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**FOR THE ATTENTION OF:**

- **Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**
- **Special Rapporteur on the right to education**
- **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**
- **Special Rapporteur on the rights to freedom of peaceful assembly and of association**
- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**
- **Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**
- **Special Rapporteur on the situation of human rights defenders**

Dear Madam/Sir,

**Urgent Action:** The continued threats to academic freedoms and institutional autonomy of the universities in Turkey, the recent appointment of Melih Bulu as the new rector of the Boğaziçi University by the President without any election at the University or consultation with the University senate, violent intervention of the police to the peaceful protests of the students and their arbitrary arrests and detention, and the ongoing discrimination and hate

speech against lesbian, gay, bisexual, transgender and intersex (LGBTI+) community by the government authorities and pro-government media.

## **I. Background**

1. As well-known to your mandates, the attempted coup d'état that took place in Turkey on 15 July 2016 led to the introduction of a state of emergency which lasted for two years and paved the way for a continued crackdown on human rights. The executive presidency introduced in 2018, which is seen as the emergence of the one-man rule in Turkey by many,<sup>1</sup> and amended anti-terrorism law have also left the President with sweeping powers to stifle dissent.<sup>2</sup> Arbitrary arrests and detentions, abusive prosecutions, torture and ill-treatment, mass summary dismissals of the public sector workers, clampdown on the right to freedom of association and freedom of expression have been few examples of the systemic rights violations in the country.<sup>3</sup> The dismissal of thousands of academics and the prosecution of many, together with interference with academics' work and student protests, led to academic freedom being hollowed out.<sup>4</sup> The state of academic freedom and university autonomy in Turkey is crucial to the issues raised in this letter and will be explored further below.

## **II. The Appointment of Melih Bulu as the Rector of Boğaziçi University and the Resultant Protests**

2. On 1 January 2021, President Erdogan, using his enhanced powers, appointed Melih Bulu as the new rector of Boğaziçi University through a presidential decree issued on 1 January 2021. Melih Bulu has strong links to Erdogan's party, the Justice and Development Party (AKP), having stood as a candidate for the party in the parliamentary elections in 2015. His appointment broke a long-standing tradition of electing rectors from within the

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<sup>1</sup> Human Rights Watch, 'Turkey: President bids for One-Man Rule' (*HRW*, 18 January 2017) available at <<https://www.hrw.org/news/2017/01/18/turkey-president-bids-one-man-rule>>

<sup>2</sup> Gulsen Solaker, Ece Toksabay, 'Turkey's emergency rule expires as Erdogan's powers expand' (*Reuters*, 18 July 2018) available at <<https://www.reuters.com/article/us-turkey-security-idUSKBN1K824E>>

<sup>3</sup> Amnesty International, 'The State of Emergency has ended but urgent measures are now needed to reverse the roll back of human rights' (*Amnesty International*, 18 July 2018) available at <<https://www.amnesty.org/en/latest/campaigns/2018/07/turkey-state-of-emergency-lifted/>>

<sup>4</sup> Human Rights Watch, 'Turkey: Government targeting academics' (*HRW*, 14 May 2018) available at <<https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>>

university.<sup>5</sup> As a result, there was immediate outrage from the university's student body and faculty members. The appointment of Melih Bulu has been perceived as an intrusion on campus by President Erdogan, particularly due to Bulu's political ties to the AKP. The students and teachers have also connected their plight to the overall disintegration of democratic norms in the country, including the academic freedom. Since 2016, the government led by Erdogan has appointed an increasing number of trustees to municipalities won by the opposition and companies of the perceived opponents, which ultimately aims at eliminating any form of challenge to its increasingly authoritarian policies. Therefore, students and teachers saw the installation of a new rector from outside Boğaziçi as an encroachment on university autonomy and academic freedom.

3. Protests against this appointment began on 4 January 2021 in front of the South Campus of the university. The first two days of protests saw approximately 1,000 people, mainly students of the Boğaziçi University, take part in peaceful demonstrations.<sup>6</sup> The academics also gave their support to the protests. A group of Boğazici academics have been silently standing with their back to the Rectoral Building starting from the 5 January the handover ceremony for the new rector.<sup>7</sup> Over the course of the protests, the police were heavily deployed and cracked down on the protests using teargas, water cannons and rubber bullets to break up the crowds. The Police arrested at least 45 students during down raids between 5 to 7 January 2021 for their alleged participation in the protests.<sup>8</sup> Many among the students have alleged torture or other ill-treatment, including being handcuffed on their back, strip searched, beaten and some LGBTI+ students threatened with rape and

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<sup>5</sup> Clare Busch and Merve Pehlivan, 'The High Stakes of Turkey's University Protests' (Foreign Policy, 9 February 2021) available at <<https://foreignpolicy.com/2021/02/09/the-high-stakes-of-turkeys-university-protests/>>

<sup>6</sup> Bethan McKernan, 'Istanbul university students clash with police over rector appointment' (*The Guardian*, 6 January 2021) available at <<https://www.theguardian.com/world/2021/jan/06/istanbul-university-students-clash-with-police-over-rector-appointment>>

<sup>7</sup> Duvar.English, 'Boğaziçi University academics protest Erdoğan's rector appointment as police flood campus' 5 January 2021 available at <<https://www.duvarenglish.com/bogazici-university-academics-protest-erdogans-rector-appointment-as-police-flood-campus-news-55736>>

<sup>8</sup> Amnesty International, Turkey: Students Allege Ill-Treatment In Detention: Boğaziçi University Protestors (13 January 2021), available at <<https://www.amnesty.org/en/documents/eur44/3501/2021/en/>>  
Bethan McKernan, 'Istanbul university students clash with police over rector appointment' (*The Guardian*, 6 January 2021) available at <<https://www.theguardian.com/world/2021/jan/06/istanbul-university-students-clash-with-police-over-rector-appointment>>

subjected to insults.<sup>9</sup> For example, Şeyma Altundal, a student at the university, said that she was beaten by police and had her headscarf dislodged when she was arrested for demonstrating peacefully.<sup>10</sup> Istanbul's governor released an order to stay at home on the third day of the protests, however, peaceful protests continued.<sup>11</sup> Demonstrations in support of Boğaziçi protests were also held in other parts of Istanbul, and other cities across Turkey. As of the 4 February, the Interior Ministry confirmed that 528 people had been arrested over 38 provinces in connection with the student protests.<sup>12</sup> Only on 1 February 2021, the police violently intervened in the protest of students who engaged in a blockade in front of the rector's office, and arrested 159 people in total on that one day.<sup>13</sup> Across the country, the courts have placed at least 25 protestors under house arrest and 9 in pre-trial detention for their participation in the protests.<sup>14</sup>

4. Completely undermining the reasons for the protests, President Erdogan signed a decree in early February to open a Department of Law and a Department of Communications at the Boğazici University.<sup>15</sup> Serving to boost the protests, this action is also seen by students and academics as another attempt to limit the university's academic independence further and potentially appoint additional pro-AKP professors to increase the government's influence on the university.

5. The students and faculty members state that they fight to preserve the long-held culture of freedom and democracy on campus. C. K. a third year linguistics student who joined the demonstrations against the appointment of Mr. Bulu, stated, "He is not our

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<sup>9</sup> Amnesty International, Turkey: Students Allege Ill-Treatment In Detention: Boğaziçi University Protestors (13 January 2021), available at <<https://www.amnesty.org/en/documents/eur44/3501/2021/en/>>

<sup>10</sup> Andrew Wilks, 'Turkey's student protests: new challenge for Erdogan' (Aljazeera, 6 February 2021) available at <<https://www.aljazeera.com/news/2021/2/6/turkeys-student-protests-new-challenge-for-erdogan>>

<sup>11</sup> Bethan McKernan, 'Istanbul university students clash with police over rector appointment' (*The Guardian*, 6 January 2021) available at <<https://www.theguardian.com/world/2021/jan/06/istanbul-university-students-clash-with-police-over-rector-appointment>>

<sup>12</sup> Ibid.

<sup>13</sup> Reuters, 'Turkish police detain 159 people at protests over Erdogan-appointed university head' (1 February 2021), available at <<https://www.reuters.com/article/turkey-security-bogazici-int-idUSKBN2A13OU>>

<sup>14</sup> Human Rights Watch, 'Turkey: Student Protesters at Risk of Prosecution' (18 February 2021), available at <<https://www.hrw.org/news/2021/02/18/turkey-student-protesters-risk-prosecution>>

<sup>15</sup> Clare Busch and Merve Pehlivan, 'The High Stakes of Turkey's University Protests' (Foreign Policy, 9 February 2021) available at <<https://foreignpolicy.com/2021/02/09/the-high-stakes-of-turkeys-university-protests/>>

rector, he is not an academic, he was not chosen democratically.”<sup>16</sup> Esra Mungan, an assistant professor of psychology at Boğaziçi University furthered these opinions stating that the protests were “not just a struggle for our own university, but a general struggle for democratic, autonomous and free universities”.<sup>17</sup> This was echoed by history student E.S., who said that Turkish universities “lack the fundamental autonomy needed to function as places of learning”.<sup>18</sup>

6. The opinion voiced by the ruling party, however, stood in stark contrast to the views of the protesting students. For example, the AKP’s spokesperson Ömer Çelik made it clear that the party did not consider the appointment of Mr. Bulu as problematic or illegal, stating that “It is not a crime for a person to have a political view.”<sup>19</sup>

7. On 30 January 2021, four students from the Boğazici University were detained for displaying an artwork at an outdoor exhibition which was a part of the ongoing protests against the appointment of Melih Bulu. The artwork showcased the Kaaba<sup>20</sup>, alongside the rainbow flag (the symbol of the LGBTI+ movement) and an image of the Shahmaran, a mythological creature that is half-snake half-woman.<sup>21</sup> The text describing the artwork stated that the artwork was a critique of traditional gender roles.<sup>22</sup> Initially, the members of the campus LGBTI+ club were targeted for the artwork and had their club room raided by police.<sup>23</sup> On 1 February, the rector announced that the club had been terminated and it’s

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<sup>16</sup> Bethan McKernan, ‘Istanbul university students clash with police over rector appointment’ (*The Guardian*, 6 January 2021) available at <<https://www.theguardian.com/world/2021/jan/06/istanbul-university-students-clash-with-police-over-rector-appointment>>

<sup>17</sup> Andrew Wilks, ‘Turkey’s student protests: new challenge for Erdogan’ (Aljazeera, 6 February 2021) available at <<https://www.aljazeera.com/news/2021/2/6/turkeys-student-protests-new-challenge-for-erdogan>>

<sup>18</sup> Ibid.

<sup>19</sup> Bethan McKernan, ‘Istanbul university students clash with police over rector appointment’ (*The Guardian*, 6 January 2021) available at <<https://www.theguardian.com/world/2021/jan/06/istanbul-university-students-clash-with-police-over-rector-appointment>>Ibid.

<sup>20</sup> A building at the centre of the Masjid al-Haram - the Great Mosque - in Mecca, Saudi Arabia, the most sacred site in Islam

<sup>21</sup> Burcu Karakas, Daniel Bellut, ‘Ankara calls student protesters ‘LGBT perverts’ amid artwork controversy’ (DW, 4 February 2021) available at <<https://www.dw.com/en/ankara-calls-student-protesters-lgbt-perverts-amid-artwork-controversy/a-56448760>>

<sup>22</sup> The Independent, ‘Students arrested in Turkey over Mecca poster with LGBT flags’ (31 January 2021) available at <<https://www.independent.co.uk/news/world/turkey-mecca-poster-lgbt-student-arrest-b1795361.html>>

<sup>23</sup> Kareem Fahim, ‘Students and faculty at top Turkish university battled Erdogan’s attempt at control’ (The Washington Post, 4 February 2021) available at

“candidate” status<sup>24</sup> revoked.<sup>25</sup> The Istanbul Prosecutor’s office later launched an investigation and four students were arrested, with two of them still in detention pending trial on charges of inciting hatred and insulting religious values.<sup>26</sup>

8. This incident led to renewed attacks on the LGBTI+ community in Turkey with government officials and the President himself directing hate speech towards the group. Ibrahim Kalin, chief adviser to President Recep Tayyip Erdogan said, *“neither freedom of expression nor the right to protest”* could defend the artwork, adding the act would receive *“the punishment it deserves before the law”*.<sup>27</sup>

9. The Interior Minister, Suleyman Soylu, tweeted that *“4 LGBT deviants who committed disrespect to the Kaaba-i Muazzama were detained at Boğaziçi University”*.<sup>28</sup> Erdogan himself when referring to the students protesting in general stated, *“Are you students or terrorists trying to raid the rector’s room?”* Erdogan said, *“This country will not again live a Gezi event in Taksim”<sup>29</sup>, we will not allow it. We have not stood with terrorists and we will not.”* When referring to the detention of the four students from the LGBTI+ community he stated that *“there is no such thing’ as LGBT”*. He continued, *“This country is national and spiritual, and will continue to walk into the future as such.”*<sup>30</sup>

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<[https://www.washingtonpost.com/world/middle\\_east/turkey-protests-bogazici-university-erdogan/2021/02/04/b6089964-6640-11eb-bab8-707f8769d785\\_story.html](https://www.washingtonpost.com/world/middle_east/turkey-protests-bogazici-university-erdogan/2021/02/04/b6089964-6640-11eb-bab8-707f8769d785_story.html)>

<sup>24</sup> A temporary status for the new student clubs at the Boğaziçi University.

<sup>25</sup> Ibid.

<sup>26</sup> Burcu Karakas, Daniel Bellut, ‘Ankara calls student protesters 'LGBT perverts' amid artwork controversy’ (DW, 4 February 2021) available at

<<https://www.dw.com/en/ankara-calls-student-protesters-lgbt-perverts-amid-artwork-controversy/a-56448760>>

<sup>27</sup> BBC, ‘Turkey LGBT: Four students arrested over artwork’ (BBC, 30 January 2021) available at

<<https://www.bbc.com/news/world-europe-55872759>>

<sup>28</sup> Ibid.

<sup>29</sup> The Gezi Park protests began as part of a longstanding campaign against the destruction of the park, one of the last green spaces in central Istanbul, as part of the redevelopment of the Taksim area. Within days, tens of thousands of protestors had taken to the streets across the main cities of Turkey. By the middle of June hundreds of thousands had taken part in “Gezi Park protests” that spanned almost every one of Turkey’s 81 provinces. See Amnesty International, ‘Gezi Park protest: Brutal Denial of the Rights to Peaceful Assembly in Turkey’ 2013. <<https://www.amnesty.org/download/Documents/12000/eur440222013en.pdf> >

<sup>30</sup> Reuters, ‘Erdogan says will not let Turkish university protests swell’ 3 February 2021. <

<https://www.reuters.com/article/turkey-security-bogazici-int/most-of-detained-university-protestors-released-in-istanbul-idUSKBN2A30SX>>

10. Homosexuality has been legal throughout modern Turkish history, but this still does not prevent the LGBTI+ community from regularly facing harassment and abuse.<sup>31</sup> Turkey, indeed, has a long history of using hate speech against people who identify as part of the LGBTI+ community. However, attacks against them have multiplied, especially since the attempted coup and state of emergency when the overall human rights situation worsened in the country. This latest campaign targeting the LGBTI+ people in Turkey “takes place in the context of rising hateful rhetoric against the LGBTI+ community by representatives of high-level religious and political institutions in Turkey, as well as actions and legislation attacking human rights defenders and civil society organisations.”<sup>32</sup> In recent years, many important LGBTI+ events were banned, including İstanbul Pride, which was banned in 2015 for four consecutive years (excluding 2020 due to the pandemic) after taking place every year since 2003.<sup>33</sup> Moreover, in November 2017, the Governor of Ankara issued a ban on public gatherings and events concerning the LGBTI+ movement in Ankara.<sup>34</sup> Kaos-GL (Kaos Gay and Lesbian Cultural Research and Solidarity Association), an organisation focused on LGBTI+ rights, filed a complaint against the ban arguing that it had failed to establish any legitimate purpose, as required under international law.<sup>35</sup> In April 2019, the ban was lifted following a decision by an Ankara court which deemed it an unlawful and disproportionate restriction of the rights of LGBTI+ people.<sup>36</sup>

11. Despite the ruling, discrimination against LGBTI+ people continues including, *inter alia*, censorship in the media regarding LGBTI+ issues, an increase in hate speech and the trial of 18 students and an academic for participating in the Middle Eastern Technical

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<sup>31</sup> Stockholm Center for Freedom, ‘Twitter flags Turkish interior minister’s tweets targeting LGBT community: report’ (2 February 2021), available at <<https://stockholmcf.org/twitter-flags-turkish-interior-ministers-tweets-targeting-lgbt-community-report/>>

<sup>32</sup> ILGA-Europe, ‘Turkish government steps up its attacks on LGBTI+ citizens’, available at <<https://kaosgl.org/en/single-news/ilga-europe-turkish-government-steps-up-its-attacks-on-lgbti-citizens>>

<sup>33</sup> Ibid.

<sup>34</sup> Library of Congress, Turkey: Ban on LGBTI Group Gatherings in Capital Province, 27 December 2017. Available at: <<https://www.loc.gov/law/foreign-news/article/turkey-ban-on-lgbti-group-gatherings-in-capital-province/>>

<sup>35</sup> Human Rights Watch, Turkey: End Ankara Ban on LGBTI Events, 14 February 2019. Available at: <<https://www.hrw.org/news/2019/02/14/turkey-end-ankara-ban-lgbti-events>>

<sup>36</sup> Graeme Reid, In Turkey, Ankara Wakes Up to Court Lifting LGBTI Events Ban, Human Rights Watch, 25 April 2019, available at <<https://www.hrw.org/news/2019/04/25/turkey-ankara-wakes-court-lifting-lgbti-events-ban>>

University Pride Parade in 2019.<sup>37</sup> Moreover, institutional discrimination is widespread, with homosexuality considered to be a mental health disorder and same-sex relationships not legally recognised.<sup>38</sup>

12. It was also only recently in April 2020, when the head of Turkey's Religious Affairs Directorate, Ali Erbaş, caused outrage when he blamed homosexuality and premarital sex for the spread of HIV during a Friday sermon.<sup>39</sup> He had also urged people "to join the fight to protect people from such evil."<sup>40</sup> This was promptly followed by criticism from several rights groups and bar associations in Ankara, Izmir, Diyarbakir, and Istanbul.<sup>41</sup> Whereas many top Turkish officials including President Erdogan, voiced their support for Erbaş's remarks.<sup>42</sup> Subsequently, the Ankara Bar Association filed a criminal complaint against Erbaş to the Ankara Chief Prosecutor's Office on the grounds that Erbaş's "sermon constituted public provocation to hatred and hostility".<sup>43</sup> In response, the Ankara Prosecutor's Office opened an investigation into the board members of the Ankara Bar Association on the grounds of insulting the religious values adopted by a part of the public.<sup>44</sup> The Diyarbakir Chief Prosecutor's Office instigated a similar investigation against the Diyarbakir Bar Association on the same grounds.<sup>45</sup> In the meantime the Ankara Branch of the Human Rights Association (İHD) also filed a criminal complaint against Ali Erbaş for his statements. Ankara Chief Public Prosecutor's Office decided not to prosecute Erbaş, after examination of the complaint.<sup>46</sup>

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<sup>37</sup> Yiğit E Korkmaz, 'Hate speech causes violence against LGBTIQ's to be ignored', Kaos GL, 13 February 2021. Available at < <https://kaosgl.org/en/single-news/34-hate-speech-causes-violence-against-lgbti-s-to-be-ignored-34>>

<sup>38</sup> Rights in Exile Programme, Turkey LGBTI Resources, available at <<https://www.refugeelegalaidinformation.org/turkey-lgbti-resources>>

<sup>39</sup> Human Rights Watch, 'Turkey: Criminal Case for Opposing Homophobic Speech' (1 May 2020), available at <<https://www.hrw.org/news/2020/05/01/turkey-criminal-case-opposing-homophobic-speech>>

<sup>40</sup> Ibid.

<sup>41</sup> Yıldız Tar, 'What happened after the hateful khutbah of the Religious Affairs Administration of Turkey?' (28 April 2020), available at <<https://kaosgl.org/en/single-news/what-happened-after-the-hateful-khutbah-of-the-religious-affairs-administration-of-turkey>>

<sup>42</sup> Human Rights Watch, 'Turkey: Criminal Case for Opposing Homophobic Speech' (1 May 2020), available at <https://www.hrw.org/news/2020/05/01/turkey-criminal-case-opposing-homophobic-speech>

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Yıldız Tar, 'Ministry permitted the investigation against the executives of Istanbul and Ankara Bar Associations' (20 January 2021), available at <<https://kaosgl.org/en/single-news/ministry-permitted-the-investigation-against-the-executives-of-istanbul-and-ankara-bar-associations>>



13. Erbaş's remarks received a heated response from national and international human rights organisations for escalating the ongoing hate attack against the LGBTI+ community and putting them under further risk.<sup>47</sup> The U.N. Human Rights Office condemned Turkey's use of excessive force, further renouncing the "homophobic and transphobic comments by officials, inciting hatred and discrimination against LGBT people".<sup>48</sup> The U.S. State Department has also urged Turkey to put an end to "the anti-LGBTQI rhetoric surrounding the demonstrations".<sup>49</sup>

### **III. Turkey's Obligation Under International and Domestic Law**

14. Turkey has violated numerous human rights guaranteed under international and domestic law during the weeks of protests against President Erdoğan's appointment of Melih Bulu as rector of Boğaziçi University, including the right to academic freedom, the right to equality and non-discrimination, the right to freedom of peaceful assembly, the right to freedom of expression, the right to freedom from torture and inhuman or degrading treatment, the right to liberty and security, and the right to respect for private and family right. In this letter we will specifically focus on three of these rights, namely the right to academic freedom, right to equality and non-discrimination and right to freedom of peaceful assembly.

#### **1. The Right to Academic Freedom**

##### **a. International law**

15. The principle of academic freedom goes back to the general right to education, which can be found in Article 26(1) of the Universal Declaration of Human Rights (UDHR)

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<sup>47</sup> See Urgent action letter to the UN on the continued discrimination and hate speech against lesbian, gay, bisexual, transgender and intersex (LGBTI+) people in Turkey by The Turkey Litigation Support Project (TLSP) and several other member organisations of Solidarity Network for Human Rights Defenders, available at <https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/5f56889d6cd6b40f39c6c02d/1599506589924/Urgent+Action+Letter+concerning+the+atacks+against+LGBTI%2B+in+Turkey+10+August+2020+website.pdf>

See also Kaos GL report "How did Diyanet's Khutbah Reflect in the Media?" (*Diyanet'in Hutbesi Medyaya Nasıl Yansıdı, 19 Nisan 20 Mayıs 2020 Medya Tarama Raporu*), available at <<https://kaosgldernegi.org/images/library/diyanetin-hutbesi-2020.pdf>> (The report notes that after the statements of Ali Erbaş the LGBTI+ community was shown as hostile on the media).

<sup>48</sup> Ibid.

<sup>49</sup> Suzan Fraser, 'Turkey rejects criticism of its handling of student protest' (The Washington Post, 4 February 2021) available at <[https://www.washingtonpost.com/world/europe/turkey-rejects-criticism-of-its-handling-of-student-protest/2021/02/04/f0ae104e-66c7-11eb-bab8-707f8769d785\\_story.html](https://www.washingtonpost.com/world/europe/turkey-rejects-criticism-of-its-handling-of-student-protest/2021/02/04/f0ae104e-66c7-11eb-bab8-707f8769d785_story.html)>

stating that “everyone has the right to education”. The International Covenant on Civil and Political Rights (ICCPR) elaborates further on the right to education in Article 19 by guaranteeing the “freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one’s] choice”. This right enshrined in Article 19 of the ICCPR should be seen as affording protection to academic discourse by academics and students.<sup>50</sup>

16. Article 13(4) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) states on this issue that “no part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State”.

17. In its General Comment No. 13, the UN Committee on Economic, Social and Cultural Rights (CESCR) importantly states that “the right to education can only be enjoyed if accompanied by the academic freedom of staff and students”,<sup>51</sup> providing therefore explicitly that the right of education relies on the availability of academic freedom. The General Comment No. 13 also introduces institutional autonomy and its importance for academic freedom.

18. Viewing institutional or university autonomy as a prerequisite for the guarantee of academic freedom is also something that has been explicitly recognised by the UNESCO General Conference’s 1997 Recommendation concerning the Status of Higher-Education Teaching Personnel. It is stated that “the proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education.”<sup>52</sup> Autonomy is also further elaborated and seen as an “institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and

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<sup>50</sup> *International Center For Not-For-Profit Law* (2020), p.2, available at <https://www.ohchr.org/Documents/Issues/Opinion/Submissions/NGOs/ICNL1.pdf>.

<sup>51</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para. 38, available at <https://www.refworld.org/pdfid/4538838c22.pdf>.

<sup>52</sup> United Nations Educational, Scientific and Cultural Organization (UNESCO), *Recommendation concerning the Status of Higher-Education Teaching Personnel*, 11 November 1997, para 17, available at [http://portal.unesco.org/en/ev.php-URL\\_ID=13144&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html)

institutions. Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source.”<sup>53</sup>

19. These international treaties as well as comments and declarations by UN bodies outlined are some of the major legal and international documents looking to safeguard academic freedom and institutional autonomy. Having ratified the ICCPR, the ICESCR, and several UNESCO Conventions, Turkey is bound by all three in its obligations.<sup>54</sup>

#### **b. Application of the law:**

20. Academic freedom provides the academic community with the right to conduct and participate in educational activities without arbitrary interference from state authorities, private individuals or groups, including popular political, religious, or other social movements.<sup>55</sup> As explained above, under international law, states are required to respect and ensure academic freedom, which in itself should be seen as a principle that is linked to a series of basic human rights such as freedom of opinion and expression as well as freedom of association and assembly.<sup>56</sup> Additionally, it is important to emphasise that academic freedom is inherently linked with institutional or university autonomy, the latter being almost certainly a prerequisite for the former meaning that in order to enjoy academic freedom, the autonomy of universities is required.

21. The appointment of Melih Bulu as the new rector of Bogazici University has been viewed as constituting an affront to the guarantee of academic freedom and university autonomy. Melih Bulu’s political affiliation with the ruling party in Turkey that has been cracking down on human rights especially since the July 2016 coup attempt is highly problematic. His appointment through a presidential decree is just another attempt by the President and his allies to change the academic landscape further and make sure that no autonomy remains. This event cannot be considered to be occurring in a vacuum, but instead there is a specific context, that of the measures adopted in the state of emergency such as the dismissal of many academics from their posts and particularly the power to issue presidential decrees without proper checks and balances from parliament.

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<sup>53</sup> Ibid, paras 18-19.

<sup>54</sup> <https://en.unesco.org/countries/turkey/conventions>

<sup>55</sup> Human Rights Watch , ‘Reading between the “Red Lines” The Repression of Academic Freedom in Egyptian Universities’ (2005) available at <<https://www.hrw.org/reports/2005/egypt0605/egypt0605text.pdf>>, p. 8.

<sup>56</sup> Ibid.

22. The three principles of the right to education, academic freedom and institutional autonomy cannot be regarded as separate entities, but instead they are bound to heavily rely on each other. Through putting a strain on the University's institutional autonomy, Turkey breaches its obligations under international law in relation to academic freedom and the right to education.

## **2. The Right to Equality and Non-Discrimination**

### **a. Domestic Law**

23. The Turkish Constitution of 1982 (the Constitution) guarantees the fundamental rights and freedoms of every individual.<sup>57</sup> These rights and freedoms are guaranteed equally before the law under Article 10 which provides that "Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. (...) State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings."

24. Despite this Constitutional principle, the existing anti-discrimination provisions in domestic law do not acknowledge gender identity or sexual orientation as grounds for discrimination, thus not translating the Constitution principle into an applicable law.<sup>58</sup> Addressing this issue in its concluding observations, the UN Human Rights Committee drew attention to the lack of a comprehensive anti-discrimination law in Turkey and requested Turkey to adopt a legislation prohibiting discrimination on all grounds, including gender identity and sexual orientation.<sup>59</sup>

25. The Constitution recognises under Article 5 that a fundamental goal of the State is to provide the necessary conditions for the development of the individual's material and spiritual existence. In 2017, amendments were made to Article 104, which assigns a position of responsibility to the President to ensure the implementation of the Constitution,

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<sup>57</sup> *Constitution of the Republic of Turkey*, 1982, available at [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf).

<sup>58</sup> E.g. The Law No. 6701 on the Human Rights and Equality Institution of Turkey does not list "gender identity" and "sexual orientation" among the prohibited grounds for discrimination. The Institution rejects the relevant applications made on this ground, see: Pembe Hayat, "Gender identity is not accepted as a prohibited ground for discrimination".

<sup>59</sup> Human Rights Committee, Concluding observations on the initial report of Turkey adopted at its 106th session, 15 October-2 November 2012.

conferring powers and duties both as the head of State and head of government.<sup>60</sup> This places a position of political responsibility onto the President and those under his political control. Article 90 of the Constitution stipulates that international agreements duly put into effect have the force of law and will prevail in case of conflict with domestic law. The provisions of international human rights treaties ratified by Turkey may be directly invoked before Turkish courts.<sup>61</sup> The Turkish Penal Code also enshrines equity before the law under Article 3.<sup>62</sup> Discrimination is banned under Article 122 and provocation to hatred based on social class, religion, race, sect or ethnicity is prohibited under Article 216.

## **b. International Law**

26. Non-discrimination is a rule of customary international law which cannot be derogated from even in times of emergencies. According to General Comment No.29 of the Human Rights Committee, the right to non-discrimination cannot be derogated from in any circumstances.<sup>63</sup>

27. The ICCPR guarantees the rights and freedoms equally before the law and without discrimination under Article 26. In this respect, Turkey has a duty to “prohibit discrimination and guarantee to all persons equal and effective protection against discrimination.”<sup>40</sup> Whilst the provisions do not explicitly refer to “sexual orientation” or “gender identity”, they conclude with the non-exhaustive words “other status”, covering among others, these grounds.<sup>64</sup> Under Article 2(1) of the ICCPR, each State Party has an obligation to respect and to ensure to all individuals in its territory the rights of the Covenant without distinction “of any kind”. The prohibition of discrimination and the entitlement to equal protection against discrimination are enshrined under Article 2 and Article 7 of the Universal Declaration of Human Rights.

28. Turkey is party to several other international agreements which explicitly prohibit

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<sup>60</sup> Abdulkadir Yıldız, *The Matter of Accountability of the President in the Presidential System of Turkey*, 2019, Kirikkale University Journal of Social Sciences, Vol. 9, No. 1, pp. 1-20.

<sup>61</sup> UN, ‘Core Document Forming Part of The Reports of States Parties, Turkey’ (22 February 2007), available at <<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgqgzAhFXD9F%2FeKaFMm83LbFY75RhklFGrig%2B69VWfzQmsye1xxP65kBG0xyik%2Bd0WUgOV2MntloNfIYVjuQN%2Fr1lrx1dC4FMmFIFHJWjhfdnxHf423Rfzftd>>

<sup>62</sup> Turkish Penal Code, 2004, available at <<https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>>.

<sup>63</sup> Human Rights Committee, General Comment No.29, para. 8.

<sup>64</sup> OHCHR, *Born Free and Equal*, 2019, p. 55., available at <[https://www.ohchr.org/Documents/Publications/Born Free and Equal WEB.pdf](https://www.ohchr.org/Documents/Publications/Born%20Free%20and%20Equal%20WEB.pdf)>

States from discriminating against individuals based on their sexual orientation and gender identity. In March 2012, Turkey ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (İstanbul Convention), which places an obligation on State Parties not to discriminate on the basis of sexual orientation and gender identity under Article 4(3).<sup>65</sup> The European Convention on Human Rights (ECHR) prohibits discrimination under Article 14<sup>66</sup> and places a series of obligations of non-discrimination upon public authorities under the Protocol No. 12.<sup>67</sup> The case law of the European Court of Human rights explicitly prohibits discrimination on the grounds of sexual orientation and gender identity.<sup>68</sup>

29. The ICESCR obligates States to ensure that a person's sexual orientation is not a barrier to realising their rights enshrined under ICESCR.<sup>69</sup> In its General Comment 20, the UN Committee on Economic, Social and Cultural Rights stated that the ICESCR explicitly prohibits discrimination on the grounds of sexual orientation and gender identity.<sup>70</sup>

### **c. Application of the Law:**

30. While the Constitution provides that international agreements must take precedence where any conflict arises with domestic law, the silence of domestic law on LGBTI+ issues continues to enable authorities to take discriminatory measures on the justification of "morals of the society", "public safety" and "unnatural sexual behaviour".<sup>71</sup>

31. Similarly, while Article 26 of the Constitution guarantees the freedom of expression of individuals, the lack of any specific statement relating to sexual orientation and gender

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<sup>65</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, May 2011, available at <<https://rm.coe.int/168008482e>>

<sup>66</sup> European Convention of Human Rights, September 1953, available at <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)>.

<sup>67</sup> Turkey signed but has not ratified the Protocol No. 12 to the ECHR as of 22 July 2020.

<sup>68</sup> Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, available at <[https://www.echr.coe.int/Documents/Guide\\_Art\\_14\\_Art\\_1\\_Protocol\\_12\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_14_Art_1_Protocol_12_ENG.pdf)>, pp. 34-37.

<sup>69</sup> International Covenant on Economic, Social and Cultural Rights, December 1966, available at: <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>.

<sup>70</sup> UN Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination in economic, social and cultural rights (Art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2019, E/C.12/GC/20, available at <<https://www.refworld.org/docid/4a60961f2.html>>

<sup>71</sup> LGBTI Equal Rights Association, *Turkey*, available at <<https://www.lgbti-era.org/content/turkey>>. UK Home Office, *Country Policy and Information Note: Turkey Sexual Orientation and Gender Identity*, June 2017, available at: <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/619683/Turkey\\_-\\_SOGI\\_-\\_CPIN\\_-\\_v2\\_0\\_June\\_2017\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/619683/Turkey_-_SOGI_-_CPIN_-_v2_0_June_2017_.pdf)>.

identity is used by authorities to censor LGBTI+ content and expression on the grounds of protecting public morals.

32. It is important to underline that the vulnerability of LGBTI+ persons is even more heightened in the context of such protests currently taking place at Boğaziçi University as they are being singled out and targeted by the police and government figures not only due to their opposing views regarding the new rector appointment, but also due to their LGBTI+ views and perspectives, which adds an additional layer of discrimination.

33. Under the 2017 amendments to the Constitution, the President has a political responsibility, as both the head of State and the head of government, to ensure the rights and freedoms of individuals. This includes ministers acting under his political control and other political leaders who can be seen as possessing a public responsibility to protect the rights conferred under the Constitution.<sup>72</sup> The President and other senior public officials' various statements inciting hatred and discrimination towards LGBTI+ groups undermine this political responsibility and breach Turkey's obligation under international law.

### **3. The Right to Freedom of Peaceful Assembly**

#### **a. Domestic Law:**

34. Under Article 34(1) of the Constitution, everyone should have the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. Article 34(2), however, provides that freedom of assembly can be restricted on the grounds of "national security", "public order", "public health" and "public morals". Articles 17 and 19 of the Law on Meetings and Demonstrations state that meetings can be postponed or banned if they pose a threat to these four principles.

35. The use of force is regulated by the Law on the Duties and Powers of the Police of 14 June 2007. Under Article 16, the police can resort to violent, forceful measures in self defence, if a person prevents police from carrying out their duties, or if a person or a group attacks police officers.<sup>73</sup> Under Additional Section 6, the police may also use violence against demonstrating groups whose dispersal they consider necessary at their discretion or to

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<sup>72</sup> Polat Yamaner, *LGBTI+s in the middle of current politics: a brief review of the statements of senior public officials*, July 2020, available at <[http://susma24.com/guncel-siyasetin-ortasinda-lgbtilar-ust-duzey-kamu-yetkililerinin-aciklamalariyla-ilgili-kisa-bir-degerlendirme/?fbclid=IwAR065pwdI9peeO\\_daLaUv4\\_3oulPonLoSiVlclt6O2ODj8LQc0LOysXGzME](http://susma24.com/guncel-siyasetin-ortasinda-lgbtilar-ust-duzey-kamu-yetkililerinin-aciklamalariyla-ilgili-kisa-bir-degerlendirme/?fbclid=IwAR065pwdI9peeO_daLaUv4_3oulPonLoSiVlclt6O2ODj8LQc0LOysXGzME)>

<sup>73</sup> Article 16(1), Law on the Duties and Powers of the Police (Polis Vazife ve Salahiyet Kanunu), 4 July 1934.

subdue those resisting arrest.<sup>74</sup> The provision foresees a gradually increasing level of use of bodily force, material force (e.g. tear gas) and, where the legal conditions are in place, arms may be utilised against illegal demonstrators.<sup>75</sup> The Order on Rapid Intervention Forces of 30 December 1982 also establishes procedures for the dispersal of demonstrators, such as two or three warnings except in cases of an effective attack and/or resistance against police officers.<sup>76</sup>

## **b. International Law:**

36. Article 11 of the ECHR and Article 21 of the ICCPR both outline the right to freedom of assembly. Furthermore, Article 5 of the United Nations Declaration on Human Rights Defenders also notes that everyone has the right to assemble peacefully “for the purpose of promoting and protecting human rights and fundamental freedoms.”<sup>77</sup>

37. Additionally, the ECHR’s Guide regarding Article 11 makes clear that the right to freedom of peaceful assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively.<sup>78</sup> The guide goes on to specify that the measure in question must answer a “pressing social need” and be proportionate to the “legitimate aim”, and the reasons adduced by the national authorities to justify it must be “relevant and sufficient”. Importantly, the right to freedom of peaceful assembly also imposes positive obligations on states and they must not only refrain from applying unreasonable restrictions upon the right to assemble peacefully but also safeguard that right.

38. According to international human rights standards, any decision to disperse an assembly should be taken only as a last resort and in line with the principles of necessity and proportionality. International standards contained in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require that in dispersing

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<sup>74</sup> Additional Section 6, Law on the Duties and Powers of the Police. If a person resisting arrest ignores the warning and attempts to escape, firearms may be used in a proportional extent to ensure that he/she is caught. *Ibid.*, Article 16(1)(c).

<sup>75</sup> *Ibid.*

<sup>76</sup> Order on Rapid Intervention Forces (Polis Cevik Kuvvet Yönetmeliği), 30 December 1982.

<sup>77</sup> UN General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom’ (8 March 1999), available at <https://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

<sup>78</sup> *Ibid.*



assemblies, police must avoid the use of force or, where that is not practicable, must restrict any such force to the minimum necessary. The Principles also stipulate that the State shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under national law.<sup>79</sup> The United Nations Code of Conduct for Law Enforcement Officials states 'law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty' with regards to demonstrators.<sup>80</sup> The use of firearms is strictly limited to situations of imminent threat to life or life-threatening injury.

### **c. Application of the Law**

39. Turkey bound by both international and domestic law to not to prevent peaceful demonstrations and avoid excessive use of force to disperse unlawful demonstrations. However, over the years, there have been persistent instances of police brutality in Turkey against those who dissent or criticise the government. In its 2020 progress report on Turkey, the European Commission stated that "there was further backsliding in the area of freedom of assembly and association where legislation and its implementation are not in line with the Turkish Constitution, European standards, and international conventions that Turkey is party to. Recurrent bans, disproportionate interventions and excessive use of force in peaceful demonstrations, investigations, administrative fines and prosecutions against demonstrators on charges of 'terrorism-related activities' continued to be reported."<sup>81</sup>

40. The right to freedom of assembly has been broadly restricted by the violent suppression of demonstrations. It is evident that by using excessive force, tear gas and water cannons to disperse the peaceful protest of students, the security forces have not acted according to international human rights standards in the way they have policed demonstrations and protests.

41. Article 90 of the Constitution provides for the supremacy of international law standards above domestic law on the subject of rights and freedoms. Turkey must,

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<sup>79</sup> UN 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials(1990), available at <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>>

<sup>80</sup> UN General Assembly, 'Code of conduct for law enforcement officials'. (1979), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

<sup>81</sup> European Commission, 'Turkey 2020 Report' (6 October 2020), available at [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf)

therefore, abide by international law norms on the right to peacefully assemble and the limits for use of police force.

#### **IV. Actions Requested**

42. We request the Special Rapporteurs to urge the Turkish Government to stop the practice of politically motivated appointments to the universities and ensure academic freedom and institutional autonomy of the universities.

43. We invite the Special Rapporteurs to request the Turkish Government to withdraw the decision on the appointment of Melih Bulu as the rector of Bogazici University and reinstate the system of election for university rectors.

44. We urge the Special Rapporteurs to ask the Turkish Government to immediately stop the arbitrary and excessive use of violence against peaceful protesters and conduct effective investigations in relation to the acts/omissions of State officials which has resulted in serious offences to people's integrity, rights and security as documented above.

45. We request the Special Rapporteurs to remind the Turkish Government of its duty under international and domestic law to protect the dignity of all human beings and respect the equal rights of all citizens.

46. We request the Special Rapporteurs to urge the Turkish Government, its public officials and other high-profile political and religious individuals, to uphold their obligations to refrain from making statements which may incite intolerance or pose a present risk of violence against the LGBTI+ people and to protect the rights and freedoms of all individuals without discrimination against sexual orientation or gender identity.

47. We request the Special Rapporteurs to invite the Turkish Government to amend its Constitution to include an explicit provision for sexual orientation and gender identity under Article 10 and introduce domestic legislation in line with its international obligations, explicitly protecting the fundamental rights and freedoms of LGBTI+ people without discrimination.

48. We request the Special Rapporteurs to call on the Turkish government to release the students detained over the exhibition of LGBTI+ artwork as well as all students detained during the course of the protests.

49. We would be grateful if you would kindly notify us of what actions you are minded to take on this matter and to inform us, in due course, of any response received from the

Turkish State. We would also be grateful if you are able to acknowledge receipt of this letter.

Yours Sincerely

**Ayşe Bingöl Demir, Turkey Human Rights Litigation Support Project (TLSP)**

**(and on behalf of the following organisations endorsing the letter)**

**Civil Rights Defenders (CRD)**

**Eşit Haklar İçin İzleme Derneği**

**Kaos GL**

**London Legal Group**

**Medya ve Hukuk Çalışmaları Derneği (MLSA)**

**Özgürlük İçin Hukukçular Derneği (ÖHD)**

**Punto 24 Bağımsız Gazetecilik Derneği (P24)**

**Research Institute on Turkey (RIT)**

**Sivil Alan Araştırmaları Derneği**

**Sosyal Politika Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği (SPoD LGBTI+)**

**Yurttaşlık Derneği**