

# KEY ISSUES AND RECOMMEN- DATIONS ON THE FREEDOM OF ASSEMBLY IN TÜRKİYE

BERKE ÖZENÇ

POLICY PAPER



Meydan

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## **TRUTH JUSTICE MEMORY CENTER**

Ömer Avni Mahallesi İnönü Caddesi

Akar Palas No: 14 Kat: 1

Beyoğlu 34427 İstanbul / Türkiye

0212 243 32 27

info@hafiza-merkezi.org

www.hakikatadalethafiza.org

## **AUTHOR**

Berke Özenç

## **TRANSLATOR**

Melis Gebeş

## **PROJECT IDENTITY DESIGN**

Baht. Design Studio

## **DESIGN**

Ekin Sanaç

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Yayınları (Truth Justice and Memory Studies  
Association Publications), 2025

e-ISBN: 978-625-95069-1-3

This publication was prepared with the support of the **European Union** as part of the **Meydan** project. Its contents are the sole responsibility of **Hafıza Merkezi** and do not necessarily reflect the views of the **European Union**.



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# KEY ISSUES AND RECOMMENDATIONS ON THE FREEDOM OF ASSEMBLY IN TÜRKİYE

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POLICY BRIEF

HAKİKAT ADALET HAFIZA MERKEZİ  
TRUTH JUSTICE MEMORY CENTER



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Freedom of assembly constitutes a fundamental condition for the existence of a democratic political regime based on political equality. The opportunity provided by the freedom of assembly to express opinions or reactions outside of election periods helps guarantee political participation and, in turn, political equality for citizens who are excluded from the ruling elite that claim to govern on behalf of momentary majorities and the so-called national will. Without freedom of assembly, the political regime risks being reduced to nothing more than the right to vote. Moreover, when irregularities in the voting process or its outcomes are shielded from public scrutiny and citizen response, the effectiveness of the right to vote itself becomes questionable. On the other hand, when societal reactions to the misuse or non-implementation of constitutional and legal provisions are suppressed, the rule of law is left at the mercy of those who create and enforce it. Therefore, authoritarian pressures on the freedom of assembly can be justified neither in the name of democracy nor the rule of law.

The collective and direct nature of the freedom of assembly not only enables genuine political participation by the people, making a substantial contribution to the democratization of the regime, but also holds the potential to exert significant pressure on those who hold and exercise political power. This situation gives rise to a persistent tension between the sphere of protection of the freedom of assembly, which reflects social movements and struggles and has been established in the legal domain as their outcome, and the pressures imposed on this sphere. While the right not to seek prior permission and the right to choose the time and place, both deriving from the nature of this freedom, are among the core guarantees within its scope of protection, there are numerous examples in practice of these rights being suppressed through subtle methods.

The tension between the scope of protection of this freedom and the legal regime governing its limitations becomes even more problematic, especially in the face of the recent rise of populist governments. In populist regimes that consolidate power under the motto of governing “on behalf of the people and for the people,” referendums are frequently used as instruments of direct democracy, whereas freedom of assembly and protest, by enabling genuine popular participation and safeguarding pluralism and political engagement, is viewed as a fundamental threat.<sup>1</sup> Therefore, it is hardly surprising that around the world we are witnessing a growing trend of restrictive

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■ *This publication was prepared before the mass demonstrations in Türkiye that erupted on 19 March 2025.*

<sup>1</sup> For examples of pressure and restrictions on the freedom of assembly in Poland and Hungary, see: Tímea Drinóczi and Agnieszka Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*, Routledge, 2022, pp. 136–137.

legal regulations on the freedom of assembly, violent interventions against assemblies through militarized tactics and excessive use of force, the criminalization of political opponents, and the suppression of freedoms during election periods.<sup>2</sup> In Türkiye, the history and current state of the freedom of assembly also reflect this broader background and the inherent tensions it entails.

## I. Historical Background

The origins of the constitutional protection of the right to freedom of assembly in Türkiye date back to the early 20th century. During the Second Constitutional Era, also referred to as the “proclamation of liberty,” an amendment to the *Kanun-i Esasi*, the first constitution of the Ottoman Empire, in 1909 granted the freedom of assembly to all citizens. The regulation enacted in the same year reflects the influence of the liberal atmosphere brought about by the transition to a constitutional monarchy. Following the proclamation of the Second Constitutional Era, freedoms such as press and association were exercised more freely, and strikes, boycotts, and mass rallies became widespread, partly due to the ‘chaotic’ environment resulting from the failure of the Committee of Union and Progress -the driving force behind the political transformation- to fully assert control over the political sphere.<sup>3</sup> This de facto situation was translated into the legal sphere through the inclusion of various safeguards in the law, most notably the principle of not requiring prior permission, to ensure the effective exercise of the freedom of assembly. However, just three years later, amendments granted public authorities broad discretionary powers to intervene in assemblies and demonstrations and introduced extensive penalties for actions deemed unlawful under the law.<sup>4</sup> The main factor behind this regression was the Committee of Union and Progress gaining full control over the political sphere. Freedom of assembly, alongside freedom of the press, came under strict regulation.<sup>5</sup> During the period up to the end of World War I, mass rallies were mostly organized at the initiative of the government or local authorities, and their primary focus was protesting the annexation of various

<sup>2</sup> UN Special Rapporteur Clément Nyaletsossi Voule, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association: Preserving the Gains and Pushing Back Against the Global Attack on Civic Space and Growing Authoritarianism* (A/HRC/56/50), 2024, § 21, www.ohchr.org.

<sup>3</sup> Doğan Çetinkaya, *1908 Osmanlı Boykotu: Bir Toplumsal Hareketin Analizi* [The 1908 Ottoman Boycott: An Analysis of a Social Movement], İletişim, 2004, pp. 44–45.

<sup>4</sup> Murat Güven, *Barışçıl Gösteri ve Toplanma Özgürlüğü* [Peaceful Demonstration and Freedom of Assembly], On İki Levha, 2020, pp. 18–19.

<sup>5</sup> Barış Bahçeci, *Türk Hukukunda II. Meşrutiyet, 1908–1920* [The Second Constitutional Era in Turkish Law, 1908–1920], On İki Levha, 2023, pp. 176–177.

regions of the Ottoman Empire.<sup>6</sup>

Drafted after the proclamation of the Republic, the 1924 Constitution included the freedom of assembly, but it was articulated without any safeguards and the old law containing authoritarian provisions remained in force. The mass rally organized in İzmir in 1930 by the Liberal Republican Party, established during the Republic's second experiment with multi-party politics, stands out as a critical moment in which the right to freedom of assembly was exercised during this period. However, the İzmir rally, where social opposition became visible and clashes and interventions took place, triggered the process that led to the closure of the Liberal Republican Party.<sup>7</sup> After the institutionalization of the single-party rule in 1931, the freedom of assembly completely lost its function as a means of democratic participation and oversight. A relative easing of pressure on the freedom of assembly became possible only with the political climate created by the transition to multi-party life in 1946, and some of the legal provisions that had rendered the exercise of this freedom impossible were repealed. This relative relaxation in the legal regulations was one of the key factors that enabled the rise of the Democrat Party and its eventual accession to power in 1950<sup>8</sup>.

Although the 1950s saw a rise in rallies and protests during the Democrat Party period, with increasing participation from both youth and the working class movements, these gatherings were initially focused primarily on supporting state policies, such as “Condemn Communism” or “Cyprus is Turkish.” During this period, violent events such as those of 6–7 September also serve as examples of mass mobilization and the top-down orchestration of social movements. However, over time, as youth and working-class movements gained political and social legitimacy, initiatives emerged within them that began to challenge the political sphere through autonomous demands and efforts to organize rallies. The student protests that began on April 28, 1960, in response to the Democrat Party's establishment of the Investigation Commission, the 555K action, and the Saraçhane Rally held on December 31, 1961, which brought together 150,000 people against the coalition government's disregard for workers' demands at the beginning of

<sup>6</sup> Cemal Tepe, *İkinci Meşrutiyet Dönemi Miting ve Nümayişler (1908–1918)* [Rallies and Demonstrations in the Second Constitutional Era (1908–1918)], unpublished PhD dissertation, Ankara University, 2020, p. 449. However, it is also worth noting the existence of rallies reflecting the will of social movements, such as the one held in Sultanahmet in 1909 to protest the newly enacted authoritarian press law or the one in Thessaloniki calling for the recognition of strike and union rights. *Ibid.*, pp. 450–451.

<sup>7</sup> Eyüp Öz, “Serbest Cumhuriyet Fırkası, 12 Ağustos – 17 Kasım 1930” [The Liberal Republican Party, 12 August – 17 November 1930], *Manas Sosyal Araştırmalar Dergisi* [Manas Journal of Social Studies], Vol. 4, No. 5, 2015, p. 438.

<sup>8</sup> Murat Şen, *Toplantı ve Gösteri Yürüyüşü Düzenleme Hakkı* [The Right to Organize Meetings and Demonstrations], Seçkin, 2022, p. 31.

the 1961 Constitution era, represent the peak moments of the street-based mobilization that had developed throughout the 1950s<sup>9</sup>. Therefore, the constitutional protection of the freedom of assembly in the 1961 Constitution, along with the relatively liberal content of the subsequent Law on Meetings and Demonstrations, can be seen not as a top-down concession but as the result of a bottom-up wave of social mobilization.

Although the Democrat Party restricted protest and rally initiatives outside its control through administrative measures, as had been done during the single-party period, it began preparing a regulation that strictly limited the freedom of assembly in parallel with its declining power and increasing efforts to narrow the political space in the second half of the 1950s<sup>10</sup>. The Law No. 6761, enacted in 1956, stipulated that meetings or demonstrations organized by political parties or those with any political content could only be held during election periods, thereby severing the link between freedom of assembly and democratic participation. All assemblies held outside the election period were made subject to the permission of the local administrative authority; “public speeches” and “propaganda” were prohibited during demonstrations; and most importantly, law enforcement was granted the authority to open fire without targeting individuals when dispersing unlawful assemblies, if deemed necessary. The severe restriction of one of the most important means of political criticism and participation for social opposition can be regarded as one of the factors that escalated political tension in the lead-up to the 1960 coup.<sup>11</sup>

### **A. The 1961 Constitution and The Constitutional Recognition of the Freedom of Assembly**

In the 1961 Constitution, drafted after the 1960 coup, the freedom of assembly was regulated in a way that granted it a considerably broad scope of protection. The principle of “not requiring prior permission” was incorporated into the Constitution as a fundamental safeguard, and in 1963, a new Law on Meetings and Demonstrations was

<sup>9</sup> Sinan Yıldırım, “1950’li Yıllarda Toplumsal Hareketler” [Social Movements in the 1950s], in *Toplumsal Hareketlerin Asrı* [The Age of Social Movements], ed. Y. Doğan Çetinkaya, Tarih Vakfı Yurt Yayınları, 2024, pp. 49–70.

<sup>10</sup> Toplantılar ve Gösteri Yürüyüşleri Hakkında Kanun [Law on Meetings and Demonstrations], *Official Gazette*, 30 June 1956, No. 9346.

<sup>11</sup> Fatih Tuğluoğlu, “Demokrat Partinin Toplantı ve Gösteri Yürüyüşleri Kanunu ve Zile Hadisesi (17 Ekim 1958)” [The Democrat Party’s Law on Meetings and Demonstrations and the Zile Incident (17 October 1958)], *Tarihin Peşinde*, No. 15, 2016, pp. 155–183, p. 179. For discussions held during the drafting of legal regulations on the freedom of assembly in the period leading up to the 1961 Constitution, see also: Ömer Faruk Gençkaya and Uğur Ülger, “Toplantı ve Gösteri Yürüyüşleri Hakkının Düzenlenmesinde Yasama Yorumu, 1908–1960” [Legislative Interpretation in the Regulation of the Right to Assembly and Demonstration, 1908–1960], *Gaziantep University Journal of Social Sciences*, Vol. 21, No. 4, 2022, pp. 2371–2388.

enacted.<sup>12</sup> During this period, streets and squares were widely used for demonstrations and protests by the growing social and political movements, supported by the liberal environment provided by the Constitution. This situation also triggered a reaction from the political authorities, and in the repressive climate created by the 1971 military memorandum, a legal amendment granted public authorities the power to “postpone” assemblies for up to 10 days and to disperse demonstrations deemed to have turned into “verbal attacks.” These amendments were brought before the Constitutional Court. The Court annulled both amendments on the grounds that they infringed upon the essence of the freedom of assembly. The Court’s reasoning deserves attention, as it highlights the liberty-oriented aspects of Türkiye’s accumulated legal approach to the freedom of assembly and underscores the importance of constitutional review in safeguarding fundamental rights. The Constitutional Court’s decision is striking in that, nearly 50 years ago, it had already reached the standards of the current case law of the European Court of Human Rights (ECtHR) and the Constitutional Court, which will be explained in detail in the third section of this study.

In its assessment, the Constitutional Court first emphasizes that legal regulations must not abolish freedoms, stating that limitations which “seriously hinder the exercise of fundamental rights, prevent them from achieving their purpose, or nullify their effect” would harm the essence of the right. According to the Court, the vague nature of the “verbal attack” criterion renders the “personal opinion and discretion” of public authorities decisive, and this carries the risk of “arbitrary and emotional interventions, potentially leading to practices where the holding of a meeting depends on the sense of fairness and judgment of a government commissioner.” The authority granted to public officials to postpone meetings and demonstrations on the grounds of national security, public interest, or public morality, according to the Court, constitutes “a different form of practice that effectively makes any meeting or demonstration subject to administrative permission.” Such a regulation that leads to meetings and demonstrations being held “not at the time chosen by those who wish to benefit from them, but at the time desired by the local administrative authorities” makes meetings and demonstrations “implicitly impossible to carry out even after the postponement period ends,” and results in “preventing the meeting from achieving its purpose and nullifying its impact.”<sup>13</sup>

In this decision, the Constitutional Court lastly examines the authority granted to public

<sup>12</sup> Toplantı ve Gösteri Yürüyüşü Hürriyeti Hakkında Kanun [Law on the Freedom of Assembly and Demonstration], *Official Gazette*, 18 February 1963, No. 11337.

<sup>13</sup> Constitutional Court, Case No: 1976/27, Decision No: 1976/51, 22 November 1976, *Journal of Constitutional Court Decisions*, No. 14, pp. 364–365.

officials to postpone demonstrations in cases where multiple events are requested to be held on the same day. According to the proposed paragraph to be added to the law, if the governor, when faced with such a situation, concludes that the security of the assembly cannot be ensured even with the assistance of security forces or the armed forces, they may exercise the authority to postpone the event. At this point, the Constitutional Court emphasizes that a public authority with the power to call even the armed forces for assistance cannot reasonably justify its inability to provide the necessary conditions for a peaceful assembly. The Court also notes that the law already grants public authorities the power to disperse an assembly if, despite taking all necessary measures, they are still unable to ensure its security. Therefore, while the principle of proportionality requires a gradual escalation in the methods of intervention by authorities, granting such a power at the very first stage, which entirely removes the possibility of exercising the right for all demonstrators, constitutes an interference with the essence of the right.<sup>14</sup>

### **B. The 1982 Constitution and the Legal Nullification of the Freedom of Assembly**

In addition to concerns over the effective use of the streets by social opposition movements in the 1970s, the Constitutional Court's progressive jurisprudence on the freedom of assembly significantly influenced how this freedom was regulated in the 1982 Constitution, which was drafted following the 1980 military coup. As a matter of fact, during the constitutional drafting process, criticisms of the Constitutional Court's progressive jurisprudence on the freedom of assembly were openly expressed in the discussions.<sup>15</sup> In this context, the prohibition of "infringement on the essence," which the Constitutional Court had relied upon as a fundamental basis in its jurisprudence on the freedom of assembly, was not included in Article 13 of the Constitution, which governs

<sup>14</sup> Constitutional Court, Case No: 1976/27, Decision No: 1976/51, 22 November 1976, *Journal of Constitutional Court Decisions*, No. 14, p. 366.

<sup>15</sup> Ülkü Azrak, *Toplantı ve Gösteri Yürüyüşleri Kanunu* [Law on Meetings and Demonstrations], *Anayasa ve Uyum Yasaları*, Türkiye Barolar Birliği Yayınları, 2002, s. 241; Zühtü Arslan, *Temel Hak ve Özgürlüklerin Sınırlanması: Anayasa'nın 13. Maddesi Üzerine Bazı Düşünceler* [Restriction of Fundamental Rights and Freedoms: Some Reflections on Article 13 of the Constitution], *Anayasa Yargısı*, Anayasa Mahkemesi Yayınları, 2002, Cilt 19, s. 146–147.

the regime of restrictions.<sup>16</sup> In Article 34 of the Constitution, the 10-day postponement powers previously annulled by the Constitutional Court were reintroduced and extended to three months, and public authorities were also granted the power to impose bans. On the other hand, the authority of local administrative chiefs to determine the location and route of assemblies was also incorporated into the same article.<sup>17</sup> It can be argued that by incorporating powers that effectively nullify the freedom of assembly into the Constitution as specific limitation criteria, the drafters aimed to preempt the possibility of annulment decisions in the event that laws containing such powers were brought before the Constitutional Court through constitutional review. The mindset underlying these provisions, which rendered the freedom of assembly practically unusable, is reflected in the words of Kenan Evren, the leader of the junta who finalized the 1982 Constitution through the National Security Council's (NSC) Constitutional Commission, during a speech he delivered to promote the Constitution:

“One of the most frequently abused rights before 1980 was this one. Especially in our major cities like Istanbul, Ankara, and Izmir, there would be a meeting or demonstration march almost every week. We adopted this right from the West. However, it is not exercised in the West the way it is here. Demonstrators in the West walk in pairs holding banners on the sidewalk on the right side of the street and they conclude their protest without disturbing anyone or disrupting urban order and traffic... Now look at how it is here. If there is a meeting or demonstration march on a given day, the entire police force of that city, and even forces brought in from neighboring provinces, along with military units, must be mobilized. Because an incident could break out at any moment. Fires, destruction, or fights could occur at any time. Indeed, this happened frequently in the past. In our new Constitution, I will now explain what kind of provisions we have introduced regarding this issue. First of all, everyone will still be able to hold meetings and demonstration marches without prior permission, provided they are unarmed and non-violent. However, not just anywhere. If necessary, in order to prevent disruption of urban order, the administrative authority may determine the location and route of the

<sup>16</sup> Arslan notes, with reference to the records of the Constitutional Commission of the Consultative Assembly, that the belief “that the essence guarantee left the political authority helpless in limiting rights” was “widespread and strongly held among the members of the commission that drafted the Constitution.” See: Zühtü Arslan, *Temel Hak ve Özgürlüklerin Sınırlanması: Anayasa'nın 13. Maddesi Üzerine Bazı Düşünceler* [Restriction of Fundamental Rights and Freedoms: Some Reflections on Article 13 of the Constitution], p. 147, fns. 29–30. Also see the statements of Constitutional Commission Vice Chair Feyyaz Gölcüklü, in which he cited the Constitutional Court's case law on the postponement of freedom of assembly as a negative example for removing the essence clause: *Danışma Meclisi Tutanak Dergisi* [Official Records of the Consultative Assembly], Vol. 7, Session: 127, 16.8.1982, p. 551; *Danışma Meclisi Tutanak Dergisi* [Official Records of the Consultative Assembly], Vol. 8, Session: 130, 19.8.1982, p. 139.

<sup>17</sup> *Article 34 (Original version)* - Everyone has the right to organize meetings and demonstration marches without prior permission, provided that they are unarmed and non-violent. To prevent disruption of urban order, the competent administrative authority may determine the location and route of the demonstration march.

demonstration march. Besides, in the event that incidents seriously disturbing public order are likely to occur, or if there is a strong possibility of acts being committed that violate national security requirements or aim to destroy the fundamental characteristics of the Republic, the authority designated by law, which will certainly be the local administrative chief, may prohibit a specific meeting or demonstration march or postpone it for a period not exceeding two months.”<sup>18</sup>

Reflecting this mindset and the restrictions embedded in Article 34 of the Constitution, Law No. 2911 on Meetings and Demonstration Marches entered into force in 1983<sup>19</sup>. The most significant feature of the law is its aim to sever the link between the freedom of assembly and political participation. Indeed, the law prohibits civil society organizations from organizing meetings and demonstration marches that fall “outside their own subject matter and objectives.” In line with this, the law includes provisions that reinforce the depoliticization of the freedom of assembly<sup>20</sup>.

### **C. The De Facto Permission System Created by the Law on Meetings and Demonstration Marches**

At first glance, a significant feature of Law No. 2911 is that the determination of the place and time of assemblies is regulated not as a right granted to individuals, but as an authority vested in public officials. On the one hand, the law prohibits gatherings in areas traditionally associated with the exercise of freedom, such as public roads and parks. On the other hand, the authority to designate a limited number of locations where meetings and demonstrations may be held within a province or district is granted to local administrative chiefs. From a temporal perspective, the law stipulates that gatherings may not begin before sunrise and must end by 11:00 p.m. Most notably, through the broad powers of postponement and prohibition granted to local administrative chiefs, public authorities are given the final say over the timing of assemblies and demonstrations. Although the law does not explicitly impose a permission requirement, a de facto permission system is institutionalized through the structure of Law No. 2911.

<sup>18</sup> Kenan Evren, *Türkiye Cumhuriyeti Devlet Başkanı Orgeneral Kenan Evren’in Yeni Anayasayı Devlet Adına Resmen Tanıtma Programı Gereğince Yaptıkları Konuşmalar*, [Speeches Delivered by the President of the Republic of Türkiye, General Kenan Evren, as Part of the Official Program to Promote the New Constitution on Behalf of the State], 24 October-5 November 1982, TBMM Basımevi, 1982, *Anayasayı Tanıtma Konuşmaları* [Constitution Promotion Speeches], p. 59. (emphasis added)

<sup>19</sup> Law on Meetings and Demonstration Marches, Official Gazette: 8 October 1983, No. 18185.

<sup>20</sup> Bülent Tanör, Necmi Yüzbaşıoğlu, *Türk Anayasa Hukuku* [Turkish Constitutional Law], 2001, p. 181.

The law also includes provisions that make the organization of meetings and demonstration marches more difficult. In this regard, the requirement to notify authorities three days in advance and the detailed regulations concerning the duties and responsibilities of the organizing committee are particularly noteworthy. Even the slightest deviation from these strict conditions renders any gathering unlawful without exception, and all unlawful meetings and demonstrations are subject to dispersal by law enforcement. The law also prescribes heavy penalties for those who participate in unlawful assemblies or resist interventions against such gatherings.

It can be said that the overall structure of Law No. 2911 effectively nullifies the constitutional guarantee of “no prior permission” in the true sense of the term. Since the 1980s, the freedom of assembly has, in practice, transformed into a right that cannot be exercised without the permission of public authorities, and its use has been heavily restricted through arbitrary decisions. A wide range of gatherings have been banned, from the April 23 Children’s Festival to the “Great White Rally” organized by healthcare workers, and demonstrations by public employees demanding union rights. Similarly, events such as the “First Student Youth Congress” and the “Congress of Homosexuals” planned in Istanbul, the “Kurdish Issue Congress” in Ankara, “Peace Rallies” in Adana and Şanlıurfa, a Grup Yorum concert in Tekirdağ, various Alevi cultural festivals in several districts, and nationwide May Day celebrations have all been subject to such prohibitions. The picture drawn by constitutional law scholar Bülent Tanör shows that today’s bans on the freedom of assembly closely resemble the practices of the 1990s in terms of subject and content. However, the similarities do not end there. Tanör emphasizes that postponement and prohibition decisions are often issued *without justification*, that judicial remedies pursued against these decisions remain slow and ineffective due to the nature of the freedom of assembly, and that public authorities contribute to this by notifying their decisions at the last minute. To this picture of the state of freedom of assembly, Tanör also adds the designation of remote areas outside urban centers as gathering locations by local administrative chiefs, while central urban spaces are arbitrarily reserved for the use of the political authority. He further notes that a wide range of protest actions, from symbolic demonstrations by a handful of people, to slogans chanted at funerals, and collective complaints by villagers, are subjected to *criminal investigation*.<sup>21</sup>

In this regard, the first steps toward relatively liberalizing the exercise of the freedom of assembly were only taken in the 2000s through constitutional amendments

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<sup>21</sup> Bülent Tanör, *Türkiye’nin İnsan Hakları Sorunu* [Turkey’s Human Rights Problem], BDS Yayınları, 1994, pp. 109–112.

made as part of the European Union harmonization process. In 2001, Article 34 of the Constitution was revised to remove the restrictive powers granted to governors, including the authority to designate locations, postpone, and prohibit assemblies, as well as the prohibitions targeting civil society organizations. However, no such comprehensive reform was made to Law No. 2911, and despite the removal of its constitutional foundations, the restrictive powers granted to public authorities were preserved at the legislative level. The amendments to the law merely reduced the postponement period from 30 days to 10 days in some cases, and from two months to one month in others, and introduced the criterion of “a clear and imminent danger of a criminal offense” as a condition for exercising the power of prohibition.

Although no legislative reforms were made to ease the exercise of the freedom of assembly, the political climate in the second half of the 2000s led to a relatively more permissive period in practice. During this time, the use of the freedom of assembly experienced a degree of liberalization. Notably, Taksim Square, which had been etched into the collective memory of the labor movement after the massacre that occurred during the May Day celebrations in 1977 when demonstrators were fired upon, and which became a symbol for all democratic forces following the 1980 coup, was opened to meetings and demonstration marches for four consecutive years starting in 2009, after having been banned for decades.

#### **D. The Gezi Protests as a Turning Point**

The relatively permissive environment surrounding the exercise of the freedom of assembly, which had continued into the early 2010s, came to an end in 2013. The shift began with the May Day celebrations in Taksim Square, which were once again banned, despite having taken place peacefully and without incidents of violence or unrest for four consecutive years. Demonstrators attempting to reach Taksim for the celebrations were met with harsh police intervention. Later that same year, at the end of May, efforts began to cut down trees in Taksim's Gezi Park to make way for the construction of a shopping mall. The protests that emerged in response quickly spread across Türkiye. The Gezi protests were forcefully suppressed by the government at the time, and the crackdown led to widespread human rights violations, including infringements on the freedoms of assembly, expression, and the press, as well as violations of the prohibitions on ill-treatment and the rights to health and work. Public authorities and law enforcement officers responsible for these violations were shielded by a persistent

culture of impunity.<sup>22</sup> Following the Gezi protests, pressure and restrictions on the freedom of assembly and demonstration intensified throughout the country. For instance, while 9,717 people were prosecuted in 2011 for alleged violations of the Law on Meetings and Demonstration Marches, this number rose to 19,274 by 2015.<sup>23</sup>

Following the Gezi protests, amendments were made to Law No. 2911 at the beginning of 2014. However, these amendments did not address the structural elements of the law that had effectively tied the exercise of the freedom of assembly to a de facto permission system. With regard to the authority of governors to designate assembly locations, the amendments introduced a non-binding requirement to consult representatives of political parties and civil society organizations. Additionally, the permissible time for open-air gatherings was extended to sunset rather than ending one hour before, and for indoor meetings, the cutoff time was shifted from 11:00 p.m. to midnight. Apart from these superficial improvements, the most notable change in the law was the addition of a provision to Article 11 that allows for the recording of the voices and images of organizers and demonstrators, a measure likely to have a chilling effect on participation. The Gezi protests of 2013 can be considered a turning point in Türkiye's recent history with respect to the freedom of assembly. From that point onward, pressure on the freedom of assembly intensified, and practices that created a chilling effect on its exercise became increasingly widespread. Symbolic spaces and protests associated with the freedom of assembly have been banned. Since 2013, Taksim Square has been closed to May Day celebrations. The Pride March was banned in 2015, the protests of the Saturday Mothers in 2018, and the Feminist Night March in 2019. One of the developments that had the most profound impact on the exercise of the freedom of assembly after the Gezi protests was the Gezi trial, a widely publicized and prolonged legal process in which numerous individuals were prosecuted for allegedly organizing the protests. In September 2023, the Court of Cassation upheld the aggravated life sentence imposed on businessman Osman Kavala, along with the 18-year prison sentences given to lawyer Can Atalay, urban planner Tayfun Kahraman, filmmakers Çiğdem Mater and Mine Özerden.

<sup>22</sup> During the interventions against the Gezi protests and subsequent related demonstrations, 14 protesters and 2 police officers lost their lives. Numerous demonstrators were injured, suffered permanent disabilities, were detained, or imprisoned. In various cities across Türkiye, mass trials were initiated against civil society leaders and demonstrators accused of organizing or participating in the protests. Physicians who provided medical assistance to injured protesters, journalists who covered the events, and many social media users who expressed their views during the protests were also subjected to criminal investigations and prosecutions. *Gezi Hukuku İzleme Grubu, Gezi Raporu* [Gezi Legal Monitoring Group, Gezi Report], Türkiye Barolar Birliği Yayınları, 2015, pp. 141–218. According to official data, 697 security personnel were injured during this period. See: *Türkiye İnsan Hakları Kurumu, Gezi Parkı Olayları Raporu* [Turkish Human Rights Institution, Gezi Park Incidents Report], 2014, p. 17.

<sup>23</sup> *Eşit Haklar İçin İzleme Derneği, Toplantı ve Gösteri Hakkı İzleme Raporu (Ekim 2015 – Kasım 2016)* [Association for Monitoring Equal Rights, Monitoring Report on the Right to Assembly and Demonstration (October 2015 – November 2016)], 2016, p. 11.

The decision, which described the protests attended by approximately three and a half million people across 80 cities as acknowledged by official sources<sup>24</sup> as a “planned uprising that had been initiated two years in advance,”<sup>25</sup> and the process leading up to it have created a lasting chilling effect on those who wish to organize or participate in mass demonstrations in parks and squares traditionally open to the exercise of the freedom of assembly.

The state of emergency declared following the July 15 coup attempt further reinforced the rupture caused by the Gezi protests in terms of restricting the exercise of the freedom of assembly. During this period, in addition to the bans and postponement orders issued under Law No. 2911, public authorities made extensive use of the power granted by the State of Emergency Law to subject assemblies to prior authorization. In addition, the provision in the Provincial Administration Law that authorizes governors to take necessary measures to ensure public order and security began to be used first as the legal basis for the curfews implemented in 2015, and later for bans on assemblies within city limits<sup>26</sup>. With the onset of the pandemic, both indoor and outdoor gatherings were postponed on general public health grounds. The bans observed during this period largely fell into three categories: those applied to an entire city, those targeting gatherings on specific issues, and those imposed on events tied to particular dates such as 8 March (International Women’s Day), 21 March (Newroz), May Day celebrations, or Pride Week activities<sup>27</sup>.

## II. What Is the Problem?

In the long history of the freedom of assembly in Türkiye, two fundamental characteristics stand out. The first is that the freedom of assembly gained legal protection as a result of the surge in social mobilization following the Second Constitutional Era. The transition to a multi-party system and the rise of social movements that challenged the political and legal order during the Democrat Party era

<sup>24</sup> *Türkiye İnsan Hakları Kurumu, Gezi Parkı Olayları Raporu* [Turkish Human Rights Institution, Gezi Park Incidents Report], 2014, p. 7.

<sup>25</sup> Court of Cassation, 3rd Criminal Chamber, 2023/6359, 28 September 2023, p. 4.

<sup>26</sup> Çiğdem Sever, “Genel Yetki Normları ile Olağanüstünün Olağanlaşması: Toplantı ve Gösteri Yürüyüşü Hakkı Örneği” [Normalization of the Extraordinary through General Authority Norms: The Case of the Right to Assembly and Demonstration], in *Olağanüstü Rejimlerde İnsan Haklarını Savunmak – Kamu Hukukçuları Platformu 10. Toplantısı Bildiri Kitabı* [Defending Human Rights under States of Emergency – Proceedings of the 10th Meeting of the Public Law Scholars Platform], ed. K. Burak Öztürk, Türkiye Barolar Birliği Yayınları, 2024, pp. 74–93.

<sup>27</sup> *Eşit Haklar İçin İzleme Derneği, Toplantı ve Gösteri Hakkı İzleme Raporu 2021* [Association for Monitoring Equal Rights, Monitoring Report on the Right to Assembly and Demonstration 2021], pp. 13–46.

also played an undeniable role in securing the constitutional guarantee of the freedom of assembly, specifically the “no prior permission” clause, under the 1961 Constitution. It can be said that the actual use of this freedom, in other words, a practice of demand and struggle from the bottom up, largely shaped its legal form. However, the second fundamental characteristic, which can be observed in the immediate efforts to impose top-down pressure and tighten the legal framework, is the enduring oscillation between freedom and repression, a pendulum swing that continues to this day.

The positive developments in the field of freedom of assembly, which began to take shape as a form of rally culture and practice even before the founding of the Republic and were later reinforced by legal guarantees, have mostly flourished in periods of relative freedom that followed major political ruptures. The proclamation of the Second Constitutional Era, the attempts at transitioning to a multi-party system in 1930 and 1946, the wave of liberalism ushered in by the 1961 Constitution following the 1960 coup, the social struggles in the 1990s to overcome the legacy of the 12 September 1980 military coup, and finally the brief period in the 2000s when the AKP adopted a relatively liberal discourse all stand out as moments when the freedom of assembly was actively and intensively used as a means of democratic participation. However, due to its very nature, the freedom of assembly poses a direct challenge to the established order by enabling social demands to be reflected directly in the political sphere. This perceived threat often leads to increased pressure on the freedom itself and the introduction of legal regulations that place it under significant constraint.

In the oscillation between freedom and repression, the repressive response reflected in the 1982 Constitution to the rising social opposition and the mass protests and rallies that emerged in the period following the 1961 Constitution forms the root of today’s problems concerning the freedom of assembly in Türkiye. Law No. 2911 on Meetings and Demonstration Marches, drafted by the junta following the 1980 coup, created a legal framework that, as rightly noted by Tanör in his early assessment, effectively tied the exercise of the freedom of assembly to a permission system in practice. The most significant feature of the law is that it regulates the determination of time and place, two fundamental elements that enable the meaningful exercise of the freedom of assembly, not as a right belonging to individuals but as an authority granted to public officials. In addition to absolute spatial and temporal prohibitions, granting public authorities the powers to designate locations, postpone, and ban assemblies effectively eliminates the freedom of assembly in practice and renders the constitutional guarantee of no prior permission meaningless. The provision in the Constitution’s provisional Article 15, which prevents the constitutionality of the law from being challenged, allowed this legal framework to remain in place for many years.

A critical development on the legal front came with the constitutional amendments of 2001. Through this reform, both the prohibition on constitutional review contained in provisional Article 15 and the powers granted to local administrative chiefs in Article 34, specifically the authority to designate locations, postpone, and ban assemblies, were repealed. Moreover, the “prohibition of infringing on the essence” of rights, which the Constitutional Court had relied on in 1976 to strike down postponement and prohibition powers as unconstitutional, was incorporated into Article 13 of the Constitution. That same article also introduced a guarantee that fundamental rights and freedoms could “only be restricted on the basis of the [specific] reasons set forth in the relevant provisions of the Constitution.” This framework is further reinforced by the explanatory note to the amendment of Article 34, which explicitly states that “the right to organize meetings and demonstration marches and its limitations were restructured in accordance with the European Convention on Human Rights.”<sup>28</sup>

The 2001 constitutional amendments thus eliminated the provisions of the 1982 Constitution that had allowed the freedom of assembly to be effectively tied to a permission system. From that point on, the Constitution stipulated that a freedom could only be restricted on the basis of specific reasons set forth in its relevant articles. The removal of the powers to designate locations, postpone, and ban assemblies, which had been listed as specific grounds for limitation in the original version of Article 34, rendered the continued existence of these powers in Law No. 2911 unconstitutional, since these three exceptional authorities no longer had a constitutional basis. However, from that day to the present, including the relatively liberal early years of the AKP government, no steps have been taken at the legislative level to align the law with the constitutional framework. As demonstrated in the previous section of this study, the authoritarian structure of the law that effectively subjects the freedom of assembly to a de facto permission system has been preserved, with only minor adjustments made to secondary details. This situation has led to a significant failure to achieve the goal emphasized in the explanatory note to the amendment of Article 34 of the Constitution regarding the freedom of assembly, namely to attain the standards of the European Court of Human Rights. This has resulted in Türkiye’s violations playing a significant role in the development of the European Court of Human Rights’ case law on the freedom of assembly. Following the constitutional amendments of 2012, which introduced the individual application procedure, the Constitutional Court’s case law began to follow a similar trajectory. A significant portion of its violation rulings concerns

<sup>28</sup> *Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkında Kanun Teklifi ve Anayasa Komisyonu Raporu (2/803), Dönem: 21, Yasama Yılı: 3, Sıra sayısı: 737* [Draft Law on the Amendment of Certain Articles of the Constitution of the Republic of Türkiye and Report of the Constitutional Commission (2/803), Term: 21, Legislative Year: 3, Report No: 737].

the freedom of assembly. Therefore, outlining the main principles of the case law developed by both courts, which are largely aligned at the normative level, can provide a solid starting point for identifying the fundamental legal issues surrounding the freedom of assembly in Türkiye today.

### **III. The Legal Situation in Türkiye: Case Law of the ECtHR and the Constitutional Court on the Freedom of Assembly**

The ECtHR and the Constitutional Court consider the freedom of assembly in conjunction with the freedom of expression, emphasizing the importance of both rights for a democratic society and political system. According to both courts, the protection of individual opinions secured by the freedom of expression is also one of the core purposes of the freedom of assembly.<sup>29</sup> The freedom of assembly “guarantees the emergence, protection, and dissemination of diverse opinions, which are essential for the development of pluralist democracies.”<sup>30</sup> With these characteristics, the freedoms of expression and assembly are among the most fundamental<sup>31</sup> and paramount values<sup>32</sup> of a democratic society. The relationship established by the ECtHR and the Constitutional Court between the freedom of assembly and democracy highlights the dual function of this right: making the freedom of expression public through collectivization and enabling the direct participation of social opposition and minorities in the formation of political will. This dual function is decisive in concretizing the scope of the freedom of assembly and the legal framework for its limitations in a democratic political order. In light of the dual function of the freedom of assembly, the ECtHR and the Constitutional Court emphasize that the distinguishing feature of democracy lies in its capacity to resolve existing problems through open debate. For this reason, they stress that attempts to suppress the exercise of the freedoms of assembly and expression when used to voice views that may be shocking, unacceptable, or seemingly illegitimate from a particular perspective but do not incite violence or reject democratic principles, through broadly preventive bans not only harm democracy but may also place it at risk. In this context, a democratic society based on the rule of law must always allow

<sup>29</sup> ECtHR, *Ezelin v. France*, no. 11800/85, 26 April 1991, § 37; *Djavit An v. Turkey*, no. 20652/92, 20 February 2003, § 39; *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, 1 December 2011, § 98; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 115.

<sup>30</sup> Constitutional Court, *Application of Güven Usta (2)*, no. 2021/42571, 17 July 2024, § 31.

<sup>31</sup> Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 117.

<sup>32</sup> ECtHR, *Navalnyy v. Russia*, no. 29580/12, 15.10.2018, § 98.

space for political views that oppose the established order, as long as they are expressed through peaceful means such as the freedom of assembly.<sup>33</sup> In this framework, the freedom of assembly not only protects individuals from arbitrary interference<sup>34</sup> by public authorities and from indirect<sup>35</sup> or covert<sup>36</sup> restrictions, but also entails positive obligations on the state to ensure the effective exercise of this freedom.<sup>37</sup>

The case law of the ECtHR and the Constitutional Court provides guidance and legally binding findings on the reasons why freedom of assembly is among the indispensable values of a democratic society and political regime. According to the ECtHR, expressing critical views on social relations and the political regime through the exercise of the freedom of assembly is one of the most important means of political participation and oversight in a pluralistic and liberal democracy<sup>38</sup>. In a democratic regime, the actions of public authorities are subject not only to the scrutiny of the legislative and

<sup>33</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, § 97; *Gün and Others v. Turkey*, no. 8029/07, 18 June 2013, § 70; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 117.

<sup>34</sup> ECtHR, *Djavit An v. Turkey*, no. 20652/92, 20 February 2003, § 57; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 158.

<sup>35</sup> ECtHR, *Makhmudov v. Russia*, no. 35082/04, 26 July 2007, § 64; Constitutional Court, *Application of Salih Şahin*, no. 2016/13964, 28 January 2020, § 44.

<sup>36</sup> Constitutional Court, *Application of Filiz Kerestecioglu Demir (3)*, no. 2020/11218, 19 October 2022, § 77; *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 38.

<sup>37</sup> ECtHR, *Plattform "Ärzte Für Das Leben" v. Austria*, no. 10126/82, 21 June 1988, § 32; *Öllinger v. Austria*, no. 76900/01, 29 June 2006, § 35; *Djavit An v. Turkey*, no. 20652/92, 20 February 2003, § 57; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 158; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 118; *Application of Dilan Ögüz Canan*, no. 2014/20411, 30 November 2017, § 42; *Application of Eğitim ve Bilim Emekçileri Sendikası and Others*, no. 2014/920, 25 May 2017, § 82.

<sup>38</sup> For further discussion of the relationship between the freedom of assembly, freedom of expression, and democracy in ECtHR case law, see: Ziya Çağa Tanyar, "Avrupa İnsan Hakları Mahkemesi İçtihadında Toplantı ve Gösteri Yürüyüşü Hakkı" [The Right to Peaceful Assembly in the Case Law of the European Court of Human Rights], *Ankara University Faculty of Law Journal*, Vol. 60, No. 3, 2011, pp. 597–601; Osman Doğru, Atilla Nalbant, İnsan Hakları Avrupa Sözleşmesi [European Convention on Human Rights], Vol. 2, Legal Yayınevi, 2013, pp. 430–431; David Mead, *The New Law of Peaceful Protest: Rights and Regulation in the Human Rights Act Era*, Hart Publishing, 2010, pp. 63–64; Oktay Uygun, *Devlet Teorisi* [Theory of the State], On İki Levha, 2014, pp. 658–659; Olgun Akbulut, "Toplantı ve Örgütlenme Özgürlükleri" [Freedoms of Assembly and Association], in İnsan Hakları Avrupa Sözleşmesi ve Anayasa [The European Convention on Human Rights and the Constitution], ed. Sibel İnceoğlu, Beta, 2013, pp. 381, 385. For the same topic in the case law of the Constitutional Court, see: Ulaş Karan, Örgütlenme ve Toplanma Özgürlüğü [Freedom of Association and Assembly], *Individual Application Handbooks Series – 3*, Joint Project on Supporting the Individual Application System to the Constitutional Court, 2018, pp. 45–60; Murat Şen, *Anayasa Mahkemesi ve Avrupa İnsan Hakları Mahkemesi Kararları Çerçevesinde Toplantı ve Gösteri Yürüyüşü Düzenleme Hakkı* [The Right to Organize Meetings and Demonstrations in the Context of Constitutional Court and ECtHR Judgments], Seçkin, 2022, pp. 95–102; Murat Güven, *Barışçıl Gösteri ve Toplanma Özgürlüğü* [The Freedom of Peaceful Demonstration and Assembly], On İki Levha, 2020, pp. 38–40; Tevfik Sönmez Küçük, "Toplantı ve Gösteri Yürüyüşü Hakkının Sınırlılığı Üzerine Bir Değerlendirme" [An Evaluation on the Restrictability of the Right to Assembly and Demonstration], *Yeditepe University Faculty of Law Journal*, Vol. 19, Special Issue, 2022, pp. 264–267.

judicial branches but also to the close oversight of the press and public opinion<sup>39</sup>. The Constitutional Court also emphasizes that the freedom of assembly, which it defines as a “means of participation in governance,” allows for the peaceful and negotiated resolution of national issues.<sup>40</sup> The relationship between the freedom of assembly and democracy requires public authorities to adopt facilitative and supportive measures throughout all stages of assemblies, from preparation to organization, to refrain from obstructing gatherings through direct or indirect arbitrary interference, and to consider the importance of this freedom in a pluralistic democracy when imposing restrictions, which must be based on concrete facts and justified by legitimate grounds.

### **A. Notification Requirement and the Concept of Hidden Restriction**

The obligation of public authorities not only to refrain from obstructing but also to facilitate the exercise of the freedom of assembly is most clearly reflected in the operation of the notification procedure. Both the ECtHR and the Constitutional Court have developed extensive case law clarifying the proper function of the notification requirement in a democratic society, with particular attention to the risk that it may be misused by public authorities as a tool to hinder or even nullify the exercise of the freedom. According to the courts, the purpose of the notification requirement is to enable public authorities to take reasonable and appropriate measures to ensure that assemblies proceed smoothly. When this purpose is disregarded, it constitutes an infringement on the essence of the right<sup>41</sup>. The ECtHR has cited examples of appropriate measures aligned with this purpose, such as regulating traffic flow and ensuring the presence of medical personnel<sup>42</sup>. In other words, the aim of the notification procedure is not “to decide whether a gathering may take place”<sup>43</sup> but rather “to ensure the possibility for the effective exercise of the right.”<sup>44</sup>

The notification requirement must not be used as a “hidden obstacle” to the exercise of the freedom, a concept developed by the ECtHR in its case law concerning applications

<sup>39</sup> ECtHR, *Christian Democratic People’s Party v. Moldova*, no. 28793/02, 14 February 2006, § 65.

<sup>40</sup> Constitutional Court, Case No: 2014/01, Decision No: 2017/142, 28 September 2017, § 23.

<sup>41</sup> ECtHR, *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008, § 42; *Navalnyy v. Russia*, no. 29580/12, 15 October 2018, § 100; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 122; *Application of Osman Erbil*, no. 2013/2394, 25 March 2015, § 52; *Application of Yener Kaya and Others*, no. 2021/52529, 9 January 2024, § 24.

<sup>42</sup> ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 38.

<sup>43</sup> Oktay Uygun, *Devlet Teorisi* [Theory of the State], p. 659.

<sup>44</sup> Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 122; *Application of Ömer Faruk Akyüz*, no. 2015/9247, 4 April 2018, § 56.

against Türkiye.<sup>45</sup> This concept, which has also been adopted by the Constitutional Court as a standard of review<sup>46</sup>, gains meaning in light of the above-mentioned notions of “indirect” or “covert” restriction and highlights the risk that the notification requirement may be instrumentalized by public authorities in a manner that infringes upon the essence of the right. So much so that public authorities may ban a gathering after it has been notified to them by citing vague grounds such as public order or the rights and freedoms of others, or may disperse it solely due to the absence of notification or its late submission. In this situation, the notification procedure, whose primary function is to enable the adoption of measures necessary for the effective exercise of the freedom, may be turned into a hidden obstacle on the grounds of formal irregularities. The concept of a hidden obstacle, used by the ECtHR and the Constitutional Court as a standard of review, establishes a framework that narrows the margin of discretion granted to public authorities by emphasizing the essential purpose of the notification procedure in protecting the right. The ECtHR later developed this case law further, underlining that not only the notification requirement but also any action or measure taken by public authorities in the name of maintaining public order and security must not amount to a hidden obstacle.<sup>47</sup> The case law of the Constitutional Court aligns with this approach.<sup>48</sup>

In this regard, the obligation to take measures to ensure the exercise of the freedom of assembly continues to apply even when the notification requirement has not been fulfilled. The mere failure to comply with the notification procedure<sup>49</sup> or any delay in the process<sup>50</sup> does not, on its own, constitute sufficient grounds for dispersing a demonstration. Moreover, as a rule, a peaceful assembly cannot be subjected to the

<sup>45</sup> ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 38; *Balçık and Others v. Turkey*, no. 25/02, 29 November 2007, § 49; *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02, 32138/02, 18 December 2007, § 43; *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, 17 May 2011, § 41; *Samüt Karabulut v. Turkey*, no. 16999/04, 27 January 2009, § 35.

<sup>46</sup> Constitutional Court, *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 38.

<sup>47</sup> ECtHR, *Berladir and Others v. Russia*, no. 34202/06, 10 July 2012, § 39.

<sup>48</sup> Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 119; *Application of Dilan Ögüz Canan*, no. 2014/20411, 30 November 2017, § 41; *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 38.

<sup>49</sup> ECtHR, *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007, §§ 36–37; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 152.

<sup>50</sup> ECtHR, *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008, § 43.

threat of criminal sanctions.<sup>51</sup> In short, the existence of a legal irregularity alone is not sufficient to justify a restriction on the freedom of assembly.<sup>52</sup> The decisive criterion is whether the peaceful nature of the gathering is maintained. According to the well-established case law of the ECtHR and the Constitutional Court, public assemblies, even if they inevitably cause disruptions to daily life such as interrupting traffic, must be met with a certain degree of tolerance by public authorities in order to safeguard the essence of the freedom of assembly.<sup>53</sup>

## B. The Criterion of “Peaceful” Assembly

The peaceful nature of an assembly can be considered lost only when there is evidence of an intent to use violence, incitement to violence, or actual violent acts committed by the organizers or participants during the assembly.<sup>54</sup> In assessing the existence of a non-peaceful intent, the content of the organizers’ and participants’ calls made before the assembly is decisive. However, the burden of proving such intent lies with the state.<sup>55</sup> Furthermore, for an assembly to be deemed non-peaceful, acts of violence must “dominate the event as a whole.”<sup>56</sup> Even when concrete risks arise that may disrupt public order beyond the organizers’ control, this does not remove the entire assembly from the scope of protection, and the standards applicable to restrictions by public

<sup>51</sup> ECtHR, *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, 17 May 2011, § 43; *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, 14 October 2014, § 46; Constitutional Court, *Application of Dilan Ögüz Canan*, no. 2014/20411, 30 November 2017, § 55; *Application of Umut Şimşek and Others*, no. 2015/14310, 12 June 2018, § 68; *Application of Ali Sarıpınar (2)*, no. 2013/6186, 9 March 2016, § 86; *Application of Osman Baydemir*, no. 2018/24509, 15 September 2021, § 73.

<sup>52</sup> ECtHR, *Samüt Karabulut v. Turkey*, no. 16999/04, 27 January 2009, § 35; *Balçık and Others v. Turkey*, no. 25/02, 29 November 2007, § 49; *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, 17 May 2011, § 41; *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 39; Constitutional Court, *Application of Osman Erbil*, no. 2013/2394, 25 March 2015, § 49; *Application of Özge Özürengin*, no. 2014/5218, 19 April 2018, § 36; *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 89.

<sup>53</sup> ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 42; *Bukta and Others v. Hungary*, no. 25691/04, 17 July 2007, § 37; *DİSK and KESK v. Turkey*, no. 38676/08, 27 November 2012, § 29; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 155; *Geylani and Others v. Turkey*, no. 10443/12, 12 September 2023, § 115; Constitutional Court, *Application of Osman Erbil*, no. 2013/2394, 25 March 2015, § 54; *Application of Dilan Ögüz Canan*, no. 2014/20411, 30 November 2017, § 38; *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 91.

<sup>54</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, § 77; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 92; *Laurijsen and Others v. the Netherlands*, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17, 21 November 2023, § 49; Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 53; *Application of Dilan Ögüz Canan*, no. 2014/20411, 30 November 2017, § 37; *Application of Ömer Faruk Akyüz*, no. 2015/9247, 4 April 2018, § 54.

<sup>55</sup> ECtHR, *Laurijsen and Others v. the Netherlands*, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17, 21 November 2023, § 51; Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 56.

<sup>56</sup> Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 55.

authorities remain in force.<sup>57</sup> If the peaceful nature of an assembly is compromised due to the actions of some participants, those who maintain peaceful conduct continue to be protected under the freedom of assembly, and any sanction imposed on them with a punitive aim constitutes a violation of this right.<sup>58</sup> In such cases, the duty of public authorities is to “distinguish between those engaging in peaceful protest and those resorting to violence.”<sup>59</sup>

### C. Chilling Effect

The framework established by the ECtHR and the Constitutional Court regarding restrictions that may constitute hidden obstacles is of great importance as it affirms that a rights-based interpretation and implementation is an obligation for public authorities. A similar approach can be seen in the concept of the “chilling effect,” developed by the courts in the context of indirect restrictions. The *chilling effect* refers to situations where, *due to* the broad and punitive provisions in national law concerning the freedom of assembly or *as a result of* police violence and criminal sanctions imposed on assemblies deemed unlawful -even when peaceful- solely for failing to comply with these provisions, individuals experience fear, concern, or hesitation, and refrain from exercising their right to assemble. In the language of the case law of the ECtHR and the Constitutional Court, the chilling effect arises when arbitrary interventions or indirect restrictions by public authorities hinder the effective exercise of this freedom. The obligation to avoid creating a chilling effect can be understood as an extension of the duty of public authorities to protect and facilitate peaceful assemblies under all circumstances.

The prohibition of a *peaceful demonstration*<sup>60</sup>, the denial of permission to travel for

<sup>57</sup> ECtHR, *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, 1 December 2011, § 103; Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 54.

<sup>58</sup> ECtHR, *Ezelin v. France*, no. 11800/85, 26 April 1991, § 53; *Laurijsen and Others v. the Netherlands*, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17, 21 November 2023, § 50; Constitutional Court, *Application of Osman Erbil*, no. 2013/2394, 25 March 2015, § 51.

<sup>59</sup> Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 54.

<sup>60</sup> ECtHR, *Christian Democratic People’s Party v. Moldova*, no. 28793/02, 14 February 2006, § 77; *Ngartiyski and Others v. Bulgaria*, no. 48284/07, 18 October 2011, § 41; *Communauté Genevoise d’Action Syndicale (CGAS) v. Switzerland*, no. 21881/20, 15 March 2022, § 83; Constitutional Court, *Application of Akın Fener and Others*, no. 2017/22695, 14 April 2022, §§ 52, 58–59.

those intending to participate<sup>61</sup>, the dispersal of a gathering through the use of force<sup>62</sup>, and the imposition of penalties on participants<sup>63</sup>, regardless of their severity, are among the types of interventions that the ECtHR and the Constitutional Court have identified as producing a chilling effect. However, the chilling effect is not limited to sanctions alone. If a gathering is denied permission or banned and thus rendered unlawful, a chilling effect may still arise, even when demonstrators are allowed to march under police escort without facing direct intervention. Because the mere knowledge that the action is legally unauthorized and that it will not be protected by public authorities in the face of possible counter-demonstrations can discourage individuals from participating.<sup>64</sup> Similarly, investigations and prosecutions following a demonstration dispersed with force can have a comparable effect. The chilling effect on participants is not eliminated simply because the investigations are dropped or the court proceedings end in acquittal.<sup>65</sup>

Given the close connection between the freedom of assembly and the freedom of expression, sanctions imposed on participants also create a chilling effect on the expression of matters of public interest that form the subject of the assembly, thereby limiting the discussion of such issues in the public sphere.<sup>66</sup> In particular, when sanctions are imposed on well-known opposition figures, the inevitable media coverage of these processes amplifies the chilling effect, discouraging not only opposition groups but also the broader public from participating in protest demonstrations or engaging in political debate.<sup>67</sup> These observations can be seen as reflections of the relationship between the freedom of assembly and political participation and oversight.

<sup>61</sup> ECtHR, *Djavit An v. Turkey*, no. 20652/92, 20 February 2003, §§ 59–62; *Kasparov v. Russia*, no. 53659/07, 11 October 2016, § 67; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 152.

<sup>62</sup> ECtHR, *Kasparov and Others v. Russia*, no. 21613/07, 3 October 2013, § 84; *Zakharov and Varzhabetyan v. Russia*, nos. 35880/14 and 75926/17, 13 October 2020, § 90; Constitutional Court, *Application of Nergiz Şen and Others (2)*, no. 2017/17702, 4 July 2022, § 91; *Application of Keziban Saçılık and Veli Saçılık*, no. 2018/5552, 11 July 2023, § 77.

<sup>63</sup> ECtHR, *Bumbeş v. Romania*, no. 18079/15, 3 May 2022, § 101; Constitutional Court, *Application of Dursun Soydan and Others*, no. 2015/2948, 14 November 2018, § 63; *Application of Osman Baydemir*, no. 2018/24509, 15 September 2021, § 58; *Application of Kasım Sığınç and Others*, no. 2019/9517, 9 January 2024, § 19; *Application of Mahfuz Karaaslan*, no. 2019/26363, 27 February 2024, § 26.

<sup>64</sup> ECtHR, *Baczowski and Others v. Poland*, no. 1543/06, 3 May 2007, § 67; *Tóth v. Hungary*, no. 20497/13, 26 May 2020, § 24.

<sup>65</sup> ECtHR, *Nurettin Aldemir and Others v. Turkey*, nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02, 32138/02, 18 December 2007, § 34; *Balçık and Others v. Turkey*, no. 25/02, 29 November 2007, § 41; *Frumkin v. Russia*, no. 74568/12, 5 January 2016, § 141.

<sup>66</sup> ECtHR, *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, 1 December 2011, § 116.

<sup>67</sup> ECtHR, *Nemtsov v. Russia*, no. 1774/11, 31 July 2014, § 78.

## D. The State's Positive Obligations

In addition to the obligation not to obstruct the exercise of the freedom of assembly through direct or indirect restrictions or sanctions that may create a chilling effect, public authorities also bear *positive obligations* to ensure the effective enjoyment of this right. According to the ECtHR and the Constitutional Court, one of the clearest expressions of the state's positive obligations arises when an assembly is threatened by the presence of counter-demonstrators. In such cases, the courts emphasize that the priority must be to enable the exercise of the right. This principle forms the core of their approach. The courts have held that those wishing to exercise the freedom of assembly must be ensured "security" and be able to gather "without fear of being attacked"<sup>68</sup> by opposing groups. Because the existence of such fear may deter potential participants from expressing their views on controversial issues<sup>69</sup>. An essential element of the state's positive obligations also includes the effective investigation and appropriate sanctioning of any attacks against demonstrators<sup>70</sup> or excessive use of force by law enforcement officers<sup>71</sup> that exceeds legal boundaries.

The positive obligations of public authorities are particularly significant when it comes to actions carried out by individuals or groups who advocate views not shared by the majority of the public or who belong to minority communities, as these groups are more vulnerable and in greater need of protection.<sup>72</sup> However, as an extension of the general case law developed by the ECtHR and the Constitutional Court in favor of safeguarding rights, protection from counter-demonstrations does not imply a categorical requirement to ban counter-demonstrations altogether. According to the courts, a measure as extreme as banning a counter-demonstration must be specifically justified, and even in such a case, what the state is required to do is to implement measures that allow the exercise of the freedom of assembly, based on an assessment that takes into account the counter-demonstrators' rights to assemble and to express their views in

<sup>68</sup> Constitutional Court, *Application of İsmail Sarıkabadayı and Others*, no. 2016/23696, 8 June 2021, § 42; *Application of Hrant Dink Foundation*, no. 2021/29443, 12 June 2024, § 45.

<sup>69</sup> ECtHR, *Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, 21 June 1988, § 32; *Alekseyev v. Russia*, nos. 4916/07, 25924/08, and 14599/09, 21 October 2010, § 73; *Faber v. Hungary*, no. 40721/08, 24 July 2012, § 38.

<sup>70</sup> ECtHR, *Promo Lex and Others v. the Republic of Moldova*, no. 42757/09, 24 February 2015, § 28; Constitutional Court, *Application of Ender Ergün*, no. 2016/1849, 19 November 2019, §§ 61–66.

<sup>71</sup> ECtHR, *Zakharov and Varzhabyan v. Russia*, nos. 35880/14 and 75926/17, 13 October 2020, § 61; Constitutional Court, *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 51; *Application of Ataberk Mest and Others (2)*, no. 2020/5116, 2 May 2024, § 30.

<sup>72</sup> ECtHR, *Baczkowski and Others v. Poland*, no. 1543/06, 3 May 2007, § 64; *Identoba and Others v. Georgia*, no. 73235/12, 12 May 2015, § 94.

that context.<sup>73</sup> Otherwise, routinely resorting to banning some or all demonstrations in the face of potential tension between opposing groups would deprive society of the opportunity to be exposed to different viewpoints.<sup>74</sup>

### **E. The Right to Choose the Time and Place of an Assembly**

For the freedom of assembly to fulfill its functions of political participation and oversight, individuals who wish to organize an assembly or demonstration must be granted two key rights within the scope of this freedom: the right to choose the place and the time of the assembly.<sup>75</sup> Legal provisions that require the place and time of assemblies to be determined by public authorities instead of the demonstrators themselves constitute hidden obstacles that undermine the guarantee of not requiring prior permission, which gives the freedom of assembly its meaningful character. Moreover, rigid legal regulations restricting the right to choose the location and timing of assemblies create the basis for interventions and sanctions against demonstrators, resulting in a severe chilling effect on those who wish to exercise this right.

The location of an assembly holds particular significance both in terms of its connection to the event prompting the exercise of the right and in light of the public awareness function that the freedom of assembly serves. Proximity to the place where the protested event or development occurred, and the assembly taking place “within the sight and hearing range of the target audience the demonstrators aim to reach,”<sup>76</sup> ensures the effectiveness of the gathering and allows the “expressed opinion to reach its intended audience and have an impact.”<sup>77</sup> At this point, the fundamental principle is that all public spaces must be open to the exercise of the freedom of assembly.<sup>78</sup> As a reflection of the obligation to avoid creating hidden obstacles, categorical bans in the legal framework regarding certain spaces do not, on their own, constitute sufficient grounds for intervention in an assembly.<sup>79</sup> In this respect, according to the ECtHR

<sup>73</sup> ECtHR, *Öllinger v. Austria*, no. 76900/01, 29 June 2006, §§ 44–49; Constitutional Court, *Application of Erdal Karadaş*, no. 2017/22700, 28 May 2019, § 74.

<sup>74</sup> ECtHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, 2 October 2001, § 107; *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 425.

<sup>75</sup> ECtHR, *Sáska v. Hungary*, no. 58050/08, 27 November 2012, § 21.

<sup>76</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 405.

<sup>77</sup> Constitutional Court, *Case No: 2014/01, Decision No: 2017/142*, 28 September 2017, § 25; *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 32.

<sup>78</sup> Constitutional Court, *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 37; *Application of Tacettin Çolak*, no. 2019/15690, 16 November 2023, § 63.

<sup>79</sup> Constitutional Court, *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023, § 76.

and the Constitutional Court, interventions in assemblies held on or near university campuses<sup>80</sup>, places of worship<sup>81</sup>, hospitals<sup>82</sup>, parks<sup>83</sup>, squares<sup>84</sup>, or in the vicinity of public buildings such as parliaments<sup>85</sup>, government offices<sup>86</sup>, or courts<sup>87</sup>, can only be deemed legitimate if they meet the requirement of necessity in a democratic society. The fact that the desired location for an assembly is “important for the participants and for achieving the purpose of the assembly” or “holds symbolic value”<sup>88</sup> constitutes a factor that narrows the margin of appreciation available to public authorities when considering whether to intervene.

The determination of the timing of an assembly plays a crucial role in ensuring its effectiveness, particularly when it is organized to commemorate or celebrate a specific event. The timing of a meeting or demonstration held to express a particular opinion or protest an incident also carries significance in terms of its political and social impact. If a gathering is held after the issue it aims to address has lost its relevance in ongoing public or political debate, it largely loses its effectiveness in shaping public opinion. In short, the freedom of assembly becomes meaningless if demonstrators are unable to exercise it at a time they consider “appropriate.”<sup>89</sup> The ECtHR emphasizes that while interventions in the organization of an assembly may be lawful if they conform to the legal framework for restrictions, altering the timing of an assembly that is significant and meaningful

<sup>80</sup> ECtHR, *Açık and Others v. Turkey*, no. 31451/03, 13 January 2009; Constitutional Court, *Application of Dilan Öğüz Canan*, no. 2014/20411, 30 November 2017.

<sup>81</sup> ECtHR, *Cisse v. France*, no. 51346/99, 9 April 2002.

<sup>82</sup> ECtHR, *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, 14 October 2014; Constitutional Court, *Application of Ramazan Sümer*, no. 2018/15924, 11 May 2022.

<sup>83</sup> ECtHR, *Nosov and Others v. Russia*, nos. 9117/04 and 10441/04, 20 February 2014; *Hyde Park and Others v. Moldova*, no. 33482/06, 31 March 2009; Constitutional Court, *Application of Ali Kalender and Others*, no. 2019/37023, 7 December 2022; *Application of Filiz Kerestecioglu Demir (2)*, no. 2019/36319, 5 October 2022.

<sup>84</sup> ECtHR, *Ziliberberg v. Moldova*, no. 61821/00, 4 May 2004, p. 11; *Makhmudov v. Russia*, no. 35082/04, 26 July 2007; Constitutional Court, *Application of Figen Yüksekdağ Şenoğlu (5)*, no. 2017/24556, 14 September 2022; *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023; *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023; *Application of Tacettin Çolak*, no. 2019/15690, 16 November 2023.

<sup>85</sup> Constitutional Court, *Application of Osman Erbil*, no. 2013/2394, 25 March 2015; *Application of Umut Şimşek and Others*, no. 2015/14310, 12 June 2018.

<sup>86</sup> ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014.

<sup>87</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, §§ 431–442; Constitutional Court, *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024; *Application of Ramazan Düğer and Others*, no. 2018/31211, 2 October 2024.

<sup>88</sup> Constitutional Court, *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023, §§ 66, 69, 72.

<sup>89</sup> ECtHR, *Helsinki Committee of Armenia v. Armenia*, no. 59109/08, 31 March 2015, § 34; *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 444.

for its organizers can never be considered compatible with the European Convention on Human Rights (ECHR).<sup>90</sup> Furthermore, in the case of spontaneous assemblies or demonstrations held in response to recent or unforeseen developments, where any delay would undermine the very purpose of the gathering, non-compliance with the notification requirement cannot serve as a legitimate ground for intervention.<sup>91</sup>

## **F. Legitimacy Criteria for Interferences with the Freedom of Assembly**

The significance of the freedom of assembly for a democratic society and political system is reflected in the negative obligations that must be observed during the process of imposing restrictions. The exercise of this freedom by individuals must be the rule, and its restriction the exception. The exceptional nature of any limitation on this freedom is evident in the interpretation of the criteria that define the framework for permissible restrictions. Both the ECHR and the Constitution set out three fundamental criteria to assess the legitimacy of any interference -whether through administrative acts, actions, or judicial decisions- that results in the restriction of the freedom of assembly. First, any interference must have a legal basis. Second, it must pursue one of the legitimate aims set out in the ECHR or the Constitution, such as the protection of public order or the rights and freedoms of others. Third, it must be necessary in a democratic society. An interference that fails to meet any of these conditions constitutes a violation of the freedom of assembly.

The requirement that an interference with the freedom of assembly must have a legal basis means that the rule defining the scope of such interference must be established by a legislature formed through democratic elections. This forms a minimum safeguard and is crucial for ensuring the democratic legitimacy of the interference. The second, and equally important, dimension of the legality criterion stems from the relationship between democracy and the rule of law. In a pluralistic and rights-based democracy, the legitimacy of political power is not derived solely from its electoral mandate. It also depends on how that power is exercised, which must meet certain standards. These standards are reflected in the principle of the rule of law. In the context of fundamental rights and freedoms, the rule of law requires that any legal norm forming the basis for a restriction must be clear, foreseeable, and accessible<sup>92</sup>. This is to prevent arbitrary

<sup>90</sup> ECtHR, *Baczowski and Others v. Poland*, no. 1543/06, 3 May 2007, § 82.

<sup>91</sup> ECtHR, *Budaházy v. Hungary*, no. 41479/10, 15 December 2015, § 3; *Bodalev v. Russia*, no. 67200/12, 6 September 2022, § 75(d); Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 136; *Application of Osman Erbil*, no. 2013/2394, 25 March 2015, § 67; *Application of Ömer Faruk Akyüz*, no. 2015/9247, 4 April 2018, § 56; *Application of Ali Orak and İrfan Gül*, no. 2014/10626, 18 April 2018, § 60.

<sup>92</sup> Jacobs, White, Ovey, *The European Convention on Human Rights*, Oxford University Press, 2017, pp. 343–347.

governance by the state and to uphold legal certainty. In other words, even if a law has been formally enacted by parliament, it cannot be considered a valid legal basis in the material sense if it is not sufficiently precise to enable individuals to understand how their actions will be regulated and what consequences they may face. According to the case law of both the ECtHR and the Constitutional Court, an act or measure carried out on the basis of a vague law that opens the door to arbitrariness lacks a proper legal basis, as there is no law in the material sense.<sup>93</sup> As a result, in such cases, the interference is considered to lack a legal foundation, and therefore constitutes a violation of the freedom of expression.

In addition to having a legal basis, any interference with the freedom of assembly must pursue one of the limited legitimate aims set out in the ECHR and the Constitution. Due to the broad and varied scope of the legitimate aims listed, the ECtHR and the Constitutional Court generally accept the aims invoked by states at this stage<sup>94</sup>. In essence, the function of this stage of review is to ensure that the state has presented a rationale that serves as the starting point for the test of necessity in a democratic society. Under the necessity test in a democratic society, the ECtHR and the Constitutional Court assess the proportionality of the means of interference chosen by the state (e.g. dispersing demonstrators who have gathered without complying with the notification requirement) in pursuit of the aim invoked (e.g. the protection of the rights and freedoms of others).<sup>95</sup>

In the review of interferences with the freedom of assembly, the necessity test in a democratic society constitutes the most critical stage, and its application is shaped by the ECtHR's and the Constitutional Court's understanding of democracy as a pluralistic concept.<sup>96</sup> Within the context of restrictions on freedoms, this criterion does not serve as a basis for the imposition of the will of the majority but rather as a safeguard to protect the rights of minorities excluded from that majority. Therefore, when viewed in

<sup>93</sup> Ulaş Karan, Örgütlenme ve Toplanma Özgürlüğü, *Anayasa Mahkemesi Bireysel Başvuru El Kitapları Serisi – 3* [Freedom of Association and Assembly, Constitutional Court Individual Application Handbook Series – 3], pp. 124–132.

<sup>94</sup> Jens Meyer-Ladewig, Martin Nettesheim, Stefan von Raumer, *Europäische Menschenrechtskonvention, Handkommentar*, Nomos, 2017, s. 433.

<sup>95</sup> Ulrich Karpenstein, Franz Mayer, *Konvention zum Schutz der Menschenrechte und Grundfreiheiten*, C. H. Beck, 2015, p. 323.

<sup>96</sup> Sibel İnceoğlu, “İnsan Hakları Avrupa Mahkemesi Kararlarında Çoğulculuk [Pluralism in the Judgments of the European Court of Human Rights]”, *Kamu Hukukçuları Platformu – Çoğulcu Demokrasi ve Çoğunlukçu Demokrasi İkilemi ve İnsan Hakları Toplantısı* [Public Lawyers Platform – Conference on the Dilemma of Pluralist and Majoritarian Democracy and Human Rights], ed. Ece Göztepe, Türkiye Barolar Birliği Yayınları, 2011, pp. 84–86; Constitutional Court, *Application of Ali Rıza Özer and Others*, no. 2013/3924, 6 January 2015, § 116.

connection with the freedom of expression, the criteria for restricting the freedom of assembly must be interpreted narrowly, and the justifications for any restriction must be convincing.<sup>97</sup> Moreover, when assemblies concern political matters of public interest, public authorities are required to provide particularly strong reasons to justify any limitation.<sup>98</sup>

In this context, under the ‘necessary in a democratic society’ test, the ECtHR and the Constitutional Court require, first, that states demonstrate with relevant and sufficient reasons that the interference meets a pressing social need, and second, that the interference does not restrict the freedom more than necessary to meet that need; in other words, that it is proportionate.<sup>99</sup> At this point, it is particularly important to underline that the notion of a pressing social need cannot be used to justify interference with the freedom of assembly based on the religious<sup>100</sup> or moral values<sup>101</sup> of the majority of society, or on the “existence of public reactions or tensions that may arise among a large part of the public.”<sup>102</sup> As the ECtHR has emphasized, if the exercise of a right by minorities were made dependent on the approval of the majority, the freedom of assembly would lose its practical and effective character and become merely a theoretical ideal.<sup>103</sup> Thus, the notion of a pressing social need is fundamentally linked to the requirement for strict scrutiny of any restriction on freedoms. It points to the necessity that arbitrary or abstract justifications are not sufficient for restricting freedoms and that only significant and current reasons, demonstrably proven with concrete evidence, can justify limitations that are exceptionally acceptable. “[I]f the opposite were accepted, interference with the right to assembly and demonstration could be justified merely by some abstract considerations and, accordingly, by references to public order and security, which could lead to the unforeseeable restriction of the

<sup>97</sup> ECtHR, *Galstyan v. Armenia*, no. 26986/03, 15 November 2007, § 114; *Laurijsen and Others v. the Netherlands*, nos. 56896/17, 56910/17, 56914/17, 56917/17 and 57307/17, 21 November 2023, § 63; Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 44; *Application of Filiz Kerestecioglu Demir (3)*, no. 2020/11218, 19 October 2022, § 77.

<sup>98</sup> ECtHR, *Berladir and Others v. Russia*, no. 34202/06, 10 July 2012, § 44; *Primov and Others v. Russia*, no. 17391/06, 12 June 2014, § 134.

<sup>99</sup> ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014, § 74; *Schwabe and M.G v. Germany*, nos. 8080/0 and 8577/08, 1 December 2011, § 111; *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2009, § 39; *Kudrevičius and Others v. Lithuania*, no. 37553/05, 15 October 2015, § 143; Constitutional Court, *Application of Ferhat Üstündağ*, no. 2014/15428, 17 July 2018, § 46; *Application of Halkevleri Derneği*, no. 2015/9174, 7 March 2019, § 39.

<sup>100</sup> ECtHR, *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, no. 37477/11, 23 November 2021, § 55.

<sup>101</sup> ECtHR, *Alekseyev v. Russia*, nos. 4916/07, 25924/08, and 14599/09, 21 October 2010, §§ 78–81.

<sup>102</sup> Constitutional Court, *Application of İsmail Sarıkabadayı and Others*, no. 2016/23696, 8 June 2021, § 42.

<sup>103</sup> ECtHR, *Bayev and Others v. Russia*, nos. 67667/09, 44092/12, and 56717/12, 20 June 2017, § 70.

exercise of that right.”<sup>104</sup>

The inevitable consequences arising from the nature of the freedom of assembly do not, by themselves, constitute sufficient grounds to conclude that public order has been disturbed or that the rights of third parties have been violated. It is natural for any assembly or demonstration held in a public space to cause a certain level of disruption to daily life and traffic.<sup>105</sup> Therefore, noise<sup>106</sup>, disruption of traffic<sup>107</sup> or “interruptions to activities such as the public’s rest, travel, or participation in social and cultural events”<sup>108</sup> cannot, on their own, justify an interference with the freedom of assembly. Moreover, abstract threats or general security concerns cannot serve as valid grounds for restricting the freedom. For example, vague references to information allegedly obtained from “various sources” suggesting possible terrorist attacks on mass demonstrations<sup>109</sup> or “intelligence reports” claiming that a demonstration may lead to “the creation of chaos and disruption of public order,”<sup>110</sup> are not considered relevant and sufficient justifications for banning a particular assembly. Furthermore, public authorities cannot rely on their own subjective evaluations regarding the content of an assembly to justify restrictions.<sup>111</sup> The freedom of assembly cannot be restricted merely because it is believed that one day would be sufficient for a demonstration<sup>112</sup> or because an administrative investigation into the issue being protested has not resulted in any findings, thus allegedly eliminating the need to gather.<sup>113</sup> Interferences with the freedom of assembly must be based on “justifications that can be warranted only by compelling necessities.”<sup>114</sup>

<sup>104</sup> Constitutional Court, *Application of Hrant Dink Foundation*, no. 2021/29443, 12 June 2024, § 46.

<sup>105</sup> ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 38; *Sergey Kuznetsov v. Russia*, no. 10877/04, 23 October 2008, § 44; *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, 14 October 2014, § 45; Constitutional Court, *Application of İsmail Sarıkabadayı and Others*, no. 2016/23696, 8 June 2021, § 42; *Application of Nergiz Şen and Others (2)*, no. 2017/17702, 4 July 2022, § 84.

<sup>106</sup> ECtHR, *Galstyan v. Armenia*, no. 26986/03, 15 November 2007, § 116.

<sup>107</sup> ECtHR, *Patyi and Others v. Hungary*, no. 5529/05, 7 October 2009, § 42; Constitutional Court, *Application of Rıza Gökçen Erus and Others*, no. 2014/17391, 19 April 2018, § 60; *Application of Ramazan Düğer and Others*, no. 2018/31211, 2 October 2024, § 82.

<sup>108</sup> Constitutional Court, *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023, § 70.

<sup>109</sup> ECtHR, *Makhmudov v. Russia*, no. 35082/04, 26 July 2007, §§ 32, 71–73.

<sup>110</sup> Constitutional Court, *Application of Ali Bozan*, no. 2021/27262, 10 January 2024, § 35.

<sup>111</sup> Constitutional Court, *Application of Bahri Oğuz and Mehmet Erdem*, no. 2021/52226, 14 February 2024, § 13.

<sup>112</sup> ECtHR, *Hyde Park and Others v. Moldova (No. 4)*, no. 18491/07, 7 April 2009, § 53.

<sup>113</sup> ECtHR, *Primov and Others v. Russia*, no. 17391/06, 12 June 2014, §§ 135–138.

<sup>114</sup> Constitutional Court, *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 33; *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023, § 57; *Application of Tacettin Çolak*, no. 2019/15690, 16 November 2023, § 60.

The Constitutional Court has recently clarified the conditions that must be met for interferences with the freedom of assembly to be considered necessary and proportionate in a democratic society. First, public authorities must demonstrate that the assembly poses “a concrete danger or a clear and imminent threat” to public order. Second, they must show that this threat or danger “cannot be prevented despite all measures, based on concrete evidence, in a persuasive manner, and in a way that is open to judicial review.” In this context, it must also be proven that the demonstrators failed to act in accordance with the duties and responsibilities required by the peaceful exercise of the freedom. Third, in line with the principle of proportionality, the possibility of adopting “less restrictive measures” must be considered in light of the positive obligations incumbent on public authorities to ensure the effective exercise of the freedom of assembly, and ultimately only “necessary” measures should be taken in the specific circumstances of the case. Finally, the reasoning must set out in a relevant and sufficient manner how a fair balance has been sought between the freedom of assembly and the protection of public order or the rights of others; in other words, the conflicting constitutional values must be weighed.<sup>115</sup>

### **G. Judicial Review of Postponement and Ban Decisions**

The principles and criteria developed by the ECtHR and the Constitutional Court regarding the scope and limitations of the freedom of assembly are particularly significant when it comes to the judicial review of *postponement and ban decisions*, which constitute the most severe forms of interference with this right. At this point, the primary obligations to be considered are the duty of public authorities to show tolerance toward peaceful demonstrations and to act proportionately when restricting freedoms. Postponement and ban decisions are among the most drastic measures and result in peaceful demonstrators being entirely deprived of the opportunity to exercise their rights.<sup>116</sup>

Unlike momentary and limited interventions targeting the location or timing of an assembly, or directed at demonstrators who act violently or disrupt public order, postponement and ban decisions entirely eliminate both the ability of peaceful demonstrators to exercise their rights and the public’s opportunity to engage in democratic interaction and participation on political matters. Therefore, proportionate

<sup>115</sup> Constitutional Court, *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023, § 72; *Application of Ali Bozan*, no. 2021/27262, 10 January 2024, § 38; *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 98.

<sup>116</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 434.

to the severity of the interference and the intensity of the consequent restriction of the freedom, the justifications provided by public authorities for such decisions must be much more concrete, significant, and persuasive. In other words, public authorities must convincingly demonstrate the importance of “specific, concrete, and sufficient” reasons that explain both their failure to fulfill their positive obligations to ensure the effective exercise of the freedom of assembly and their inability to adopt any less restrictive measure under the principle of proportionality that governs their negative obligations.<sup>117</sup> Otherwise, “the banning of meetings or events by administrative authorities based on general and vague expressions harms the very essence of the right to organize assemblies and demonstrations.”<sup>118</sup>

The risk that postponement and ban decisions may infringe upon the essence of the freedom of assembly arises from the fact that they, by their consequences, constitute a serious interference with the demonstrators’ rights to determine the time and place of a gathering, protected by the freedom of assembly itself. Prohibiting a location that would allow a demonstration to fulfill its purpose or interfering with its timing in a way that renders the event ineffective deprives the assembly of its meaning. In particular, the arbitrary use of postponement and ban decisions by public authorities leads to the de facto subjection of the freedom of assembly to prior authorization. For this reason, the existence of judicial review mechanisms capable of ensuring the effectiveness of the “no prior permission” guarantee, which is explicitly provided in the Constitution and forms the essence of the right, is of particular importance. Under the right to an effective remedy, as protected by both the European Convention on Human Rights and the Constitution<sup>119</sup>, such review must be “capable of preventing the occurrence or continuation of the violation or redressing its consequences,”<sup>120</sup> and must be adequate to “preserve the essence of the right.”<sup>121</sup>

To ensure the right to an effective remedy, the first essential element is the availability of judicial review mechanisms through which a final decision can be obtained prior to the planned date of the assembly, in response to postponement or ban decisions

<sup>117</sup> Constitutional Court, *Application of Bahri Oğuz and Mehmet Erdem*, no. 2021/52226, 14 February 2024, § 16.

<sup>118</sup> Constitutional Court, *Application of Mutlu Öztürk and Others*, no. 2020/8525, 28 January 2021, § 60.

<sup>119</sup> Ömer E. Egeği, *İnsan Hakları Avrupa Sözleşmesi ve Anayasa Çerçevesinde Etkili Başvuru Hakkı [The Right to an Effective Remedy within the Framework of the European Convention on Human Rights and the Constitution]*, On İki Levha, 2021, p. 196.

<sup>120</sup> Constitutional Court, *Application of Özgür Sağlam*, no. 2016/9076, 30 June 2021, § 62; *Application of Hasan Mama and the Union of Education and Science Labourers*, no. 2018/24209, 21 December 2022, § 11.

<sup>121</sup> ECtHR, *Keegan v. the United Kingdom*, no. 28867/03, 18 July 2006, § 41; *Petrosyan v. Armenia*, no. 51448/15, 9 January 2025, § 166.

issued by public authorities.<sup>122</sup> A decision to annul such restrictions issued after the assembly date, once the link to time and place has been severed, cannot fully remedy the consequences of an arbitrary interference with the freedom of assembly.<sup>123</sup> Second, for judicial review to be effective, the law must set out clear and foreseeable criteria.<sup>124</sup> Although the wide margin of discretion granted to public authorities does not make it impossible for courts to find postponement and ban decisions unlawful, it significantly complicates the review process.<sup>125</sup> The third element, closely related to the above, is that judicial review must be structured to assess specifically the necessity and proportionality of interferences with the freedom of assembly. If the scope of judicial review is confined to a narrow legal framework that only examines compliance with the formal conditions set out in the law, or if judicial bodies limit themselves to a merely formal legality review, this would constitute a violation of the right to an effective remedy in connection with the freedom of assembly.<sup>126</sup>

### H. Criteria to Be Respected During the Dispersal of Assemblies

Like decisions to postpone or ban assemblies, the dispersal of assemblies through the use of force constitutes a serious interference with the freedom of assembly, both because it completely eliminates the possibility of exercising the right and because the violence experienced may have a chilling effect on demonstrators and the broader public observing the events.<sup>127</sup> The fundamental principles that underpin the recognition of freedom of assembly as one of the indispensable values of a democratic society and political order must be taken into account in the justification, implementation, and

<sup>122</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 345.

<sup>123</sup> ECtHR, *Bączkowski and Others v. Poland*, no. 1543/06, 3 May 2007, § 83; *Alekseyev v. Russia*, nos. 4916/07, 25924/08, 14599/09, 2010, § 98.

<sup>124</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 357.

<sup>125</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 428. As Sever emphasizes, “[t]he effectiveness of judicial review... depends on elements such as whether the substantive normative standards applied in judicial review are capable of ensuring effective oversight. To illustrate this last point, ... when determining the grounds for a restriction, the adoption of more concrete and detailed or cumulative conditions, or the specification of certain criteria for the exercise of discretionary powers, enables more active judicial oversight. This situation, which can be referred to as norm density, is one of the factors that also determines the intensity of the judicial review. In particular, low norm density in provisions granting powers that interfere with fundamental rights and freedoms results in a weakening of the guarantees afforded to those freedoms.” Çiğdem Sever, “Genel Yetki Normları ile Olağanüstünün Olağanlaşması: Toplantı ve Gösteri Yürüyüşü Hakkı Örneği” [*The Normalization of the Exceptional Through General Authorization Norms: The Case of the Right to Assembly and Demonstration*], pp. 94–95.

<sup>126</sup> ECtHR, *Lashmankin and Others v. Russia*, no. 57818/09, 7 February 2017, § 360.

<sup>127</sup> ECtHR, *Süleyman Çelebi and Others v. Turkey (No. 2)*, nos. 22729/08 and 10581/09, 12 December 2017, § 54; Constitutional Court, *Application of Keziban Saçılık and Veli Saçılık*, no. 2018/5552, 11 July 2023, § 77.

review of such serious interferences.

In this context, the dispersal of assemblies must be based on compelling justifications that can legitimize the severe consequences of the intervention<sup>128</sup>, and law enforcement authorities must act with restraint under all circumstances.<sup>129</sup> Therefore, procedural shortcomings such as failures to comply with the notification requirement regarding the exercise of the freedom of assembly do not, on their own, constitute sufficient grounds for dispersing an assembly<sup>130</sup>, and in line with the obligation to show tolerance towards peaceful assemblies, demonstrators must be provided with adequate opportunity to express their views<sup>131</sup>.

With regard to proportionality, which constitutes the most critical principle in the dispersal of assemblies, the first point to underline is that the obligation to protect peaceful demonstrators under all circumstances remains in effect. In cases where acts of violence occur that do not affect the assembly as a whole, the intervention of law enforcement must be limited to the individual or individuals concerned.<sup>132</sup> Second, intervening law enforcement officers must comply with the sub-principles of proportionality, particularly necessity and proportionality in the strict sense. In this context, methods and tools that minimally interfere with the physical integrity of demonstrators must be selected during the dispersal of assemblies, and their use must be proportionate to the behavior and resistance of the demonstrators. Otherwise, not only the freedom of assembly but also the prohibition of ill-treatment may be violated.<sup>133</sup> Indeed, any use of physical force by law enforcement that exceeds what is strictly required by the conduct of the demonstrators undermines human dignity

<sup>128</sup> ECtHR, *Mammadov v. Azerbaijan*, no. 60259/11, 15 October 2015, § 61; Constitutional Court, *Application of Deniz Kaplan*, no. 2015/17962, 11 March 2020, § 119.

<sup>129</sup> ECtHR, *Laguna Guzman v. Spain*, no. 41462/17, 6 October 2020, § 54; Constitutional Court, *Application of Özge Özgürengin*, no. 2014/5218, 19 April 2018, § 54.

<sup>130</sup> ECtHR, *Eğitim ve Bilim Emekçileri Sendikası and Others v. Turkey*, no. 20347/07, 5 July 2016, § 108; Constitutional Court, *Application of Deniz Kaplan*, no. 2015/17962, 11 March 2020, § 74.

<sup>131</sup> ECtHR, *Oya Ataman v. Turkey*, no. 74552/01, 5 December 2006, § 38; *Ibrahimov and Others v. Azerbaijan*, nos. 69234/11, 69252/11, 69335/11, 11 February 2016, § 80; Constitutional Court, *Application of Keziban Saçılık and Veli Saçılık*, no. 2018/5552, 11 July 2023, § 76; *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 97.

<sup>132</sup> ECtHR, *Süleyman Çelebi and Others v. Turkey*, nos. 37273/10 and 38958/10, 24 May 2016, § 111; Constitutional Court, *Application of Özge Özgürengin*, no. 2014/5218, 19 April 2018, § 63.

<sup>133</sup> ECtHR, *Muradova v. Azerbaijan*, no. 22684/05, 2 April 2009, § 109; Constitutional Court, *Application of Özlem Kır*, no. 2014/5097, 28 September 2016, §§ 56–57; *Application of Ataberk Mest and Others (2)*, no. 2020/5116, 2 May 2024, § 21.

and, in principle, constitutes a violation of the prohibition of ill-treatment.<sup>134</sup> Where such interventions are carried out for the purpose of retaliation or punishment, they are considered acts of torture, which represents the most serious form of violation by public authorities.<sup>135</sup> Moreover, life-threatening injuries resulting from law enforcement intervention amount to a violation of the right to life.<sup>136</sup>

One of the main issues regarding the principle of proportionality during the dispersal of assemblies arises from the use of weapons with potentially lethal effects, such as plastic bullets<sup>137</sup>, tear gas<sup>138</sup>, and water cannons<sup>139</sup>, by law enforcement officers. The use of such weapons may be considered legitimate only if the conduct of the demonstrators strictly necessitates the use of such a high level of force, or if it is absolutely necessary to suppress disorder arising during mass demonstrations.<sup>140</sup> For this to be the case, the circumstances under which these weapons may be used must first be regulated through clear rules, and these rules must be designed to prevent arbitrary interventions, abuses, and avoidable accidents. In addition to these negative obligations, public authorities also have a positive obligation to provide law enforcement officers with training in line with these rules and to establish an administrative and judicial system capable of reviewing whether specific interventions were necessary and proportionate in the circumstances.<sup>141</sup>

<sup>134</sup> ECtHR, *Bouyid v. Belgium*, no. 23380/09, 28 September 2015, §§ 100–101; *Geylani and Others v. Turkey*, no. 10443/12, 12 September 2023, § 71; Constitutional Court, *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, § 58.

<sup>135</sup> ECtHR, *Cestaro v. Italy*, no. 6884/11, 7 April 2015, §§ 177–190; Constitutional Court, *Application of Akin Can*, no. 2016/13469, 10 June 2020, § 54; *Application of Deniz Kaplan*, no. 2015/17962, 11 March 2020, §§ 63–65.

<sup>136</sup> ECtHR, *Evrin Öktem v. Turkey*, no. 9207/03, 4 November 2008, §§ 52–53; Constitutional Court, *Application of Dilan Dursun*, no. 2015/18831, 2 November 2022, §§ 66–70.

<sup>137</sup> ECtHR, *Kılıcı v. Turkey*, no. 32738/11, 27 November 2018.

<sup>138</sup> ECtHR, *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, 16 July 2013; İzci v. Turkey, no. 42606/05, 23 July 2013; Constitutional Court, *Application of Turan Uytun and Kevzer Uytun*, no. 2013/9461, 15 December 2015.

<sup>139</sup> ECtHR, *Geylani and Others v. Turkey*, no. 10443/12, 12 September 2023.

<sup>140</sup> ECtHR, *Geylani and Others v. Turkey*, no. 10443/12, 12 September 2023, § 71; Constitutional Court, *Application of Okan Göçer*, no. 2017/29596, 13 January 2021, § 68.

<sup>141</sup> ECtHR, *Abdullah Yaşa and Others v. Turkey*, no. 44827/08, 16 July 2013, § 43; İzci v. Turkey, no. 42606/05, 23 July 2013, § 99; *Kılıcı v. Turkey*, no. 32738/11, 27 November 2018, § 33; Constitutional Court, *Application of Turan Uytun and Kevzer Uytun*, no. 2013/9461, 15 December 2015, §§ 60–62; *Application of Özge Özgürengin*, no. 2014/5218, 19 April 2018, § 78; *Application of Dilan Alp*, no. 2018/32913, 7 December 2022, §§ 52–53.

## **IV. The De Facto Situation in Türkiye: The Invalidation of the Freedom of Assembly in Violation of Constitutional Guarantees**

The case law of the ECtHR and the Constitutional Court, outlined in the previous section of this study, reveals that the legal status of the freedom of assembly in Türkiye is plagued by a fundamental contradiction. On the one hand, the text of the Constitution concerning the freedom of assembly, which binds all state institutions, as well as natural and legal persons<sup>142</sup>, and its equally binding content as concretized by the Constitutional Court<sup>143</sup> are pluralistic and liberty-oriented. Similarly, the same applies to the ECHR's freedom of assembly content as concretized by the ECtHR, which Türkiye is obligated to implement under international law as a party to the Convention and under the constitutional provision that explicitly foresees an implementation obligation.<sup>144</sup> However, the general framework of Law No. 2911, a product of the 1980 coup, which has been preserved to this day without substantial changes, and its application by public authorities, often disregarding the decisions of the ECtHR and the Constitutional Court, leads to the de facto invalidation of the freedom of assembly. The political components of the government in Türkiye, which have characterized the freedom of assembly, particularly since the Gezi protests, not as a right but as an illegitimate activity, further reinforce this negative scenario.

In this context, it can be argued that the fundamental cause of the issues regarding the freedom of assembly in Türkiye is not legal, but political. If public authorities adhere to the standards established by the Constitutional Court, which largely align with the case law of the ECtHR, namely the principles of always showing tolerance toward peaceful demonstrations, ensuring that the reasons for intervening in the freedom of assembly are relevant and sufficient, and ensuring that interventions comply with the principle of proportionality, the issues regarding the freedom of assembly in Türkiye would largely disappear. The standards set by the Constitutional Court through its individual application decisions legally bind the interpretation of the regulations in Law No. 2911 in a manner consistent with the Constitution. In other words, these standards must be

<sup>142</sup> *Article 11* – The provisions of the Constitution are fundamental legal rules that bind the legislative, executive, and judicial bodies, administrative authorities, and other institutions and individuals.

<sup>143</sup> *Article 153* – Decisions of the Constitutional Court are published immediately in the Official Gazette and bind the legislative, executive, and judicial bodies, administrative authorities, and natural and legal persons.

<sup>144</sup> *Article 90* – ... In cases of conflicts arising between international treaties related to fundamental rights and freedoms, duly promulgated, and domestic laws containing different provisions on the same subject, the provisions of the international treaty shall prevail.

taken into account and applied in similar matters and cases. However, public authorities and the judiciary overseeing their actions and decisions do not sufficiently take into account the objective effect<sup>145</sup> of the Constitutional Court's decisions regarding the freedom of assembly. This approach is inconsistent with the constitutional provision that mandates the binding nature of Constitutional Court decisions, as well as with the primary aim of individual applications, which is to ensure the effective protection of constitutional freedoms.

Undoubtedly, the failure of administrative and judicial authorities to consider the Constitutional Court's case law on the freedom of assembly cannot be assessed independently of the approach of the political power to the issue. The ruling coalition, which determines not only ministers in positions of administrative authority but also the composition of the High Council of Judges and Prosecutors that is responsible for the career rights and disciplinary law of judges, has an extremely negative approach toward the freedom of assembly, as will be exemplified below. The authoritarian approach in political discourse and administrative practice, the deficiencies in judicial review of the implementation, and the chilling effect resulting from all of these make the exercise of the freedom of assembly almost impossible in Türkiye.

### **A. The Determination of the Place and Time of Assemblies Becoming a Matter Within the Discretionary Powers of Public Authorities**

As emphasized in the case law of the ECtHR and the Constitutional Court, the freedom of assembly is one of the highest and most fundamental values of a democratic society.

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<sup>145</sup> “The individual application decisions of the Constitutional Court have both objective and subjective effects... The subjective aspect of the decisions requires that concrete measures or actions be taken on an individual level concerning the applicant. Therefore, the Constitutional Court issues certain decisions to eliminate the violation and its consequences. The objective aspect of the decision, however, requires that general measures be taken by the legislative, executive, and judicial bodies to prevent similar violations in the future. All state authorities and courts are obliged to comply with the criteria established by the Constitutional Court in similar cases. This necessity means that, from the legislative perspective, a change in legislation is required; from the executive perspective, changes in procedures and actions must be made; and from the judicial perspective, a change in jurisprudence is necessary. The success of the individual application procedure is measured not only by the enforcement of the decision on an individual level but also by the implementation of the decision's requirements by other organs.” Ulaş Karan, *Öğretide ve Uygulamada Anayasa Mahkemesinin Kararlarının Bağlayıcılığı ve İcrası [The Binding Nature and Enforcement of the Decisions of the Constitutional Court in Theory and Practice]*, On İki Levha, 2018, s. 169-170. According to the Constitutional Court, “It should be accepted that its ‘objective function,’ which arises from the interpretation and application of the Constitution, takes precedence over its subjective function... If it is claimed that constitutional protection has not been provided in a particular issue by these authorities, an individual application can be made. In this case, the Constitutional Court interprets the Constitution and issues a decision. After this, public authorities and lower courts are expected to conduct their practices on the same issue within the framework of this interpretation. Otherwise, all disputes on the same issue would end up before the Constitutional Court. A system of individual applications operating in this way is unsustainable.” *Application of K.V.* no. 2014/2293, 1 December 2016, § 53.

The value of the freedom of assembly for a democratic political regime and society forms the basis of public authorities' positive obligations to create an environment in which this freedom can be freely exercised, as well as their negative obligations to avoid arbitrarily limiting the freedom through direct, indirect, or covert interventions. There is no doubt that these positive and negative obligations of public authorities are of great importance for the validity of the right. However, in the case of the freedom of assembly, in order to speak of the existence of the freedom itself, it is first and foremost necessary for the determination of the place and time of assemblies to be recognized as a right of the demonstrators.

The distinctive functions of the freedom of assembly are to draw the attention of its addressees through the joint exercise of freedom of expression and to directly influence the formation of democratic political will. The accessibility of locations of historical and political significance or of locations where the activities of public authorities or any institution, organization, or individual that are being protested are taking place, is a *prerequisite* for the achievement of the assembly's objective. Furthermore, the ability of the freedom of assembly to have an impact is closely related to the location being central enough to facilitate interaction with the public. The ability to choose the time of the assembly is equally important for the achievement of its purpose. As important as the date of memorials or traditional events, the topicality of the event or process that is intended to be protested or influenced through the assembly makes the timing of the assembly a *decisive factor* in terms of the freedom's function. Indeed, the inability of demonstrators to determine the time of the assembly virtually nullifies its subject and purpose.

However, in Türkiye's practice, the right of demonstrators to choose the place and time of their assembly, which is crucial for the expression of opinions or the demands raised during meetings and demonstrations to reach their addressees and create an impact, has become a matter of discretionary powers vested in public authorities. Interventions in the right to choose the place of assembly represent one of the clearest examples of contradictions within the constitutional and legal framework. Article 34 of the Constitution explicitly ensures the right of demonstrators to choose the place and time of their assembly without requiring prior permission. The guarantee of not requiring prior permission for an assembly allows demonstrators to exercise their freedom of assembly without being subject to public authorities' approval and to assemble at their chosen place and time. Therefore, categorical restrictions and general bans on the right to choose the place and time, or the broad powers granted to public authorities to impose bans, are incompatible with this constitutional guarantee. *Preventive general bans* that limit demonstrators to certain locations or prevent them from demonstrating at

their planned time have the same effect as denying permission for the assembly. In this context, the guarantee of not requiring prior permission means that interventions in the right to choose the place and time can only be justified with very strong reasons and can only be made exceptionally.

In the case law of the Constitutional Court, it is recognized as a general principle, in line with the guarantee of not requiring prior permission, that demonstrators have the right to choose the time and place of assemblies and that public spaces must be open to the exercise of the right to assembly. However, in Türkiye, Law No. 2911 both grants provincial governors the authority to designate assembly locations<sup>146</sup> and absolutely prohibits assemblies in certain places, such as parks and public service buildings<sup>147</sup>. The authority granted to local administrative governors regarding assembly locations is incompatible with the function of the freedom of assembly, in that it does not allow for the exceptional and temporary closure of specific places based on concrete reasons but rather grants the authority to restrict the exercise of the freedom of assembly solely to a limited number of designated locations. Under the plain wording of the law, all areas other than those designated by the governors are rendered inaccessible to assemblies, as gatherings held outside the designated areas are automatically deemed unlawful without the need for any further assessment.<sup>148</sup> In other words, through this authority, local administrative governors effectively “deny permission” for assemblies across almost the entire city without even initiating a formal permission process which, under the Constitution, should not exist in the first place. This completely nullifies the guarantee of not requiring prior permission.

In this context, Istanbul serves as a striking example, particularly in connection with the bans on Taksim Square, which holds symbolic significance for the freedom of assembly. Although the number of designated assembly locations has recently increased from

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<sup>146</sup> *Article 6* – Assemblies and demonstration marches may be held anywhere within the boundaries of provinces and districts, provided that the following conditions are met. In provinces and districts, the places and routes for assemblies and demonstration marches shall be determined by the highest-ranking local administrative authority, after obtaining the opinions of the provincial and district representatives of political parties represented in the Grand National Assembly of Türkiye, the mayors of the municipalities along the planned routes, the three trade unions with the largest membership, and the provincial and district representatives of professional organizations with the status of public institutions. The designated places and routes must not disturb public order and general security or excessively and intolerably disrupt the daily lives of citizens, and must comply with the limitations set out in the first paragraph of Article 22. Taking into account the size, level of development, and settlement characteristics of the province or district, more than one place and route for assemblies and demonstration marches may be designated.

<sup>147</sup> *Article 22* – ... Assemblies may not be held in parks, places of worship, buildings and facilities used for public services, their annexes, or within an area of one kilometer from the Grand National Assembly of Türkiye.

<sup>148</sup> *Article 23*, paragraphs (d) and (e).

only eight<sup>149</sup> to thirty-eight<sup>150</sup>, the decisions of the governorate, which exclude central locations such as Kadıköy and Taksim, have resulted in almost the entire city being closed off to the exercise of the freedom of assembly. As a consequence, assemblies and demonstration marches held in almost any part of the city are deemed unlawful from the outset, exposing demonstrators who gather at their chosen locations to police intervention<sup>151</sup>, administrative fines<sup>152</sup>, and subsequent criminal proceedings<sup>153</sup>. Moreover, rendering all areas outside a limited number of designated locations within a given geographic area off-limits to assemblies provides a legal basis for the rejection of assembly requests based on individuals' political views and ultimately for arbitrary and discriminatory practices.<sup>154</sup>

It is important to note that, in practice, the recent case law of the Constitutional Court regarding the constitutionally compliant interpretation of the authority of local administrative governors to designate assembly locations, which by its very nature is difficult to reconcile with the function of the freedom of assembly, has not been duly reflected in implementation. Although the Constitutional Court has stated that “the places designated by the highest-ranking local administrative governors as assembly and demonstration areas serve as alternatives intended to facilitate the exercise of the

<sup>149</sup> Istanbul Governorship, *İstanbul'da 2015 Yılı Toplantı ve Gösteri Yürüyüş Alanları Duyurusu* [Announcement on Assembly and Demonstration March Areas in Istanbul for the Year 2015], 30 April 2015, [www.istanbul.gov.tr](http://www.istanbul.gov.tr).

<sup>150</sup> Istanbul Governorship, *2025 Yılı Toplantı ve Gösteri Yürüyüşü Yer ve Güzergahları Hakkında* [On Assembly and Demonstration March Places and Routes for the Year 2025], 28 January 2025, [www.istanbul.gov.tr](http://www.istanbul.gov.tr).

<sup>151</sup> Constitutional Court, *Application of İlhan Yiğit*, no. 2016/7532, 29 December 2021; *Application of Pınar Akbina Karaman*, no. 2016/3871, 3 November 2022; *Application of Sinan Ok*, no. 2018/24902, 16 November 2023.

<sup>152</sup> Constitutional Court, *Application of Songül Eriş and Bedriye Kuş*, no. 2020/38552, 30 March 2022; *Application of Hüseyin Doğan and Yusuf Kaya*, no. 2020/4741, 5 October 2023.

<sup>153</sup> Constitutional Court, *Application of Ali Demirci and Others*, no. 2015/16311, 20 September 2018.

<sup>154</sup> In Urfa, the Şenyaşar family's request to set up a tent in front of the courthouse to hold a vigil demanding the punishment of those who had killed their relatives was rejected on the grounds that the area was not among the locations designated by the governorate. In their application, the Şenyaşar family argued that no intervention had been made against protest tents set up in front of the offices of the Peoples' Democratic Party (HDP) in different cities of the region, where demonstrations were held demanding the return of children who had joined the PKK, even though those areas were also not among the locations designated by the governorates. However, this argument was not taken into account. *Evrensel*, “Şenyaşar ailesinin çadır kurma talebine ret” [Şenyaşar Family's Request to Set Up a Tent Rejected], 20 December 2021, <https://www.evrensel.net/haber/450706/senyaşar-ailesinin-ca-dir-kurma-talebine-ret>. Similarly, the application made by the Istanbul Provincial Organization of the Republican People's Party (CHP) to hold a rally on Galata Bridge to protest the crimes against humanity and the policy of forced displacement in Palestine was rejected on the grounds that the location was not among those designated by the governorate. One year earlier, however, a rally had been held at the same location by the Milli İrade Platformu [National Will Platform] to protest the crimes against humanity in Palestine, with the son of President Erdoğan among the speakers. *Evrensel*, “CHP'nin Gazze yürüyüşüne İstanbul Valiliği izin vermedi” [Istanbul Governorship Denied Permission for CHP's Gaza March], 7 February 2025, <https://www.evrensel.net/haber/542323/chpnin-gazze-yuruyusune-istanbul-valiligi-izin-vermedi>.

right, and that this does not imply a prohibition on assemblies and demonstrations in other locations,<sup>155</sup> attempts to organize assemblies outside the designated areas continue to be treated as grounds for intervention<sup>156</sup>.

It can similarly be said that the right to choose the time of assemblies has been rendered ineffective in practice. One of the main issues in this regard is the intervention against spontaneous demonstrations. Since the freedom of assembly is often exercised in response to a current event, it may become practically impossible to comply with the statutory requirement of providing notice forty-eight hours in advance. The most significant problem arising from the structure of the law is that it does not provide for any exception in such cases and treats the failure to fulfill the notification requirement, by itself, as a ground for deeming an assembly unlawful.<sup>157</sup> The established case law of the Constitutional Court stating that a failure to comply with the notification requirement cannot alone justify intervention and sanctions is often disregarded in practice.<sup>158</sup>

The most serious interferences with the right to choose the timing of assemblies, not only in the case of spontaneous gatherings but also for those planned for a specific date, stem from the broad powers of postponement and prohibition granted to local administrative governors. Law No. 2911 provides the authority to intervene in the timing of assemblies in three ways. The first is Article 15, which grants the governor the authority to postpone assemblies for up to ten days if multiple assembly requests are received for the same day within a province and the governor determines that law enforcement forces and the armed forces available for support would be insufficient.<sup>159</sup> In addition, Article 17 grants public authorities the power to postpone a specific

<sup>155</sup> Constitutional Court, *Application of Şerafettin Can Atalay*, no. 2021/9387, 19 January 2023, § 37.

<sup>156</sup> Constitutional Court, *Application of Türkiye Devrimci İşçi Sendikaları Konfederasyonu (DİSK) and Others*, no. 2016/14517, 12 October 2023; *Application of Tacettin Çolak*, no. 2019/15690, 16 November 2023; *Application of Besna Tosun*, no. 2019/30632, 13 February 2024.

<sup>157</sup> Article 23, paragraph (a).

<sup>158</sup> Constitutional Court, *Application of Maside Ocak Kışlakçı*, no. 2019/21721, 16 November 2022, §§ 23–27; *Application of Abdülkerim Ataman*, no. 2021/58415, 10 December 2024, §§ 11–16.

<sup>159</sup> Article 15 – If multiple assemblies are requested to be held on the same day within the boundaries of a province, and the governor concludes that the security forces under their command, as well as other forces that may be called upon if necessary, are insufficient to ensure that these assemblies are held safely, they may postpone some of the assemblies once, for a period not exceeding ten days. In such postponement, the order of application shall be taken into consideration.

assembly<sup>160</sup>, while Article 19 grants the authority to postpone or prohibit all assemblies within one or more districts<sup>161</sup>.

The fundamental problem with the regulation of postponement and prohibition powers, which by their legal consequences have the potential to nullify the guarantee against prior permission, lies in the mere repetition of the abstract limitation criteria set out in the Constitution, such as the protection of public order, national security, and the rights and freedoms of others, without any further concretization. In this respect, only in prohibition decisions, which are used more frequently in practice than postponement decisions, has an additional criterion, namely the “existence of a clear and imminent danger that a crime will be committed,” been introduced to limit the discretion of the administration. However, the legal grounds granting the authority to restrict the right to choose the timing of assemblies are not limited to these provisions. The implementation of another power recently added to the Law on Provincial Administration, which is frequently used by public authorities to interfere with the freedom of assembly, further demonstrates the ineffectiveness of the criteria intended to limit administrative discretion.

Through a paragraph added to Article 10, subparagraph (C) of the Law on Provincial Administration, governors have been granted the authority to regulate or restrict individuals’ “movement” and “gathering” in certain places or at certain times for up to fifteen days, in cases where there are serious indications that public order or security has been or will be disrupted to the extent of halting or severely interrupting the normal course of life. First of all, considering that Law No. 2911 constitutes a specific regulation concerning the freedom of assembly, it must be emphasized that the Law on Provincial Administration, as a general law containing vague terms such as movement and gathering, cannot be relied upon as a legal basis to restrict this freedom.<sup>162</sup> Nevertheless, in practice, it is observed that prohibition decisions frequently cite both Articles 17 and 19 of Law No. 2911 and Article 10 of the Law on Provincial Administration together, and

<sup>160</sup> Article 17 – ... the governor or district governor may postpone a specific assembly for a period not exceeding one month for the purposes of protecting national security, public order, preventing the commission of crimes, safeguarding public health and public morals, or protecting the rights and freedoms of others. They may also prohibit the assembly if there is a clear and imminent danger that a crime will be committed.

<sup>161</sup> Article 19 – Governors may prohibit all assemblies within one or more districts under their jurisdiction for a period not exceeding one month, based on reasons related to the [protection of national security, public order, the prevention of crime, the protection of public health and public morals, or the protection of the rights and freedoms of others,] provided that there is a clear and imminent danger that a crime will be committed.

<sup>162</sup> Çiğdem Sever, *Genel Yetki Normları ile Olağanüstünün Olağanlaşması: Toplantı ve Gösteri Yürüyüşü Hakkı Örneği* [The Normalization of the Exceptional through General Authority Norms: The Example of the Right to Assembly and Demonstration], p. 84.

that the reasoning provided in these decisions merely repeats the criteria set out in the laws without further elaboration. As a result, while multiple references to different legal bases give the appearance of reinforcing the decisions' legality, they fail to provide concrete, relevant, and sufficient reasoning that would satisfy the requirements of legality.<sup>163</sup>

The scope of application of the postponement and prohibition powers, shaped by reliance on these three articles, has expanded to such an extent<sup>164</sup> that arbitrariness has become normalized, going beyond merely the absence of relevant and sufficient reasoning. Today, it is now common practice for local administrative governors to prohibit all assemblies across an entire province by invoking Article 19 of Law No. 2911, which in fact only grants the authority to prohibit all assemblies within one or more districts, not the entire province.<sup>165</sup> Governors can issue decisions that effectively subject assemblies to prior permission, disregarding the constitutional guarantee against prior permission explicitly provided for in the Constitution. Much like the text

<sup>163</sup> Following the appointment of a trustee to the Metropolitan Municipality, the prohibition decision covering the entire city of Mardin serves as an example in this regard: "Following a terrorism investigation/prosecution conducted against the Mayor of Mardin Metropolitan Municipality, the Mayor was dismissed by the Ministry of the Interior, and a Deputy Mayor was appointed in their place. Considering the possibility that groups sympathetic to terrorist organizations may organize all kinds of unlawful acts and activities in order to disrupt the environment of peace and security established throughout the province, and for the purpose of ensuring public order and security, personal inviolability, the security of property, and public welfare within the provincial borders, all acts and activities that may be carried out in open areas, including but not limited to press statements, gatherings, marches, hunger strikes, sit-in protests, rallies, setting up stands, pitching tents, distributing leaflets or brochures, and hanging posters or banners, as well as organizing acts and activities in our city center and districts (within the administrative borders of the province), supporting acts and activities that may be organized, and the entry and exit of individuals, groups, and vehicles intending to participate in such acts and activities into and out of the provincial borders, are prohibited for a period of ten days, from 4 November 2024 at 09:00 AM until 13 November 2024 at 11:59 PM, covering the entire geographical boundaries of Mardin Province including the city center and all districts, pursuant to Article 11(C) of the Law on Provincial Administration No. 5442 and Articles 17 and 19 of the Law on Meetings and Demonstration Marches No. 2911. Activities deemed appropriate by the Governorate and District Governorates, and theatrical plays, performances, and various forms of shows and activities within the scope of Additional Article 1 of the Law on Police Duties and Authorities No. 2559, as well as the commercial activities of private law legal entities with commercial status, are excluded from this prohibition." Source: <http://www.mardin.gov.tr/basin-duyurusu-04112024>. For similar prohibition decisions, see: Eskişehir Governorship, Prohibition Decision, 6 August 2021, <http://www.eskisehir.gov.tr/yasaklama-karari06082021>; Diyarbakır Governorship, Press Release – Prohibition Decision, 16 May 2024, <http://www.diyarbakir.gov.tr/basin-duyurusu--yasaklama-karari>; Elazığ Governorship, Prohibition Decision dated 22 November 2024 and numbered 2024/12, 22 November 2024, <http://www.elazig.gov.tr/22112024-tarihli-yasaklama-karari>; Aydın Governorship, Prohibition Decision, 8 July 2021, <http://www.aydin.gov.tr/basin-duyurusu>; Erzurum Governorship, Prohibition Decision, 16 May 2024, <http://www.erzurum.gov.tr/yasaklama-karari-2024-1>; Mersin Governorship, Prohibition Decision, 28 October 2022, <http://www.mersin.gov.tr/basin-duyurusu-yasaklama-karari27102022>.

<sup>164</sup> The Association for Monitoring Equal Rights identified 1,088 prohibition decisions between 2018 and 2021. See Çiğdem Sever, *Türkiye'de Toplantı ve Gösteri Yürüyüşü Hakkı Bakımından İdari Yargının Etkili Başvuru Yolu Olma Niteliği* [The Effectiveness of Administrative Judiciary as a Remedy Concerning the Right to Assembly and Demonstration in Türkiye], Association for Monitoring Equal Rights, 2022, p. 16.

<sup>165</sup> Constitutional Court, *Application of Aklime Hanas and Others*, no. 2021/36970, 20 December 2023, § 31.

of the Constitution itself<sup>166</sup>, the Constitutional Court's judgments which clearly state that there is no legal basis for a system requiring prior permission<sup>167</sup> are disregarded in practice.

This authority, which is in practice predominantly exercised in the form of prohibitions, has now effectively become a tool to suppress societal reactions following political developments.<sup>168</sup> Moreover, traditional events such as International Women's Day on 8 March, Newroz on 21 March, Pride Marches, and Labour Day on 1 May are increasingly being prevented through postponement and prohibition decisions.<sup>169</sup> A similar observation can be made regarding the banning of concerts and festivals.<sup>170</sup> In these decisions, not only is there a mere repetition of the criteria set out in Law No. 2911 and the Law on Provincial Administration without establishing a concrete link to the specific facts or circumstances, but the fact that the area where the demonstration is intended to be held falls outside the locations designated by the governorate is also frequently cited

<sup>166</sup> Bitlis Governorship, *Authorization Requirement for All Events Across the Province for Three Days between 30 December 2023 and 1 January 2024*, <http://www.bitlis.gov.tr/30122023---01012024-tarihleri-arasinda-ilimiz-genelinde-tum-etkinlikler-3-gun-sureyle-izne-baglanmistir>; Mardin Governorship, *Prohibition Decision* dated 6 February 2024, 6 February 2024, <http://www.mardin.gov.tr/06022024-yasaklama-karari>; Denizli Governorship, *Announcement*, 17 May 2024, <http://www.denizli.gov.tr/basin-deneme>.

<sup>167</sup> Constitutional Court, *Application of Cihan Tüzün and Others*, no. 2019/13258, 10 November 2022, §§ 26–32; *Application of Songül Korkmaz and Others*, no. 2020/5722, 18 January 2023, §§ 8–14.

<sup>168</sup> For the prohibition decision issued by the district governorate to prevent the gathering and press statement intended to be held before and after the hearing of Pınar Selek, whose acquittal in the Egyptian Bazaar bombing case was overturned for the fourth time, see: Kağıthane District Governorship, *Prohibition Decision dated 31 March 2023*, 31 March 2023, <http://www.kagithane.gov.tr/31032023-tarihli-yasaklama-karari>. For the prohibition decisions issued by the governorships of thirteen provinces following the imposition of heavy sentences on the defendants in the Kobani trial, in order to prevent protests, see: *Bianet*, “Protest Ban in Thirteen Cities Following the Kobani Trial Verdict,” 17 May 2024, <https://bianet.org/haber/kobani-davasinda-cikan-karar-sonrasi-13-kentte-protesto-yasagi-295489>. For the prohibition decisions issued by the governorships of nine provinces following the appointment of a trustee to the Hakkâri Municipality, in order to prevent protest actions, see: *Oksijen*, “Prohibition on Demonstrations and Open-Air Meetings in Nine Provinces,” 3 June 2024, <https://gazeteoksijen.com/turkiye/dokuz-ilde-gosteri-ve-acik-hava-toplantisi-yasagi- getirildi-213152>. For the prohibition decisions issued following the appointment of a trustee to the Tunceli Municipality, in order to prevent protests, see: *DHA*, “Ten-Day Ban on Protests in Tunceli and Seven-Day Ban in Elazığ,” 23 November 2024, <https://www.dha.com.tr/gundem/tuncelide-10-elazigda-7-gun-eylem-yasagi-2536861>. For the prohibition decision issued to prevent protests and press statements following acts of violence targeting Alawites in Syria, see: *Milliyet*, “District Governorate Announces Protest Ban in Şişli,” 9 March 2025, <https://www.milliyet.com.tr/gundem/kaymakamlik-acikladi-sislide-eylem-yasagi-7325686>.

<sup>169</sup> Association for Monitoring Equal Rights, *Toplantı ve Gösteri Hakkı İzleme Raporu 2021* [Monitoring Report on the Right to Assembly and Demonstration 2021], pp. 13–46.

<sup>170</sup> For an example of a prohibition decision concerning the Anadolu Fest event, which provides no justification, see: Eskişehir Governorship, *Prohibition Decision*, 9 May 2022, <http://www.eskisehir.gov.tr/yasaklama-karari090522>. For a broader discussion on the scope of concert and festival bans, see: Birgün, *Yasaklanan Festivaller ve Kültürel Hegemonya* [Banned Festivals and Cultural Hegemony], 14 August 2022, <https://www.birgun.net/makale/yasaklanan-festivaller-ve-kulturel-hegemonya-398970>.

as a primary justification.<sup>171</sup> A striking example illustrating that the reasoning behind prohibition decisions is -in the words of the Constitutional Court- of a “generic” nature is the Mardin Governorship’s decision to ban the 8 March events. In that decision, one of the grounds for the preventive ban is that “8 March is considered among significant days by the PKK/KCK terrorist organization”.<sup>172</sup> Furthermore, in response to the Pride March that was planned to be held in Istanbul last year, the Istanbul Governorship resorted directly to enforcement measures without providing any justification, solely on the basis that the gathering was an “unauthorized demonstration”<sup>173</sup>.

Considering the broad scope of the powers of postponement and prohibition, judicial review of such decisions is of great importance for the protection of the freedom of assembly. However, in Türkiye, it is not possible to speak of the existence of an effective remedy against postponement and prohibition decisions. The main issue is that it is almost impossible to obtain a suspension of execution or an annulment decision concerning prohibition orders before the planned date of the demonstration, especially when the prohibition targets assemblies organized in response to current developments. The expedited judicial procedure introduced into the Code of Administrative Procedure in 2014 does not cover disputes relating to fundamental rights. With regard to requests for the suspension of execution, a situation of practical impossibility exists. This is because there is no legal barrier preventing authorities from issuing prohibition decisions immediately before the planned demonstration and additionally, in cases where the event is scheduled to take place over the weekend, there is no duty judge system within the administrative judiciary that would allow for an immediate appeal against a refusal decision issued on a Friday or Saturday. As a result, annulment and suspension of execution decisions, when granted in exceptional situations, are generally

<sup>171</sup> For an example where the fact that demonstrations were intended to be held outside the locations designated by the governorship was cited as a justification for the bans on Pride Marches, see:

Istanbul Governorship, *Press Release*, 17 June 2016, <http://www.istanbul.gov.tr/basin-duyurusu-17062016>;

Istanbul Governorship, *Press Release*, 24 June 2017, <http://www.istanbul.gov.tr/basin-duyurusu-24-06-2017-40>;

Kaos GL, *Valilik, İstanbul LGBTİ+ Onur Yürüyüşü’nü yasakladı* [Governorship Banned the Istanbul LGBTI+ Pride March], 29 June 2018, <https://kaosgl.org/haber/valilik-istanbul-lgbti-onur-yuruyusunu-yasakladi>. For a similar justification used in the banning of International Women’s Day events, see:

Evensel, *Beyoğlu Kaymakamlığı yasakladı; kadınlar, “8 Mart yasaklanamaz” dedi* [Beyoğlu District Governorship Banned It; Women Said, “8 March Cannot Be Banned”], 8 March 2024, <https://www.evrensel.net/haber/484399/beyoglu-kaymakamligi-yasakladi-kadinlar-8-mart-yasaklanamaz-dedi>.

<sup>172</sup> Mardin Governorship, *Prohibition Decision dated 28 February 2023*, <http://www.mardin.gov.tr/28022023-yasaklama-karari>.

<sup>173</sup> Istanbul Governorship, *Press Statement (2024/47)*, 30 June 2024, <http://www.istanbul.gov.tr/basin-aciklamasi-202447>.

obtained only after the event has lost its topical relevance.<sup>174</sup>

At this point, another fundamental issue concerns the open-ended concepts contained in the relevant laws, as discussed above. The abstract nature of these concepts grants public authorities broad discretionary powers, which in turn complicates judicial review by administrative courts.

What further exacerbates this situation is the tendency of administrative courts to refrain from concretizing these vague concepts or from conducting a rigorous proportionality review, and their frequent disregard for the lack of reasoning in postponement and prohibition decisions by deferring to the discretion of the administration.<sup>175</sup> These shortcomings in judicial review by administrative courts have also been identified by the Constitutional Court.<sup>176</sup>

## **B. Arbitrary and Disproportionate Interferences with the Freedom of Assembly**

The incompatibility of Türkiye’s legal regulations and practices with the comprehensive case law developed by the ECtHR and the Constitutional Court regarding the framework and limits of interferences with the freedom of assembly is not limited to bans on the choice of location or prohibition decisions. In practice, the fundamental requirement of necessity in a democratic society, which is explicitly safeguarded by the ECHR and the Constitution and serves as the primary standard for reviewing interferences with the freedom of assembly, is generally disregarded. This standard, as interpreted by the ECtHR and the Constitutional Court in light of the functioning, order, and protection of a pluralistic democracy, requires that interferences with the freedom of assembly be based on concrete information and findings, be supported by relevant and sufficient reasoning, and meet the requirement of proportionality. This legal framework is also significant for the prevention of arbitrariness, which constitutes the main purpose of

<sup>174</sup> T24, İstanbul Bölge Adliye Mahkemesinden “Feminist Gece Yürüyüşü” yasağına ihlal kararı! [Istanbul Regional Court of Justice Ruled a Violation Regarding the “Feminist Night March” Ban], 22 March 2024, <https://t24.com.tr/haber/istanbul-bolge-adliye-mahkemesi-nden-feminist-gece-yuruyusu-yasagina-ihlal-karari,1157204>; Evrensel, *Antep Valiliğinin eylem yasağı kararının yürütmesi bitime bir gün kala durduruldu* [Execution of Antep Governorship’s Protest Ban Suspended One Day Before Expiration], 27 February 2025, <https://www.evrensel.net/haber/544499/antep-valiliginin-eylem-yasagi-kararinin-yurutmesi-bitime-bir-gun-kala-durduruldu>.

<sup>175</sup> See Çiğdem Sever, *Türkiye’de Toplantı ve Gösteri Yürüyüşü Hakkı Bakımından İdari Yargının Etkili Başvuru Yolu Olma Niteliği* [The Effectiveness of Administrative Judiciary as a Remedy Concerning the Right to Assembly and Demonstration in Türkiye], pp. 18–22.

<sup>176</sup> Constitutional Court, *Application of Ali Bozan*, no. 2021/27262, 10 January 2024, § 39; *Application of Bahri Oğuz and Mehmet Erdem*, no. 2021/52226, 14 February 2024, § 17.

the rule of law as one of the defining characteristics of the state under the Constitution, and for the protection of human dignity, which is the core value toward which human rights are directed, particularly in the context of the prohibitions of ill-treatment. In Türkiye, the lack of relevant and sufficient reasoning in interferences with the freedom of assembly has escalated to a point where the absence of any reasoning has become a fundamental problem.<sup>177</sup> This situation undoubtedly fosters arbitrariness and undermines the principle of the rule of law. At the same time, however, the justification based on societal sensitivities, which has become prominent in interferences with the freedom of assembly particularly since the Gezi protests, produces results that severely damage the pluralistic nature of democracy. “The sensitivities of the majority of society,” which both the ECtHR and the Constitutional Court have explicitly underlined cannot constitute a legitimate ground for interferences with fundamental rights, are increasingly invoked in prohibition decisions in recent years.

In prohibition decisions, assumptions are frequently emphasized, such as the possibility that 8 March<sup>178</sup> and LGBTI Pride<sup>179</sup> marches may provoke public outrage due to societal sensitivities, or that anti-war demonstrations may arouse public unrest and threaten national, moral, and humanitarian values, thereby endangering social peace<sup>180</sup>. Another common justification is the concern that such assemblies could lead to clashes between opposing groups<sup>181</sup>. However, the freedom of assembly, together with the freedoms of belief and expression, serves precisely to protect groups who hold views different from the majority and to safeguard the expression of ideas that challenge official or societal truths and may be disturbing to many. In Türkiye, the justifications often

<sup>177</sup> For examples of prohibition decisions issued without any reasoning, see: Aydın Governorship, Prohibition Decision, 8 July 2021, <http://www.aydin.gov.tr/basin-duyurusu>; Antalya Governorship, Antalya Governorship, Prohibition Decision, 4 July 2023, <http://www.antalya.gov.tr/antalya-valiligi-yasaklama-karari>; Mersin Governorship, Prohibition Decision, 15 September 2023, <http://www.mersin.gov.tr/yasaklama-karari-15092023>; Iğdır Governorship, Prohibition Decision, 3 June 2024, <http://www.igdir.gov.tr/yasaklama-karari-2024haziran>; Eskişehir Governorship, Prohibition Decision, 9 May 2022, <http://www.eskisehir.gov.tr/yasaklama-karari090522>.

<sup>178</sup> Evrensel, *Beyoğlu Kaymakamlığı yasakladı; kadınlar, “8 Mart yasaklanamaz” dedi* [Beyoğlu District Governorship Banned It; Women Said, “8 March Cannot Be Banned”], 8 March 2023, <https://www.evrensel.net/haber/484399/beyoglu-kaymakamligi-yasakladi-kadinlar-8-mart-yasaklanamaz-dedi>.

<sup>179</sup> Ankara Governorship, *Press Release Regarding the Prohibition Decision*, 19 November 2017, <http://www.ankara.gov.tr/yasaklama-kararina-iliskin-basin-duyurusu-19112017>; İzmir Governorship, *Prohibition Decision Concerning Assemblies and Demonstration Marches*, 24 June 2022, <http://www.izmir.gov.tr/toplanti-ve-gosteri-yuruyuslerine-dair-yasaklama-karari>; Beyoğlu District Governorship, *Press Statement*, 25 June 2023, <http://www.beyoglu.gov.tr/basin-aciklamasi-31-istanbul-onur-haftasi-yasaklama>.

<sup>180</sup> Istanbul Governorship, *Prohibition Decision Within the Boundaries of Istanbul Province*, 2 March 2020, <http://www.istanbul.gov.tr/istanbul-ili-sinirlari-dahilinde-yasaklama-karari>.

<sup>181</sup> Muğla Governorship, *Prohibition Decision (1)*, 16 April 2021, <http://mugla.gov.tr/yasaklama-karari-1>; Osmaniye Governorship, *Prohibition Decision*, 24 November 2022, <http://www.osmaniye.gov.tr/yasaklama-karari-23112022>.

invoked by public authorities that aim to protect majority values and sensitivities not only contradict their negative obligations under human rights law but also violate their positive obligations to ensure that peaceful demonstrators can assemble freely, even when there is an actual risk of clashes between opposing groups.

In Türkiye, the second major issue regarding interferences with the freedom of assembly within the framework of the necessity requirement in a democratic society is the failure to comply with the principle of proportionality. Under the principle of proportionality, public authorities are obligated to take all necessary measures to ensure the effective exercise of the freedom of assembly and, when unavoidable interferences for legitimate purposes are required, to prioritize methods that impose the least restriction on the freedom. Prohibition decisions restricting access to certain locations and postponement or prohibition orders against assemblies stand out as practices that are incompatible with these obligations, as the heaviest sanctions against peaceful demonstrations have effectively become the rule. This negative situation is further exacerbated by interventions of law enforcement authorities against assemblies that are rendered unlawful as a result of such prohibitions.

Law No. 2911 contains an extensive list of conditions that require peaceful assemblies to be deemed unlawful.<sup>182</sup> In cases where these conditions are not met, law enforcement authorities are, according to the law, first required to issue a warning and then proceed to disperse the assembly.<sup>183</sup> The structure of the law, which does not provide any discretion to consider the peaceful nature of the demonstration, leads to the systematic prioritization of dispersal, the heaviest sanction, against assemblies. However, the series of disproportionate interventions is not limited to this. Although the Law on Police Duties and Authorities requires law enforcement officers to adhere to the principle of proportionality even when dispersing assemblies<sup>184</sup>, interventions intensified by the use of plastic bullets and tear gas can escalate to a severity that results in violations of the prohibition of ill-treatment<sup>185</sup> and even the right to life<sup>186</sup>. Moreover, the widespread practice of detaining participants in peaceful assemblies leads to violations of the right

<sup>182</sup> Article 23.

<sup>183</sup> Article 24.

<sup>184</sup> Article 16 – In the event that police officers encounter resistance while performing their duties, they are authorized to use force to the extent necessary to overcome the resistance.

<sup>185</sup> Constitutional Court, *Application of Keziban Saçılık and Veli Saçılık*, no. 2018/5552, 11 July 2023, §§ 44–56; *Application of Abdulmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, §§ 53–65; *Application of Dilara Aksoy and Özer Durmuş*, no. 2020/23729, 3 October 2024, §§ 30–37.

<sup>186</sup> Constitutional Court, *Application of Dilan Dursun*, no. 2015/18831, 2 November 2022, §§ 66–70.

to liberty and security of person.<sup>187</sup> In addition, not only are the unlawful aspects of such disproportionate interventions rarely identified during judicial review processes, but criminal complaints filed in relation to these interventions also tend to remain ineffective, thereby breaching the state's positive obligation to conduct effective investigations.<sup>188</sup> What further exacerbates this negative situation is the imposition of disproportionate criminal penalties on peaceful demonstrators based on accusations such as violating prohibitions<sup>189</sup> or resisting<sup>190</sup> under Law No. 2911<sup>191</sup>. In addition, demonstrators may also be subjected to sanctions under the Law of Misdemeanors<sup>192</sup> or face disciplinary measures within the framework of administrative law if they hold student<sup>193</sup> or civil servant<sup>194</sup> status.

### **C. The Chilling Effect on the Exercise of the Freedom of Assembly Stemming from Legal and Political Frameworks**

In Türkiye, it is a well-established fact that the ability to exercise the freedom of assembly has been excessively restricted due to the structure of Law No. 2911, which effectively places the freedom under severe constraint. The primary factors contributing to this situation are the transformation of the legal provisions into hidden barriers to the exercise of the freedom and the chilling effect created on demonstrators. As emphasized in the case law of the ECtHR and the Constitutional Court, the primary

<sup>187</sup> Constitutional Court, *Application of Fatma Talia Alan*, no. 2021/25821, 11 July 2024, §§ 13–19; *Application of Ali Ekber Derman and Mehmet Uçar*, no. 2021/16510, 5 June 2024, §§ 10–19.

<sup>188</sup> Constitutional Court, *Application of Abdülmecit Yıldırım and Others*, no. 2021/32660, 17 September 2024, §§ 67–72; *Application of Dilara Aksoy and Özer Durmuş*, no. 2020/23729, 3 October 2024, § 35; *Application of Ataberk Mest and Others (2)*, no. 2020/5116, 2 May 2024, §§ 17–34.

<sup>189</sup> Article 28.

<sup>190</sup> Article 32.

<sup>191</sup> Constitutional Court, *Application of Ali Orak and İrfan Gül*, no. 2014/10626, 18 April 2018, §§ 57–67; *Application of Abdülkerim Ataman*, no. 2021/58415, 10 December 2024, §§ 11–16; *Application of Ramazan Düger and Others*, no. 2018/31211, 2 October 2024, §§ 69–91; *Application of Güven Usta (2)*, no. 2021/42571, 17 July 2024, §§ 28–52.

<sup>192</sup> Constitutional Court, *Application of Kadim Doğan and Others*, no. 2018/21466, 2 November 2023, §§ 5–14; *Application of Hüseyin Doğan and Yusuf Kaya*, no. 2020/4741, 5 October 2023, §§ 6–14; *Application of Çağla Yolaşan Kurul*, no. 2021/29184, 27 September 2023, §§ 29–62; *Application of Songül Korkmaz and Others*, no. 2020/5722, 18 January 2023, §§ 7–14; *Application of Songül Eriş and Bedriye Kuş*, no. 2020/38552, 30 March 2022, §§ 45–54.

<sup>193</sup> Constitutional Court, *Application of Çağrı Çolak and Others*, no. 2020/600, 6 September 2023, §§ 10–18; *Application of Melisa Kaya*, no. 2018/19529, 1 November 2023, §§ 9–17.

<sup>194</sup> Constitutional Court, *Application of Selahattin Alp and Others*, no. 2021/36551, 23 October 2024, §§ 13–20; *Application of Recep Oruç*, no. 2021/29033, 23 October 2024, §§ 20–23; *Application of Yılmaz Güneş*, no. 2020/29046, 18 September 2024, §§ 19–29; *Application of Mahfuz Karaaslan*, no. 2019/26363, 27 February 2024, §§ 18–27.

function of regulations concerning the freedom of assembly is to facilitate the peaceful conduct of demonstrations. Therefore, for public authorities to fulfill this primary function, errors or omissions made by demonstrators in the process of complying with the formal and procedural requirements set out by law cannot, on their own, constitute sufficient justification for an interference with the freedom of assembly. However, under Law No. 2911, any failure to meet these formal and procedural requirements automatically results in the assembly being classified as unlawful and mandates its dispersal.

To concretize the structure of Law No. 2911, in any given province or district, assemblies held outside the locations designated by public authorities are deemed unlawful from the outset. Taking Istanbul as an example, any demonstration held outside the thirty-eight locations currently designated by the governorship is considered unlawful under the law. Thus, in geographic terms, the prohibition effectively covers almost the entire city. If a demonstration is attempted in one of the few remaining designated locations, the absence of prior notification in the case of spontaneous assemblies constitutes a ground for unlawfulness, while prohibition decisions render planned demonstrations and events unlawful. In short, even if individuals are aware that they are exercising their right to peaceful assembly as guaranteed by the Constitution, they are compelled to act under the concern that they may be engaging in an unlawful activity under Law No. 2911, which public authorities primarily enforce. Those who nevertheless participate in a peaceful demonstration, relying on the Constitution and the Constitutional Court's case law binding on public authorities, must also anticipate that they may face the dispersal of the demonstration by law enforcement authorities pursuant to the obligations imposed by the law. Furthermore, merely expressing an intention to organize or participate in a peaceful assembly may expose individuals to criminal proceedings or other sanctions on accusations of incitement, violation of prohibitions, or resistance as prescribed by Law No. 2911.

As a result, it can be said that due to the structure of Law No. 2911, which is filled with hidden barriers and is incompatible with the Constitution and the decisions of the Constitutional Court, the freedom of assembly in Türkiye has been transformed from a fundamental right into an unlawful activity. This situation undoubtedly creates a severe chilling effect on individuals who wish to exercise their right to freedom of assembly. Elements that further exacerbate this chilling effect include the characterization of the freedom of assembly not as a tool of democratic participation but as part of an uprising

or a coup attempt by components of the political power since the Gezi protests.<sup>195</sup> This approach has not remained at the level of political discourse but has also found its reflection at the judicial level, notably in the imposition of heavy sentences for the crime of attempting to overthrow the government in the trial related to the Gezi protests. The prolonged judicial proceedings and the heavy sentences ultimately imposed, as in the case of the Gezi protests which were attended by millions of people, inevitably create a chilling effect on the expression of democratic political reactions to current developments. It is important to emphasize that the chilling effect generated by the Gezi trial has not ended with the conclusion of the proceedings. Recently, retrospective investigations initiated in connection with the Gezi protests have further intensified this ongoing chilling effect. Very recently, Ayşe Barım, a manager representing actors, was first taken into custody and then arrested on charges of aiding an attempt to overthrow the government, based on allegations that she encouraged her clients to participate in the Gezi protests.<sup>196</sup> Moreover, it was reported in the press that, within the scope of the same investigation, the prosecutor's office sent a request to the Radio and Television Supreme Council (RTÜK) to examine the broadcasts and news reports of media outlets accused of promoting the Gezi protests and contributing to their spread.<sup>197</sup>

The political discourse and judicial proceedings concerning the Gezi protests in recent times are striking in that they point to the possibility that the large masses who participated in the protests may at any time face retrospective criminal proceedings. At the same time, however, these developments deserve attention as another manifestation of the contradiction between the legal framework and the actual practice. In individual applications lodged by persons who were subjected to police violence or faced prison sentences due to their participation in the Gezi protests, the Constitutional Court, taking into account the specific circumstances of each case, has issued numerous

<sup>195</sup> T24, *Bahçeli: Sivil direniş kışkırtmalarının darbeye davet olduğunun farkındayız, yüreğiniz yetiyorsa çıkın sokağa da görelim!* [Bahçeli: We Are Aware That Provocations of Civil Resistance Are Invitations to a Coup, If You Dare, Take to the Streets and We Will See!], 28 January 2025, <https://t24.com.tr/video/bahceli-sivil-direnis-kiskirtmalarinin-darbeye-davet-oldugunun-farkindayiz-yureginiz-yetiyorsa-cikin-sokaga-da-gorelim,63027>; Sözcü, *AKP Gençlik Kolları'ndan 'Gezi' tehdidi: 'Bir daha kalkışsanız karşınızda bizi göreceksiniz* [Threat from AKP Youth Branch Regarding 'Gezi': 'If You Attempt It Again, You Will Face Us'], 27 January 2025, <https://www.sozcu.com.tr/akp-genclik-kollari-ndan-gezi-tehdidi-bir-daha-kalkisirsanz-karsinizda-bizi-goreceksiniz-p131434>.

<sup>196</sup> *Hürriyet, Ayşe Barım tutuklandı* [Ayşe Barım Arrested], 28 January 2025, <https://www.hurriyet.com.tr/gundem/ayse-barim-tutuklandi-42673061>.

<sup>197</sup> T24, *Ayşe Barım'ın tutuklandığı 'Gezi' soruşturması medyaya uzandı: Savcılık RTÜK'ten 12 yıl öncenin görüntüleri talep etti* [The 'Gezi' Investigation Leading to Ayşe Barım's Arrest Extends to the Media: Prosecutor's Office Requested Footage from 12 Years Ago from RTÜK], 3 February 2025, [https://t24.com.tr/haber/ayse-barim-uzerinden-12-yil-sonra-acilan-gezi-sorusturmasi-medya-uzandi-savcilik-rtuk-ten-goruntuleri-talep-etti-,1215598#google\\_vignette](https://t24.com.tr/haber/ayse-barim-uzerinden-12-yil-sonra-acilan-gezi-sorusturmasi-medya-uzandi-savcilik-rtuk-ten-goruntuleri-talep-etti-,1215598#google_vignette).

decisions finding violations of rights.<sup>198</sup> This contradiction between the legal framework and actual practice constitutes a concrete example of the regression in the field of legal certainty, which is a fundamental value toward which the rule of law is directed.

## V. Necessary Amendments to Law No. 2911

This report has sought to demonstrate that the main factors contributing to the erosion of the freedom of assembly in Türkiye are the disregard for the case law of the ECtHR and the Constitutional Court in administrative and judicial processes, alongside the prevailing approach of the political authorities. At this point, it should be emphasized that even without referring to the ECtHR case law, which has historically encountered challenges in being properly implemented within the national legal system, the mere consideration by administrative and judicial authorities of the fundamental principles articulated by the Constitutional Court in individual applications concerning the freedom of assembly would largely suffice to address the current problems. However, the recent crisis between the Constitutional Court and the Court of Cassation regarding the parliamentary immunity of Can Atalay, a member of the Workers' Party of Türkiye (TİP), has rendered it nearly impossible to maintain a positive expectation regarding the objective effect of Constitutional Court decisions. Therefore, it can be said that the exercise of the freedom of assembly in Türkiye will depend largely on developments in the political sphere.

Of course, the observation regarding the determining role of political developments does not alter the fact that the transformation of the structure of Law No. 2911 -a legacy of the 12 September coup- in a more liberty-oriented direction remains a constitutional necessity. Below, a brief list of the primary amendments that should be made in this context will be presented. However, it must once again be emphasized that no legal reform alone can fully shape administrative and judicial practices. For instance, even if amendments are introduced to restrict the discretion of the administration in issuing prohibition decisions, which constitute some of the most severe interferences with the freedom of assembly, and to strengthen judicial review by ensuring the right to an effective remedy, public authorities may still issue prohibition decisions without providing any reasoning, and the courts reviewing these decisions may still conclude, as they often do today, that the absence of reasoning is sufficient.

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<sup>198</sup> Constitutional Court, *Application of E.A.K.*, no. 2015/12263, 16 January 2020; *Application of Ender Ergün*, no. 2016/1849, 19 November 2019; *Application of Egemen Budak*, no. 2016/14870, 9 June 2020.

Therefore, just as the freedom of assembly in Türkiye was first recognized in legislation and then incorporated into constitutions following the de facto exercise of meetings and protest demonstrations during and after the establishment of the Republic, the effective implementation of existing constitutional guarantees today likewise depends on society's willingness to demand and struggle for these rights.

### **A. Incorporating the Concept of Freedom into the Title of the Law**

In any reform initiative concerning Law No. 2911, the first and foremost step should be the amendment of the title of the Law. Among the three principal laws regulating the freedom of assembly in the history of the Republic, only the law enacted under the liberty-oriented atmosphere created by the 1961 Constitution incorporated the concept of "freedom" in its title. In contrast, the laws of 1956 and 1983 omit any reference to freedom and merely refer to "meetings and demonstration marches". As a result, from the outset, these laws appear to focus not on safeguarding the scope and framework of a fundamental freedom but rather on regulating and, above all, controlling an activity perceived as potentially threatening. In other words, as demonstrated by the concrete findings presented in this report, the deliberate avoidance of the concept of freedom is not a mere oversight but a conscious choice reflecting the spirit of the law. Therefore, it is essential that any amendment to Law No. 2911 incorporate the concept of freedom into its title.

### **B. Recognition of the Right of Individuals to Choose the Place and Time of Assemblies**

In order for the amendment to the title of the Law to be meaningfully reflected in its substance, the right of individuals to choose the place and time of assemblies must be recognized in a manner that upholds the guarantee against prior authorization set forth in the Constitution.

In this regard, the authority granted to administrative chiefs under Article 6 of the Law to designate assembly locations, as well as the absolute bans on certain places such as parks, should be abolished. Thus, administrative authorities receiving a notification would retain the ability to propose alternative locations by providing relevant and sufficient justification, in a manner that respects the demonstrators' choice of venue, as a proportionate measure aimed at protecting public order or the rights and freedoms of others.

With respect to the right to choose the time of assemblies, an amendment should be

introduced into Article 10 of the Law, which regulates the notification requirement, to explicitly state that spontaneous assemblies are not subject to prior notification. Regarding the provisions regulating the postponement and prohibition of assemblies, it is necessary, first of all, to abolish the powers granted to the regional governorships, an institution that no longer has legal validity, and to simplify the complex content concerning postponement and prohibition powers currently dispersed across multiple articles. In this context, in order to clarify the framework of legitimate aims required for postponement and prohibition decisions, the concept of “inevitable necessity” developed by the Constitutional Court should also be incorporated into the text of the Law.

### **C. Acknowledgement of the State’s Positive Obligations**

One of the State’s positive obligations within the scope of the freedom of assembly is to take the necessary measures to ensure that counter-demonstrations can be organized peacefully alongside other assemblies. In this regard, the rule set forth in Article 10 of the Law, which grants priority to the first group to submit a notification when different groups wish to assemble at the same place on the same day, should be repealed. Similarly, the provision in Article 15 of the Law, which authorizes the governor to postpone some assemblies if they believe they cannot guarantee security when multiple demonstrations are planned in the same province, should also be removed, as it is incompatible with the State’s positive obligations. The Constitutional Court’s emphasis, as early as 1976, that a public authority vested with the power to call for the assistance of armed forces cannot justify its failure to provide the appropriate conditions for a peaceful assembly, is sufficient to demonstrate that such powers are incompatible with the freedom of assembly.

### **D. Narrowing the Scope of the Definition of Unlawfulness**

In relation to the issue of disproportionate interventions by law enforcement, which constitutes another fundamental problem concerning the freedom of assembly in Türkiye, it is necessary, first and foremost, to narrow the scope of the definition of unlawful assembly found in Article 23, which serves as the starting point of the intervention process. Accordingly, an exception for spontaneous assemblies should be incorporated regarding the notification requirement, and the provisions concerning location bans should be removed from the text of the article. Secondly, the provisions in Article 24 of the Law, which require the dispersal of all unlawful assemblies, should be amended. In this context, the article should explicitly grant law enforcement officers in charge the discretion to decide whether to disperse an assembly, taking into account its

peaceful nature.

### **E. Guaranteeing the Right to an Effective Remedy Against Postponement and Prohibition Decisions**

Finally, both the administrative procedural rules governing the adoption of postponement and prohibition decisions and the judicial procedural rules must be amended to guarantee the right to an effective remedy with respect to the freedom of assembly. In this regard, Law No. 2911 should be amended to include provisions requiring that postponement and prohibition decisions be issued at least two working days prior to the scheduled assembly. In parallel, the Code of Administrative Procedure should be amended to ensure that in cases involving urgent interventions in fundamental rights and freedoms, decisions on requests for the suspension of execution can be issued sufficiently quickly. Through these amendments, a procedural system should be established that resembles the expedited judicial procedure, in which the time limits for preliminary examinations or responses are shortened and maximum timeframes are imposed not only on the parties but also on the courts.

