



**SCREENING CHAPTER 23
JUDICIARY AND FUNDAMENTAL RIGHTS**

AGENDA ITEM III: FUNDAMENTAL RIGHTS

**Country Session: Republic of TURKEY
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3.1. GENERAL INTRODUCTION



General provisions regarding fundamental rights are set out in the Second Part of the Constitution of Republic of Turkey under the title of Fundamental Rights and Duties. These provisions arrange the nature, use by individuals and restriction by the state of fundamental rights.

Turkey is also active in the international area with regard to the ratification of international conventions on fundamental rights and freedoms.



ARTICLE 12

Nature of Fundamental Rights and Freedoms

Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.

The fundamental rights and freedoms also comprise the duties and responsibilities of the individual to the society, his or her family, and other individuals.



ARTICLE 13

Restriction of Fundamental Rights and Freedoms

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.



ARTICLE 14

Prohibition of Abuse of Fundamental Rights and Freedoms

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights.

No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution.

The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.



ARTICLE 15

Suspension of the Exercise of Fundamental Rights and Freedoms

In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.

Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.



ARTICLE 16

Status of Aliens

The fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law.

ARTICLE 90(4)

Ratification of International Treaties

International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements on the grounds that they are unconstitutional. In case of contradiction arising from different provisions on the same issue between international agreements regarding basic rights and freedoms approved through proper procedure and domestic laws, the provisions of international agreements shall take precedence.



MAIN INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND PROTOCOLS SIGNED/RATIFIED BY TURKEY

An important aspect of Turkey's human rights policy is to become party to the core international human rights instruments. Turkey is party to all the core international instruments pertaining to fundamental rights and freedoms, including all of the seven principal international human rights treaties of the UN. Similarly, Turkey is party to all of the major conventions of the Council of Europe pertaining to human rights and fundamental freedoms.



MAIN INTERNATIONAL HUMAN RIGHTS CONVENTIONS AND PROTOCOLS SIGNED/RATIFIED BY TURKEY

UNITED NATIONS

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination Against Women
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



- Convention on the Rights of the Child
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the International Covenant on Civil and Political Rights (ratification is at its final stage)
- Second Optional Protocol to the International Covenant on Civil and Political Rights



- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (not yet ratified)

Other UN human rights and related conventions

- Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- Slavery Convention 1926 as amended (1955)
- Convention relating to the Status of Refugees (1951)



- UN Convention Against Transnational Organized Crime 2000 and its Protocols against the smuggling of migrants by land, sea and air, and to prevent, suppress and punish trafficking in persons, especially women and children



COUNCIL OF EUROPE

- Convention for the Protection of Human Rights and Fundamental Freedoms
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Cultural Convention
- European Social Charter
- European Code of Social Security



- European Convention on the Legal Status of Migrant Workers
- Supplementary Agreement for the Application of the European Convention on Social Security
- European Convention on the Exercise of Children's Rights
- European Agreement relating to persons participating in proceedings of the European Court of Human Rights
- Convention on Human Rights and Biomedicine



- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinion
- Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (not yet ratified)



- Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention
- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (not yet ratified)
- Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms



- Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (not yet ratified)
- Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances
- Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention



- Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- Protocol Amending the European Social Charter (ratification process is at its final stage)
- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (not yet ratified)



- Additional Protocol to the Convention for the Protection of Individual with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (not yet ratified)
- European Social Charter (revised) (ratification process is at its final stage)
- Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (not yet ratified)



INTERNATIONAL LABOUR ORGANIZATION

- Weekly Rest (Industry) Convention (1921) (No.14)
- Forced or Compulsory Labour Convention (1930) (No.29)
- Freedom of Association and Protection of the Right to Organise Convention (1948) (No.87)
- Right to Organize and Collective Bargaining Convention (1949) (No.98)
- Equal Remuneration Convention (1951) (No.100)



- Abolition of Forced Labour Convention (1957) (No.105)
- Discrimination (Employment and Occupation) Convention (1958) (No.111)
- Employment Policy Convention (1964) (No.122)
- Minimum Age Convention (1973) (No.138)
- Labour Relations (Public Service) Convention (1981) (No.151)
- Worst Forms of Child Labour Convention (1999) (No.182)



CONVENTIONS OF THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

- Convention on the law applicable to maintenance obligations towards children (1956)
- Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children (1958)
- Convention concerning the powers of authorities and the law applicable in respect of the protection of minors (1961)



- Convention on the Law Applicable to Maintenance Obligations (1973)
- Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations (1973)
- Convention on the Civil Aspects of International Child Abduction (1973)
- Convention on International Access to Justice (1980) (not yet ratified)
- Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (1993)