CORA Cork Open Research Archive
Cartlann Taighde Oscailte Chorcaí

Title	Freedom of association in Türkiye
Authors	Öztürk, Fatih
Publication date	2025-01-01
Original Citation	Öztürk, F. (2025) 'Freedom of association in Türkiye', Societās Working Paper 27/2025 (16pp). Cork: School of Law, University College Cork.
Type of publication	Working paper
Rights	© 2025, the Author(s). Views expressed do not represent the views of the Societās project or the School of Law at UCC.
Download date	2026-11-15 02:33:45
Item downloaded from	https://hdl.handle.net/10468/17839

UCC
University College Cork, Ireland
Coláiste na hOllscoile Corcaigh

UCC University College Cork, Ireland Coláiste na hOllscoile Corcaigh | School of Law Scoil an Dlí

SHAPING A JUST SOCIETY SINCE 1849

Societās Working Paper 27/2025 August 2025

Global Perspectives on Freedom of Association: Türkiye

Fatih Öztürk

Societās Exploring the Value of Freedom of Association

IRISH RESEARCH COUNCIL An Chomhairle um Thaighde in Éirinn

Societās Working Paper Series

Global Perspectives on Freedom of Association Collection

The Global Perspectives on Freedom of Association collection is presented under the auspices of "Societās: Exploring the Value of Freedom of Association". The project is generously funded as a Laureate project of the Irish Research Council and hosted at the School of Law in University College Cork.

Project Lead
Professor Maria Cahill
School of Law, University College Cork, Cork, Ireland
www.associationalfreedom.org | maria.cahill@ucc.ie

Editors of the Global Perspectives on Freedom of Association collection
Professor Maria Cahill, School of Law, University College Cork
Dr. Seán Ó Conaill, School of Law, University College Cork
Professor Dwight Newman, School of Law, University of Saskatchewan
Mr. Ruairí McIntyre, School of Law, University College Cork
Dr. Giulia Lasagni, School of Law, University College Cork
Ms. Aoife Khasri, School of Law, University College Cork
Cover Sheet Design thanks to Mr Ruairí McIntyre used with permission.

© the author, August 2025.
Views expressed do not represent the views of the Societās project or the School of Law at UCC.

Select other working papers in this series include, *inter alia*, reports from Australia, Chile, China, Ethiopia, Finland, France, Germany, India, Indonesia, Ireland, Italy, Kenya, Mexico, Nigeria, Peru, Poland, Russia, Slovenia, South Africa, Spain, Türkiye, the United Kingdom, the United States, as well as international human rights systems such as the Council of Europe, the Inter-American System of Human Rights and the United Nations. Click here or here for to explore further.

Final versions of these papers appear in (2025) 12 1&2 *European Journal of Comparative Law and Governance* and in Maria Cahill & Giulia Lasagni (eds.), *Associational Life and Freedom: Insights from Philosophy and Law* (Hart Publishing, 2025).

Freedom of Association in Türkiye*

*Fatih Öztürk***

I. Introduction

Freedom of association in Türkiye, including the right to form associations and join them, is protected by the Turkish Constitution. Article 33 of the Constitution explicitly guarantees this right. Article 33 of the Turkish Constitution states that everyone has the right to form associations, or to become a member of an association, without prior permission. This is a fundamental right aimed at supporting democratic participation and civil society activities. The Law on Associations (Law No. 5253) and other relevant regulations provide the legal basis for the establishment, operation, and supervision of associations in Türkiye. This law outlines the requirements for forming an association, including the minimum number of founders and the necessary documentation.

In this paper, I will first examine Article 33 of the Constitution of Türkiye, the Law on Associations (Law No. 5253), and relevant regulations. Second, I will explore cases from first instance courts. Third, I will examine cases from the Turkish Constitutional Court to analyse how the country's highest judicial body has interpreted the right to freedom of association.

---

* Since 1st June of 2022, "The United Nations changed the country's name from "Turkey" to "Türkiye" in foreign languages following Türkiye's request. UN Secretary-General's Spokesperson, Stephane Dujarric, stated that they received a letter from Foreign Minister Mevlüt Çavuşoğlu on June 1, in which he requested the country's name to be changed to "Türkiye" in foreign languages. Dujarric noted that the name change became effective as soon as the letter was received." See https://turkiye.un.org/tr/184798-t%C3%BCrkiyenin-ad%C4%B1-bmde-yabanc%C4%B1-dillerde-de-art%C4%B1k-t%C3%BCrkiye.

** I would like to express my sincere thanks to Professor Maria Cahill for giving me the opportunity to be part of this book project. Associate Professor of Constitutional Law, Faculty of Law, Istanbul University. LLB (Istanbul University, Türkiye), LLM (California Western School of Law, San Diego, USA), LLM (Queen's University, Kingston, Canada), PhD (UCC & Istanbul University, Türkiye). Email: fatih.ozturk@istanbul.edu.tr. ORCID ID: 0000-0003-1363-3301.

Finally, I will conclude with my reflections on the protection of freedom of association in Türkiye.

II. The Turkish Legal System

Modern Türkiye has a civil law system similar to that of most other European countries. Legislation is the main source for law and is binding on courts.[1] According to the classifications of European law, Turkish law belongs to the family of Continental European law.[2] This form of law contains separate classes such as Common law, Continental European law, Islamic law, Socialist law, and American law.[3] After the disintegration of the Ottoman Empire and the creation of the Republic of Türkiye, the Turkish state aimed to establish its legal and social order according to Western norms.[4] To this end, the framers of the Republic took very radical actions. In 1924, the Turkish Grand National Assembly (TBMM) passed a law to abolish the Sharia (religious) courts (Ser'iye Mahkemeleri). In 1926, the TBMM abolished Islamic law and forced the Swiss Federal Code Civil law system (with adaptations for Turkish society) into the new State's legal system. The German Commercial code was added into Turkish Commercial law. In addition, the Italian Criminal code of 1889 was adapted and put into effect on July 1926.[5] However, a new Turkish Criminal law became effective in June 2005 in order to come in line with the law of the European Union (EU). Turkish law was made to resemble the Continental European Civil law. The Turkish Parliament now enacts new laws and regulations on a daily basis to conform to EU standards.[6]

There is currently great conflict in the legal arena of modern Türkiye. In the First Constitution of the Republic (The Constitution of 1924), Article 2 stated that the state religion was Islam. However, the fathers of the Republic believed that secularism was to be one of the most important tools of modern Turkish society. Thus in 1928, although the religion of the state

---

[1] See Ansay T. and Schneider E. C.(eds.), *Introduction to Turkish Business Law* (Ankara, TK, 2002) at 3.
[2] Oğuzman M. K., *Medeni Hukuka Giris* [*Introduction to Civil Law*] (Istanbul, Filiz, 1990) at 17-25.
[3] Id, at 18-19.
[4] See Atatürk's strategy to establish a Western style state, Paul Dumont, "Hojas For Revolution: The Religious Strategy of Mustafa Kemal Ataturk" 1 J. of the American Institute for the Study of Middle Eastern Civilization (1980) at 17-32.
[5] See Oğuzman, supra note 2, at 20-22.
[6] See about Türkiye's efforts to become the EU member, Hugg P. R., "The Republic of Türkiye in Europe: Reconsidering the Luxembourg Exclusion" 23 Fordham Int'l L. J. (2000) at 606-706. Moreover; Elizabeth Shakman Hurd, "Negotiating Europe: The Politics of Religion and the Prospects for Turkish Accession" 32 Rev. Int'l Stud. (2006) at 401-418.
Banani D. D., "Reforming History: Turkey's Legal Regime and Its Potential Accession to the European Union" 26 B. C. Int'l & Comp. L. Rev. (2003) at 113-127.

was Islam, this was removed from the Constitution.[7] In 1937, secularism was added into the Turkish constitutional system[8] and today, the modern Turkish state struggles with its secularist traditions in light of an Islamic citizenry.[9] Traditional Turkish state officials prefer to follow the French and German version of secularism, instead of that of the UK, Canadian and American forms. The Turkish state still continues to seek influence over individual thought and religious belief.[10] Some foreign observers of Türkiye believe that the orientation of secularism will be one of the keystones to the future of Turkish society and policy practices."[11] Rigid adherence to secularism may compromise democracy if religious freedom is curtailed in the name of protecting secularism.

Lastly, I would like to give some basic information about the Turkish court system. The Turkish judicial system sets out the civil law court system as composed of:

a) General First Instance Courts, including i) criminal courts: magistrate, general criminal, and heavy penalty courts; and ii) civil courts: civil courts of peace, general civil courts, and commercial courts;

b) Specialized First Instance Courts, including juvenile courts, land registration courts, labor courts, intellectual property courts, and family law courts;

c) The Supreme Court of Appeals (in Turkish "Yargıtay") as the court of last instance for reviewing decisions and judgments given by criminal and civil courts;

d) The administrative court system composed of administrative courts tax courts and regional administrative courts;

e) The Council of State (in Turkish "Danıştay") as the court of law instance for administrative and tax court decisions; and

---

[7] See Boyle K., J. Sheen, eds., *Freedom of Religion and Belief* (London and New York, Routledge, 1997) at 389.
[8] See Gözübüyük, A. Ş., Hukuka Giriş [Introduction to Law] (Ankara, TK, 2006) at 61.
[9] See Turkish nation that thinks about secularism and secular practices, Yumni Sezen, Turk Toplumunun Laiklik Anlayışı [Turkish Society's Understanding of Secularism] (Istanbul, MUIFVY, 1993).
See also Edip Yuksel who is a Kurdish Human Rights Activist and fled from Türkiye to USA claims that that the Republic secular ideology, controls, manipulates and exploits religious believes and attack them who are not converted to official version. See Edip Yuksel "Cannibal Democracy, Theocratic Secularism: The Turkish Version" 7 Cardozo J. Int'l & Comp. L. (1999) at 467.
[10] See more with examples Morris C., *The New Turkey: The Quiet Revolution on the Edge of Europe* (London, Granta Books, 2005) at 60-86.
[11] Larrabee F. S., Lesser I. O., *Turkish Foreign Policy in an Age of Uncertainty* (Santa Monica, Rand, 2003) at xiv. See more Szyliowicz J. S., "Religion, Politics and Democracy in Turkey" in ed. Safran W., *The Secular and The Sacred: Nation, Religion and Politics* (London, Frank Cass, 2003) at 188-216.

f) The Constitutional Court (in Turkish "Anayasa Mahkemesi") which examines the constitutionality of laws in respect of both their form and substance, and judicial review decrees having the force of law and the rules of procedure of the Turkish Parliament.[12]

The Turkish Constitutional Court may reach one of two different outcomes when reviewing the constitutionality of laws (judicial review): either rejecting the annulment request or annulling the law. Annulment decisions ensure that unconstitutional laws are repealed. According to Article 153 of the 1982 Constitution, a law is repealed after the annulment ruling is published in the Official Gazette. Established in 1961, the Constitutional Court has sometimes overstepped its primary purpose by acting as a legislative body. However, constitutional courts are primarily designed to review and protect legal changes related to fundamental political issues, such as fundamental rights, freedoms, and minority rights. Their main duty is to oversee whether the decisions of political authorities and the legislature comply with the constitution. Consequently, their work unavoidably involves political decisions, and complete neutrality in such matters contradicts the very nature of their function. In Turkish constitutional jurisprudence, the doctrine of judicial activism leads the Constitutional Court to interpret its authority as broadly as possible. While the U.S. Supreme Court tends to limit its own powers, the Turkish Constitutional Court has shown a tendency to expand its jurisdiction. The ambiguous, subjective, and ideological provisions in the 1961 and 1982 Constitutions have made judicial activism highly feasible.

In fact, the Constitutional Court has gone so far that, in a 1993 ruling, it asserted the authority to suspend the enforcement of laws, despite the fact that neither the 1961 nor the 1982 Constitution granted such authority. In general, the Turkish Constitutional Court has engaged in judicial activism, particularly in areas such as privatization, government savings in the social sector, suspension of executive decisions, and constitutional amendments review. Like other state elites, the Turkish Constitutional Court has perceived itself as the guardian of the state and a supreme tutelary body, consistently viewing elected political elites with suspicion, considering them opportunistic representatives of temporary and partial interests.

Lastly, the so-called **"Turkish-Style Presidential System"**, which has been in place since the **2017 Constitutional Amendment**, appears to be a **hybrid of the parliamentary and**

[12] See Ansay & Wallace, supra note 1, at 14-6.

presidential systems. However, in reality, it resembles neither a true **parliamentary system** nor a **presidential system**, presenting a unique and unprecedented model of governance.

III. Article 33 of the Constitution of 1982 and The Law on Associations (Law No. 5253)

Article 33 of the Turkish Constitution is titled under the heading "Freedom of Association" and reads as follows:

> "Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission. No one shall be compelled to become or remain a member of an association. Freedom of association may be restricted only by law on the grounds of national security, public order, prevention of commission of crime, public morals, public health and protecting the freedoms of other individuals. The formalities, conditions, and procedures to be applied in the exercise of freedom of association shall be prescribed by law. Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. However, where it is required for, and a delay constitutes a prejudice to, national security, public order, prevention of commission or continuation of a crime, or an arrest, an authority may be vested with power by law to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his/her decision within forty-eight hours; otherwise, this administrative decision shall be annulled automatically. Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require. The provisions of this article shall also apply to foundations."

In Turkish Civil Code No. 4721 and the Associations Law No. 5253, the definition of an association is almost identical. Associations are defined as legal entities formed by at least seven real or legal persons who pool their knowledge and efforts continuously to achieve a specific and common purpose, excluding profit-sharing (Turkish Civil Law Code, Article 56/1 and Associations Law, article 2-a). The individuals who form associations are called members, and two key elements in the definition of associations are members and purpose. The reason for the existence of associations is their objectives; if it is no longer possible to achieve their objectives, the associations are considered to have ceased to exist on their own (Turkish Civil

Law Code, Article 87/1-1). The most significant distinction between associations, trade unions, and political parties lies in the differences in their objectives. According to the accepted view in Turkish law, the broad definition of the concept of associations includes both political parties and trade unions. Therefore, in the absence of specific regulations, these two institutions are subject to the legal provisions applicable to associations. Turkish Civil Code, Article 56-1, in parallel with the Associations Law, Article 30, states that associations cannot be established for purposes that are contrary to law and morality. In other words; in Turkish law freedom of association provides protection for various forms of organizations such as political parties, trade unions, associations, or foundations.

The Constitution of Türkiye, Article 34, regarding the "right to organize meetings and demonstrations," states that "[e]veryone has the right to organize meetings and demonstrations, unarmed and non-violent, without prior permission." Article 51, concerning the "right to form trade unions," reads, "[w]orkers and employers have the right to establish unions and confederations to protect and improve the economic and social rights and interests of their members, as well as the right to freely join and withdraw from them, without prior permission."

These provisions affirm that these rights can be exercised by everyone without the need for prior authorization. However, the articles also specify situations where these rights can be restricted. Such restrictions may apply in cases of national security, public order, prevention of crime, public health, public morality, and the protection of the freedoms of others.

In recent years, the amendments to association legislation in our country clearly reflect an intent by the ruling power to intervene in the liberal structure of the "civil" sphere. It is evident that these changes impose restrictions on the citizens' most fundamental constitutional right—the right to association. As an author rightly stated, "[i]t is a legitimate expectation within the scope of the right to legal security that every legal regulation should comply with the Constitution, which is the fundamental text, and be consistent with other legislation governing the field. The amendment made to Article 23 of the Law on Associations, requiring membership admissions and resignations to be reported in writing to the local authority, is a clear example of the state's attempt to bring associations under public control through an additional reporting obligation, despite the information already being available to public

authorities. This provision of the law evidently violates the freedom of association."[13] The author emphasizes two fundamental principles of constitutional law: the principle of legal certainty and freedom of association.

It is stated that every legal regulation must comply with the fundamental provisions of the constitution and not contradict other relevant legislation. This is essential for ensuring individuals' trust in the legal system and enhancing predictability. The requirement to notify local authorities of membership admissions and resignations, despite the existing information infrastructure, mandates an additional reporting obligation. This has been criticized as imposing unnecessary administrative burdens and indirectly restricting individuals' right to association. Gümüş rightly argues that the regulation violates freedom of association. Freedom of association is one of the cornerstones of democratic societies, encompassing the right of individuals to form groups, establish associations, and carry out their activities. Excessive oversight or bureaucratic barriers can hinder the effective exercise of this right. In conclusion, the critique underlines the importance of safeguarding constitutional principles and avoiding unnecessary restrictions on individual rights and freedoms. Such regulations should undergo a constitutional review process to ensure that freedoms are not unnecessarily curtailed.

Although the Turkish Constitutional Court stands at the top of the judicial system in Türkiye, most Turkish lawyers avoid taking their cases to the Constitutional Court after finalizing them in the Court of Cassation (Yargıtay) to prevent an additional 2 to 4 years of legal delay. For this reason, we will examine two interesting cases ruled by the Court of Cassation, which are directly related to our topic of the right to form associations.

A. The Supreme Court of Appeals, 9th Criminal Chamber, Decision dated May 22, 2003, Case No. 2003/627 - Decision No. 2003/870

In this case, the defendants were accused of establishing an association that violated the principles stated in **Article 5 of the Associations Law No. 2908, Article 174 of the Turkish Constitution,** and the **Law No. 677** which mandates the closure of all dervish lodges, tekkes, and tombs. The defendants allegedly continued their activities in violation of these ‘laws and faced prosecution under **Article 76/1 of the Associations Law** for their association's activities.

---

[13] Gümüş, Mustafa, “Dernekler Mevzuatında Son Dönemde Yapılan Değişikliklerin Örgütlenme Özgürlüğüne Etkileri” [The Impact of Recent Amendments to Association Legislation on Freedom of Association], Ankara Barosu Dergisi, issue 2022/3, at 497.

The court sentenced the defendants to punishment and ordered the closure of the association. The specific case concerned an association named "Hatay Tombs and Shrines' Protection and Beautification Association." The association's founding statute included goals and activities that violated the prohibitions in **Article 5/9** of the Associations Law and **Article 174 of the Constitution**, such as attempting to repeal or revive revolutionary laws and forbidden matters. The association was also accused of violating **Law No. 677,** which prohibits the reopening or re-establishing of closed tekkes, dervish lodges, or tombs, and engaging in activities related to prohibited titles or services associated with them. However, after examining the case, it was found that the association's statute did not involve any prohibited activities, and no evidence was found to show that the defendants engaged in activities contrary to the law. Furthermore, the defendants were previously acquitted in another case concerning the same issue, where the court found that the purpose of the association was merely to ensure the proper maintenance of the tombs in Antakya and provide a clean environment for visitors. Given this, there was no intent to commit a crime. The court, after reviewing the evidence, found that there was insufficient evidence to convict the defendants, and the decision to convict them was overturned. The case emphasized that the association's activities did not violate the law and the defendants' actions were not criminal. This decision was made under the **previous Associations Law No. 2908,** which was later repealed and replaced with more restrictive regulations. This decision reflects a more liberal interpretation of the association's activities at the time and highlights the importance of distinguishing between lawful association activities and those that violate legal or constitutional principles.

B. The Supreme Court of Appeals, 9th Criminal Chamber, Decision dated November 18, 2003, Case No. 2003/1993 - Decision No. 2003/2113

The defendants were members of the board of directors of the **Anadolu Tutuklu ve Hükümlü Aileleri Yardımlaşma Derneği (TAYAD).** They had decided to stage a hunger strike to prevent the establishment of F-type prisons and had also distributed a declaration supporting a death fast. The decision recorded in the association's Minutes of Meetings dated November 29, 2000, stated: "The state intends to place our detained and convicted children in F-type prisons. Our children are determined not to enter these F-type prisons, and as a result, they are on an indefinite hunger strike and death fast. To support their rightful demands and to prevent their deaths, the association members unanimously decided to begin an indefinite hunger strike on December 1, 2000." The police report dated December 4, 2000, confirmed that some of the

defendants began their hunger strike in accordance with the board's decision. The association's stated purpose in its bylaws was to "assist among families of detainees and convicts, help meet all their material, social, and other needs in a manner worthy of human dignity, and strive for the full realization of human rights and freedoms." The defendants were convicted of violating **Article 37/1 of the Associations Law No. 2908**, which states that members of an association can only engage in activities related to the purpose and activities as specified in the bylaws. They were sentenced to six months in prison under **Article 77/3** for participating in activities beyond the scope of the association's purpose. The prison sentences were later converted into fines. The Court of Appeals upheld the conviction of the defendants who signed the board's decision for the hunger strike. However, for the defendants who did not sign the **November 29, 2000** board decision and whose names were not listed in the **December 4, 2000** report, the court ruled that there was an insufficient amount of definitive and convincing evidence needed to prove that they had participated in unlawful activities or committed the alleged crime. Therefore, the convictions were overturned. Although a similar penal provision exists in **Article 30/a of the Law No. 5253** on Associations, a subsequent amendment by **Law No. 5728** changed the penalty for such offenses to a judicial fine instead of imprisonment. This decision highlights the legal limits placed on associations, especially regarding activities that fall outside their stated purposes. The case also demonstrates how legal penalties for associations that engage in prohibited activities can be adjusted through legal amendments, particularly when changing the scope of penalties from imprisonment to fines.

IV. Turkish Constitutional Court Cases Regarding Freedom of Association

According to the Turkish Constitutional Court's ruling in the Emin Aydın Case (Application No: 2013/2602, Decision Date: 23/01/2014**):** "Freedom of expression not only includes the freedom to 'hold opinions and beliefs' but also the freedom to 'express and disseminate' these thoughts and beliefs." Additionally, it encompasses the right to 'receive and impart information and opinions'. In this context, the Constitutional Court ruled in the same decision that freedom of expression or speech means that "individuals should be able to freely access news, information, and the opinions of others, should not be condemned for the thoughts and beliefs they hold, and should be able to express, explain, defend, convey, and disseminate these ideas alone or together with others through various means." Since the **right to freedom of expression** is inherently **closely linked to the right to freedom of association**, it would not

be an exaggeration to say that they are like **two sides of the same coin**—one cannot truly exist without the other.

The Turkish Constitutional Court has addressed various cases concerning the freedom of association. For instance, in the case of **Kristal-İş Sendikası** (Application No: 2014/12166, 2/7/2015), the Court examined issues related to trade union rights. Similarly, in **Birleşik Metal İşçileri Sendikası** (Application No: 2015/14862, 9/5/2018), the Court dealt with matters pertaining to union activities. Another notable case is **Muharrem Çimen** (Application No: 2016/5002, 23/3/2023), which also delved into aspects of the freedom of association.

The Kristal-İş Sendikası case (Application No: 2014/12166) before the Turkish Constitutional Court deals with the right to freedom of association, specifically in the context of trade union activities. The case was brought by Kristal-İş, a labor union representing workers in the glass industry. The union argued that certain actions and decisions by the authorities interfered with their rights under the Constitution and international law, including the right to freely organize and engage in collective bargaining. The union claimed that administrative or judicial decisions limited their ability to organize and represent workers effectively. They alleged that these restrictions undermined the rights of workers to collectively negotiate working conditions. The case addressed whether the actions taken against the union violated the constitutional guarantee of freedom of association. The Constitutional Court assessed the case within the framework of Article 51 of the Turkish Constitution, which guarantees the right to form and join trade unions. It also considered international treaties, such as the European Convention on Human Rights (Article 11) and International Labour Organization (ILO) conventions, which Türkiye has ratified. The Court held that any restrictions on the activities of a union must be proportional, necessary in a democratic society, and pursue a legitimate aim. Unreasonable interference with union activities constitutes a violation of the right to freedom of association. The case is significant as it reaffirms the principles protecting trade unions and highlights the importance of ensuring workers' rights to organize without undue state interference.

The **Muharrem Çimen** case (Application No: 2016/5002) before the Turkish Constitutional Court addresses the alleged violation of trade union freedom due to disciplinary action taken against an employee for participating in a slowdown strike. Muharrem Çimen, the applicant, was an employee who participated in a slowdown strike organized by his trade union. In response, his employer imposed disciplinary measures against him. Çimen contended that

these actions infringed upon his constitutional right to trade union freedom. The applicant argued that participating in union-organized actions, such as slowdown strikes, is a fundamental aspect of trade union freedom. The case examined whether the disciplinary actions taken were proportionate and justified, considering the nature of the union activity involved. The Court evaluated the case in light of Article 51 of the Turkish Constitution, which safeguards the right to form and join trade unions. It also referenced international conventions, including the European Convention on Human Rights (Article 11), which protects freedom of assembly and association. The court arrived at the conclusion that participation in a slowdown strike, as a form of industrial action, falls within the scope of legitimate trade union activities. Imposing disciplinary penalties on an employee solely for engaging in such union activities constitutes a violation of the right to trade union freedom. This judgment underscores the importance of protecting employees' rights to participate in union activities without fear of retaliation, reinforcing the constitutional guarantee of trade union freedom.

In another interesting case, the court concluded in the Tayfun Cengiz decision that "freedom of association not only includes the right of individuals or legal entities to establish an organization and become a member of one, but also encompasses the ability to request human, material, and financial resources from local, foreign, and international sources, as well as the right to receive and utilize these resources."[14]

The Constitutional Court of Türkiye has adjudicated several significant cases concerning the **freedom of association,** particularly focusing on the dissolution of political parties and the rights of trade unions. For example; the **Welfare Party (Refah Partisi) Case,** in 1998 the Constitutional Court dissolved the Welfare Party on the grounds that its activities violated the principle of secularism enshrined in the Turkish Constitution. The party appealed to the European Court of Human Rights (ECHR), arguing that the dissolution infringed upon their rights to freedom of association and expression. However, the ECHR upheld the decision, stating that the party's policies were incompatible with democratic principles. Another one was the **Democratic Society Party (DTP) Case,** in 2009 the Constitutional Court ordered the closure of the pro-Kurdish DTP, citing its alleged connections with the Kurdistan Workers' Party (PKK), which is designated as a terrorist organization by Türkiye. The court also imposed political bans on several party members. This decision was met with criticism from the

[14] AYM (Turkish Constitutional Court), Tayfun Cengiz Decision, App. No: 2013/8463, Verdict dated 18/9/2014, § 36. See more about freedom of association in Türkiye, Karan, Ulaş, Örgütlenme ve Toplanma Özgürlüğü: Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi 3 [Freedom of Association and Assembly: Individual Application to the Constitutional Court, Handbook Series 3], (Ankara, Avrupa Konseyi, MRK Baskı, 2018).

European Union, which viewed it as a setback for democratic reforms in Türkiye. In the very recent Şerafettin Can Atalay Case, in 2023 the Constitutional Court ruled that the continued detention of Şerafettin Can Atalay, a member of parliament (Workers' Party of Türkiye), violated his rights to be elected and to engage in political activity. Atalay had been convicted of attempting to overthrow the government and was elected as an MP while his appeal was pending. The court's decision underscored the importance of legislative immunity and the protection of political rights. The Constitutional Court ruled twice in favor of Atalay, but the Court of Cassation did not implement these rulings, and the first-instance court followed the Court of Cassation's decision. As a result, the elected Member of Parliament, Atalay, is still in prison.

These cases reflect the Constitutional Court's pivotal role in interpreting and enforcing the principles of freedom of association in Türkiye, balancing state interests with individual and collective rights. However, it should not be forgotten that the main issue in Türkiye is the freedom of expression, as in a place where there is no real freedom of expression, it is impossible for other freedoms to exist and develop. Therefore, just like in other countries, the key to freedoms in Türkiye is through freedom of expression. Without building a system based on the rule of law, a constitutional republic cannot be established. In my view, the construction of a constitutional republic is only possible in a system where freedom of expression is absolute. To understand why **freedom of expression** is the most crucial issue in Türkiye, one must consider the events of **March 19, 2025**, when **Istanbul's elected mayor, Ekrem İmamoğlu, was detained and arrested**. In response, **millions of people participated in protests** under the framework of freedom of expression. However, the **blocking of social media platforms** and the **disruption of public transportation in Istanbul** served as further proof of the restrictions on this fundamental right.[15]

Between 1959 and 2016, the European Court of Human Rights (ECHR) issued a total of 656 violation rulings related to freedom of expression—265 of these decisions (40%) were against Türkiye.[16] This statistic clearly demonstrates that freedom of expression is the most significant legal issue in Türkiye. As a legal scholar and academic with 20 years of experience, I argue that the root cause of this problem lies in the positivist legal education taught in law

[15] See more "Turkish President Etrdogan's main rival jailed" by Emily Wither, visited on March 24, 2025, https://www.bbc.com/news/articles/c0egjvj8vdro

[16] See Violation by Article and by States (1959-2016), visited on March 24, 2025, chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.echr.coe.int/documents/d/echr/Stats_violation_1959_2016_ENG

schools. This approach has produced legal professionals who, instead of prioritizing justice, have developed a culture of submission to those in power. Therefore, unfortunately, it does not seem possible to speak of judicial independence in Türkiye, especially in the last two hundred years since the 1800s. On the contrary, it would be more accurate to call it the judiciary of the executive.

V. Concluding Remarks

The constitutional republic of a society or country is determined by looking at the functioning of the legal system built in that society or country. In fact, one can easily understand whether rights and freedoms are respected in that society simply by observing the functioning of traffic. You can even gauge the level of law and justice in a country by noticing whether people smoke without considering those walking behind them. In Türkiye, the system which has been in place since the 1800s was built upon elitist pillars and causes the innocent and honest people of this country to be the ones made to lose in the struggles that take place above. They have no race or religion. Sometimes they are Muslim, sometimes Jewish, sometimes Christian, and sometimes atheist. But their common point is being honorable in the face of the dishonorable. We believe that the disease of elitism is most evident in the fields of law and medicine. In a constitutional republic, people, citizens, will fear the power of the laws, not of individuals. Individuals will derive their power from the laws, not from their positions or the wealth they have accumulated.

Constitutionalism refers to the limitation of state or political power and the protection of individual freedoms. The goal of constitutionalism is to ensure as much freedom as possible for individuals, while also restraining the power of political authorities. Contrary to popular belief, constitutionalism existed in these lands long before the 1808 *Sened-i İttifak* (Deed of Agreement). In fact, constitutional judicial review, meaning the subjection of first-instance court decisions to the highest norm, the constitution, existed centuries ago in Turkish-Islamic states (the Great Seljuk State 1037-1194) through the *Divan-ı Mezalim* (the court of atrocity) institution, where the decisions of judges were corrected by a higher judicial body.

In conclusion, constitutional rights in Türkiye should begin with first-instance courts, and it is essential to move away from the Napoleonic model where agents of the administration are protected by legal loopholes. Instead, a system should be adopted where lawsuits can be directly filed and administrators are held accountable. In Türkiye, freedom of association is a constitutional right protected under Article 33 of the 1982 Constitution, which guarantees

everyone the right to form associations without prior permission. This right is also subject to Türkiye's international obligations under instruments such as the European Convention on Human Rights (ECHR), particularly Article 11. While the legal framework permits a wide range of associational activity, restrictions can be imposed on grounds such as national security, public order, or the prevention of crime. In practice, the Constitutional Court has played an active role in upholding associational rights, particularly in cases involving the closure of associations or political parties, emphasizing proportionality and democratic pluralism. However, concerns persist regarding limitations on certain civil society organizations, especially those critical of the government.