



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	Turkey
<b>Title:</b>	ECtHR refuses to issue interim measures against curfews in Turkey's Kurdish region, though willing to review the cases
<b>Date:</b>	15 February 2016
<b>Expert:</b>	Dilek Kurban
<b><u>Context</u></b>	
<b>Issue at stake:</b>	ECtHR's review of curfews in Turkey's Kurdish region
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	ECtHR
<b>Field:</b>	All
<b>Applicable law:</b>	Rule 39 of the Rules of Court of the ECtHR

### Content

#### Case:

Since the breakdown of the talks in Summer 2015 between the Turkish government and the Kurdistan Workers' Party's (PKK) imprisoned leader Abdullah Ocalan, clashes between security forces and the Patriotic Revolutionary Youth Movement (YDG-H), an armed movement associated with the PKK, have been ongoing in the Kurdish region. Since 16 August 2015, the government has imposed open-ended, round-the-clock curfew measures in towns and cities predominantly populated by the Kurdish minority. There has been at least 58 officially confirmed curfews in 19 districts of seven cities where at least 1 377 000 people reside. There has been an unprecedented military deployment in the region; security forces equipped with tanks, with armoured vehicles and heavy artillery conducting operations in residential areas without taking security measures to protect civilians. Communication lines, electricity and water were cut off, depriving the residents of basic needs of survival and livelihood. Unable to access basic needs and fearful of their lives, tens of thousands became displaced. Ambulances, health professionals, observers, parliamentarians and journalists were not allowed to enter the curfew zones and were at times attacked by the security forces through tear gas and bullets. As of 8 January 2016, at least 162 civilians died, including 32 minors, 29 women and 24 above the age of 60, due to being shot by the security forces and by unidentified individuals, being caught between fire and lack of access to medical help.<sup>1</sup> The YDG-H forces reportedly prevented residents from leaving the curfew zone and using them as human shields. No investigation has been conducted into the killings, injuries and human

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<sup>1</sup> Human Rights Foundation of Turkey, "Factsheet on Declared Curfews in Turkey between 11 December 2015-8 January 2016", available at: <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-in-turkey-between-11-december-2015-8-january-2016/> (Last accessed 19/01/2016).

rights abuses by security forces and the YDG-H.<sup>2</sup>

Civilians were unable to bury their dead. According to reports from 6 January 2016, 50 dead bodies (including that of 10 children) awaited burial in 3 towns.<sup>3</sup> Dead bodies were left lying on the streets for days, as in the case of 57 year old Taybet Inan, mother of 11, who was killed by a shot from a panzer in front of her house on 19 December. Her brother-in-law was killed and husband injured while they were trying to retrieve her body from the street under heavy shelling.<sup>4</sup> Finally collected a week later on 25 December, Inan's body awaited burial for 17 days.

Since September 2015, applicants ranging from a nine month pregnant woman to a paralysed teenager claimed to be unable to access urgent medical services and fearful for their lives, petitioned the Constitutional Court for interim measures.<sup>5</sup> In one case, the applicants asked the Court's assistance to retrieve and bury the bodies of their family members.<sup>6</sup> While Taybet Inan's family also made a similar request for interim measures for the burial, the authorities secretly buried Inan and her brother in law on 10 January without having notified their families or waiting for the Constitutional Court's ruling.<sup>7</sup> As of 18 January 2016, the Court ruled on five petitions, rejecting them on the ground that the elements for an interim measure had not materialized.<sup>8</sup> The Court concluded that urgent medical and law enforcement services were available to civilians in the curfew zones if they called the emergency numbers and that the applicants concerned had never called for help. As for applicants who could not retrieve the bodies of their family members, the Court concluded that the authorities were not able to access the premises where the applicants claimed the bodies laid and which were under YDG-H control.<sup>9</sup>

### Decision of the Court:

On 29 December and 31 December 2015 and 4 January 2016,<sup>10</sup> a number of applicants asked the ECtHR to indicate interim measures<sup>11</sup> for an end to the curfews and the halting of security operations or their conduct in accordance with international standards.<sup>12</sup> On 31 December, the ECtHR asked the Government: 1) What is the legal ground of the curfews? 2) Are the applicants able to have realistic and adequate access to health services and their basic needs? Would their lives be endangered if they were to leave

<sup>2</sup> Human Rights Watch, *Turkey: Mounting Security Operation Deaths, Scores of Civilians among Hundreds Killed in Southeast*, <https://www.hrw.org/news/2015/12/22/turkey-mounting-security-operation-deaths> (last accessed 19/01/2016); Diyarbakir Bar Association, *Cizre Sokağa Çıkma Yasağı: İnceleme Raporu: 4-12 Eylül 2015* (Cizre Curfew: Fact Finding Report: 4-12 September 2015), <http://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu.pdf> (last accessed 19/01/2016).

<sup>3</sup> "Sur, Cizre ve Silopi'de 10'u Çocuk 50 Cenaze Hala Defnedilemedi", *Diken*, 6 January 2016, <http://www.diken.com.tr/sur-cizre-ve-silopide-10u-cocuk-50-cenaze-hala-defnedilemedi/> (last accessed 19/01/2016).

<sup>4</sup> "Taybet İnan'ın Oğlu, Annesini Defnedebilmek için Anayasa Mahkemesi'ne Başvurdu" (Teybet İnan's Son Petitioned to the Constitutional Court to be able to Bury His Mother), *Bianet*, 6 January 2016, <http://bianet.org/bianet/insan-haklari/170842-taybet-inan-in-oğlu-annesini-defnedebilmek-icin-anayasa-mahkemesine-basvurdu> (last accessed 19/01/2016).

<sup>5</sup> The Court can order interim measures under Article 73(1) of its Statute "where there is a serious danger threatening the applicant's life or his/her material or emotional well-being."

<sup>6</sup> Turkish Constitutional Court, *Ayhan Seviktek and Mehmet Oran*, no. 2016/43, 8 January 2016.

<sup>7</sup> "Cenazesi Haftalarca Sokak Ortasında Kalan Taybet ve Yusuf İnan Gizlice Defnedildi" (Taybet and Yusuf Inan whose Dead Bodies Laid on the Streets for Weeks were Secretly Buried), *Yarın*, 11 January 2016, <http://yarinhaber.net/guncel/31943/cenazesi-haftalarca-sokak-ortasinda-kalan-taybet-ve-yusuf-inan-gizlice-defnedildi> (last accessed 19/01/2016).

<sup>8</sup> Turkish Constitutional Court, *Mehmet Girasun and Ömer Elçi*, no. 2015/15266, 11 September 2015; *Meral Danış Beştaş*, no. 2015/19545, 22 December 2015; *İrfan Uysal and Others*, no. 2015/19907, 26 December 2015; *Ayhan Seviktek and Mehmet Oran*, no. 2016/43, 8 January 2016.

<sup>9</sup> Turkish Constitutional Court, *Ayhan Seviktek and Mehmet Oran*, no. 2016/43, 8 January 2016.

<sup>10</sup> ECtHR, "Requests for lifting of curfew measures in south-eastern Turkey: the Court refuses to indicate interim measures for lack of elements, but is pursuing its examination of applications", 13 January 2016.

<sup>11</sup> The Court may, under Rule 39, indicate interim measures to any State party to the Convention. The Court applies interim measures as urgent measures only where there is an imminent risk of irreparable harm, without prejudging any subsequent decisions on the admissibility or merits of the case in question.

<sup>12</sup> Application by Ömer Elçi to the ECtHR under Rule 39, 29 December 2015, at p. 2.

their houses for emergencies or basic goods? Does the government provide sufficient health services and basic needs in curfew zones? 3) What measures have been and are being taken to safeguard the right to life of the residents?

In its response on 8 January 2016, the government stated that the curfews were based on the Law on Provincial Administration, which authorizes governors to take the necessary requisite measures to maintain peace and security, protect private property and prosperity within provincial borders. The significant increase in terrorist attacks since July 2015 threatened national security and public order in Turkey; the YDG-H sought to forcefully create an autonomous region in residential areas and inserted pressure on civilians by blocking the entry and exit of urban centres by trenches, barricades and bomb tramps, damaging the infrastructure, carrying out armed attacks against healthcare professionals and facilities, educational institutions and security officers. Since July 2015, the PKK killed 27 security officers and 14 civilians in Cizre and Diyarbakir alone. Public services were still provided and the government used every means to meet the basic needs of civilians. At the beginning of the curfew, residents were informed that they could access health and funeral services and obtain food by calling the Police Emergency Line. Where power and water lines got damaged, they were immediately repaired. The authorities distributed food, medicine, diapers and financial aid to the residents. There was no record showing that four of the six applicants in *Evin Çağlı and Others* had applied to the authorities for help or called the emergency line. One of the applicants was transferred from her house to the hospital via ambulance, while another had moved out of the curfew zone and did not express any request when he was contacted by the police.<sup>13</sup> The applicant in *Elçi* did not request to be transferred to a safe zone and there was no indication that his life or security was in danger. In its pleadings before the ECtHR, the government also claimed that “there has been no incident of death which was resulted from the acts of the security forces and established by a court decision.”<sup>14</sup>

On 12 January, the ECtHR decided not to indicate interim measures “because the elements at its disposal were insufficient,”<sup>15</sup> though applying Rule 40 (urgent notification of an application) and Rule 41 (giving priority treatment to an application). The Court referred the matter to a Chamber and remained “open to the applicants to make a fresh request for interim measures should new evidence or circumstances arise.” It asked the government “to take any necessary steps to ensure that physically vulnerable individuals can have access to treatment if they so request” in light of “the gravity of the situation.”

### **Key points of analysis:**

The ECtHR did not address the legality issue. Under the Turkish Constitution, curfews can only be declared during a state of emergency or martial law, subject to parliamentary approval.<sup>16</sup> In this case, there was no such declaration. The Court adopted an extremely narrow understanding of the right to individual petition, failing to take into account the context where over a million civilians are trapped in an internal war and more than a hundred civilians are reported to have been killed. To expect civilians who are aware of the death and injury of others and who live under the imminent threat of death to prove personal physical harm or inability to access basic services imposes an undue evidentiary burden and undermines the right of individual petition. The Court was also cursory in its

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<sup>13</sup> Republic of Turkey Ministry of Justice, Information Requested by the European Court of Human Rights Concerning the Application no. 63130/15 *Evin Çağlı and Others v. Turkey*, 8 January 2016.

<sup>14</sup> Republic of Turkey Ministry of Justice, Information Requested by the European Court of Human Rights Concerning the Application no. 63130/15 *Evin Çağlı and Others v. Turkey*, 8 January 2016, at pp. 10-11; Republic of Turkey Ministry of Justice, Information Requested by the European Court of Human Rights Concerning the Application no. 63129/15 *Elçi v. Turkey*, 8 January 2016.

<sup>15</sup> ECtHR, “Requests for lifting of curfew measures in south-eastern Turkey: the Court refuses to indicate interim measures for lack of elements, but is pursuing its examination of applications”, 13 January 2016.

<sup>16</sup> Articles 119, 120 and 122.

review of the government information. Contrary to the latter's claim, curfew declarations did not contain information about the emergency numbers residents could call.<sup>17</sup>

**Internet link source:**

Turkish Constitutional Court rulings rejecting to issue interim measures:

<http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/cc3b7777-aaaf-49a0-9197-3e1ba1fa6a29?wordsOnly=False> (11 September 2015)

<http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/d98560dd-db10-4548-ada8-f5dafe68bcab?wordsOnly=False> (22 December 2015)

<http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/45033619-72b6-422d-b573-55d6842403e9?wordsOnly=False> (26 December 2015)

<http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/5ac7e944-7448-41c6-9b97-e80da680ec14?wordsOnly=False> (31 December 2015)

<http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/a678282c-5709-4db8-b1d9-001713e2a32a?wordsOnly=False> (8 January 2016)

All last accessed 05/02/2016.

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<sup>17</sup> The Constitutional Court reviewed a case where the applicants raised this issue, but declined to order interim measures. Turkish Constitutional Court, *Ayhan Seviktek and Mehmet Oran*, no. 2016/43, 8 January 2016.