs and DPOs to conduct monitoring activities in line with the Convention.

Human Rights and Equality Institution of Türkiye (TİHEK)

Human Rights and Equality Institution of Turkey (TİHEK) was established in 2016 through Law No. 6701 and replaced the Turkish Human Rights Institution (TİHK) which was defunct from 2012 onwards.

While theoretically and on paper TİHEK's legally mandated powers are broad, it is not structurally or financially independent. Especially, the appointment of the members of the board by the President and the failure to guarantee pluralism in the composition of the board led to the emergence of the current existing structure; which does not comply with the Paris Principles and cannot discuss human rights problems independently and freely.

TİHEK, which was established by law in 2016, has not made any meaningful progress in terms of compliance with the Paris Principles in the past seven years since its establishment. The report referenced throughout this document⁴ which was prepared by independent and expert lawyers and published by our association in 2020 is the only report prepared on this subject to date and continues to be up-to-date and relevant.

⁴ Association for Monitoring Equal Rights, D. Çiğdem Sever and Ulaş Karan, 'National Human Rights Institutions As a Human Rights Protection Mechanism' (2021), pg. 17 – 19. (https://www.esithaklar.org/wp-content/uploads/2022/05/ESHID-TIHEK-RAPORU-ENG_v2.pdf)

TİHEK in the context of the basic requirements of the Paris Principles

TİHEK's mandate is composed of mainly two areas: (i) combatting and preventing discrimination and (ii) acting as a National Preventive Mechanism. TİHEK's mandate contained in law runs parallel to Paris Principles. Protected grounds against discrimination outlined in Law No. 6701 are stipulated as an exhaustive list, leaving out gender identity and sexual orientation. While TİHEK is obliged by law to monitor the implementation of international human rights conventions which Turkey is a party to, TİHEK has not carried out such a role to date. TİHEK also does not have any recommendations issued to the government for lifting the reservations on certain human rights conventions or to ratify those which Turkey has not yet become a party to. On the contrary, it produced arguments against the İstanbul Convention, from which Turkey withdrew in 2021, and collaborated with groups lobbying for this withdrawal at a presidential level. TİHEK included the arguments of groups opposing the İstanbul Convention in its 2018 Annual Report on the Protection and Promotion of Human Rights: *“The Istanbul Convention, which was prepared with a perspective of gender equality, received reactions on the grounds that it was prepared without taking into account the sociological background of Turkey and had negative consequences, [the Convention] did not take into account cultural differences and harmed the construct of family”*.

While TİHEK has endowed with a broad mandate in its legislation, it fails to fulfil the requirements of its own law.

Recommendations by NHRIs

Since its establishment, TİHEK has not prepared any recommendations for public authorities. Nor did it make any policy recommendations concerning minority groups, women or persons with disabilities at risk of discrimination. There is only one thematic report prepared by the TİHEK on different groups. In the report on the Right to Education for children with autism and discrimination, broad and general suggestions⁵ were made regarding the right to education for children with autism. However, TİHEK did not follow up on the implementation of these recommendations subsequent to this report.

While the UN Special Procedures and Committees issued numerous recommendations against the risk of deepening discrimination under the pandemic conditions, TİHEK failed to issue any policy recommendations, also neglecting recommendations in the international arena. During the pandemic, TİHEK issued its second thematic report. This report focused on an issue that is completely outside the ambit of its mandate. TİHEK has prepared "Armenia's Actions in Karabakh: Human Rights Violations and Follow-up Report"⁶ to defend the foreign policy theses of the Turkish government in the Azerbaijan-Armenia war. This report is not relevant to TİHEK's mandate in any way both in terms of subject and jurisdiction. In other

⁵ https://www.tihkek.gov.tr/upload/file_editor/2020/04/1585822889.pdf

⁶ https://www.tihkek.gov.tr/upload/file_editor/2021/10/1634982939.pdf

words, TİHEK, which has prepared only one thematic report on any disadvantaged group in Turkey in the 7 years since its establishment, prepared a special report on the Azerbaijan-Armenia war. The objectivity, impartiality and compliance with international norms of this report is a separate issue. TİHEK rejected an individual application made in 2019 which requested it to issue a recommendation for the prevention of hate speech during election periods, on the grounds that the institution did not have a duty to make recommendations. Yet, preventing racist hate speech is the legally mandated duty of this institution in terms of monitoring the national implementation of human rights conventions and preventing racial discrimination.

TİHEK remains unresponsive to human rights issues identified by CSOs, activists and academics. Instead of following the independent, impartial, objective standards identified in international conventions; TİHEK follows the government's policies.

The institution follows an agenda that is independent, objective and in line with the government's policies, rather than the standards set in the human rights conventions to which Turkey is a party.

For example, while violence against women is a very common phenomenon in Turkey, TİHEK has made publications advocating that domestic/family violence" should be approached regardless of gender".

TİHEK approaches freedom of religion and belief with the sole perspective on Sunni/Islamic faith. TİHEK has not reacted to any of the acts of harassment against different beliefs and practices in Turkey for 5 years. However, it has condemned all of the Islamophobic practices in other countries through its social media accounts. All cases that TİHEK examines ex officio on religious discrimination consist of discrimination allegations against women who dress in accordance with the Sunni-Islamic beliefs. TİHEK did not even include any recommendations in its annual reports on the decisions of the European Court of Human Rights on compulsory religion classes, which are considered a violation of freedom of belief, and on the recognition of Djemevis as places of worship.

A consideration of the ex officio investigations carried out by TİHEK, the decisions it has issued, the incidents it has omitted from its agenda illustrates that it is not an independent and impartial human rights mechanism.

Examples from TİHEK's work:

- Right to Protection of the Family Symposium 2019 (Final Conference Proceedings), https://www.tihkek.gov.tr/upload/file_editor/2020/04/ailesonuc.pdf
- Prevention of Violence Workshop 2019 (Final Workshop Proceedings), <https://www.tihkek.gov.tr/siddetin-onlenmesi-calistayi-sonuc-bildirisi/>
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In the original version of Law No. 6701, it was stipulated that TİHEK board members' election will be carried out in a transparent manner, open to the public and four-year terms

were foreseen for members. However, through a decree law issued by the Presidency in 2018, the only provision to ensure pluralism in the said legislation “[members] are determined among those nominated by non-governmental organizations working in the field of human rights, trade unions, social and professional organizations, academics, lawyers, members of the visual and print media and candidates nominated by field experts or those who have applied for membership” was removed, along with the provision containing term times.

Changes in the members of the board are only possible through dismissal by the President of Turkey, resignation or death. The only authorized authority for the appointment of the members of the Board is the Presidency of Turkey. An application was made to the Constitutional Court against this Presidential Decree Law, which amended Law No. 6701, it was rejected by the Court.

In Turkey, the President is also the head of a political party. TIHEK’s board members are appointed by the President of Turkey; the only criterion for ensuring independence in appointment of board members is that they should not be a member of the governing bodies of political parties. Proximity to the political party in the government has been used as the main criterion in the appointments made to the Board so far.

TIHEK’s board members neither represent Turkey’s social diversity nor the groups that are affected the most by the violation of the prohibition of discrimination. Since its establishment to date, representatives of groups at risk of discrimination have not been included among board members. For example, Roma, Kurds, Arabs, Circassians, religious minorities, Alevi are not represented in the board.

This board, consisting of 11 members, reflects the binary understanding of gender and has only two members who are women.

- Apart from the very general recommendations vaguely expressed in the annual reports, TIHEK has not made any constructive recommendations to the legislature or government regarding disadvantaged groups.
- TIHEK publishes annual reports the following year. For 7 years, the Institution did not have a critical approach to government practices. During the COVID-19 pandemic, it remained silent about the practices that created public debate.
- TIHEK Law Art. 9 (e) mandates the institution to monitor the legislature’s activities, as well as form opinions and recommendations. TIHEK has not expressed any opinion or issued recommendations on any law discussed by the legislature in the last five years.
- TIHEK did not even express any opinions or make statements about the decision of withdrawal issued by the President from the Istanbul Convention which is a human rights convention.

- TİHEK has not issued any recommendations for Turkey to become a part to the human rights conventions which it has not yet ratified, or to lift the reservations it has on numerous conventions.
- There are a limited number of violation decisions issued for the applications made to TİHEK. The majority of decisions are issued against individuals or private companies.
- TİHEK does not provide any compensation for victims. In case of a violation decision, administrative fines imposed on the perpetrator are recorded as income to TİHEK.
- The awareness of TİHEK among disadvantaged groups is quite low. NHREI does not carry out any work to change this situation. Furthermore, the Law on NHREI does not allow NGOs to file applications on behalf of victims.

Violation decisions issued for public institutions remains very rare. TİHEK endeavours to not issue violation decisions against public institutions. Out of the 8 violation decisions issued in 2018 and 2019, only one was against public institutions.

The President of TİHEK defined ending of marriages as terrorism in 2018, he argued that especially restraining orders issued within the marriage union are a violation of rights, the term violence against women should not be used and lastly, he defended that there is a difference between "early marriages" and "forced marriage". In a presentation he made in the Parliament, the President of TİHEK argued that "15-year-old marriages should be legally recognized". TİHEK cooperated with groups that supported withdrawal from the Istanbul Convention in 2021.

As a result, TİHEK is an ineffective institution in protecting and promoting human rights and there is no law, policy or practice that has been changed in the last 7 years in any field of rights upon the recommendation of TİHEK.