



# ***NEWS & VIEWS***

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REALITY *VERSUS* THE HUMAN RIGHTS ACTION PLAN (HRAP) .....3

IS HRAP A LITERARY TEXT? .....4

THE PREPARATION PROCESS OF HRAP .....5

BASIC PRINCIPLES OF THE HUMAN RIGHTS ACTION PLAN.....7

## Reality versus the Human Rights Action Plan (HRAP)

The Human Rights Action Plan (HRAP) consists of an introduction and the goals listed under 9 goals. When considered as a whole, the plan is outlined by the principles which are the minimum requirements for the struggle for human rights and the accumulation of the contemporary constitutionalism. The point of origin of the plan has been declared to be the protection liability of the state together with all the institutions and organizations towards the physical and non-physical existence and the honour and respectability of humans in all the procedures and actions.

HRAP speaks of a series of reforms which are under way since 2002. This is actually true if we consider that the plan is produced in consequence of hundreds of repetitive meetings and working visits. Indeed, the Specialization Commission Report of the Justice Services which determines the seven-year strategy of the judicial system, the Ninth Development Plan published in the Official Gazette dated 01.07.2006, the Judicial Reform Strategy issued by the Ministry of Justice in 2009, 2015 and 2019, Action Plan for the Prevention of the Violations of the European Convention on Human Rights published in the Official Gazette dated 08.02.2014, the Second Strategic Plan which covers the period between 2015 and 2019, the 10th Development Plan and, finally, HRAP which was announced on March 2, 2021 are almost self-same texts. HRAP didn't meet the expectations as the previous papers didn't provide a monitoring activity based on indicators and the papers which had been externally audited, if any, were not transparently shared with the public.

Concrete changes are required to talk about reforms. The repercussion of the alleged uninterrupted reforms from 2002 to 2021 on beneficiaries has become the disruption of the foundations of the fundamental rights and freedoms. The systematic infringements of rights intensify as there is no structural attempt to change the impunity culture. Regulations have been made ambiguous directly by the majority's superiority in number, and the judicial control (including the constitutional jurisdiction) has abandoned established judgments with the reshaping of the judicial system and the oppression as well as the infringements of the rights by the executive power. As a result, the means of remedy became ineffective.

What the plan misses most is a “reading directive.” Reading Directive is important not only for it shows the great abyss between the statements of the AKP and the reality but also for it refers to the accountable persons in the case of human rights infringements. If such a directive existed, it would be easier for everybody to identify the plan as a “confession” as soon as it was declared by the President.

Having recognized the qualities HRAP should bear as per the financing rules by the European Council and the European Union, it is clear that “pretending” causes harm to the process of democratization rather than producing benefits and that it should be carefully considered as it also diminishes the accountability of the infringers before the public. What should be done is not to support the atmosphere of oppression and fear wherein the rights of all from women to children, youth, disabled, elderly and workers are entrenched but to defend the rights of the citizens and the supremacy of law.

To the Republican People's Party, human rights are among the tenets of the Republic of Turkey. In this sense; supremacy of law, separation of powers and democratization are not fictional terms or expressions in the outputs of projects created subsequent to grant agreements but are constitutional guarantees. Therefore, the plan must be analysed in terms of discourse and technical aspects as it claims to bring changes based on the needs of the society and the satisfaction of citizens.

### **Is HRAP a literary text?**

Never to be implemented, HRAP leaves an impression like a fictional novel wherein institutions are real but the determinations and goals are only illusions. There are a couple of reasons why HRAP is not convincing.

The first reason is the historical and chronological experience. The contents of neither the IPA Program nor the ruling party's strategic planning and papers were not implemented but laws were enacted and steps were taken to the contrary as regards to these matters. After all the papers which proved to be the opposite when implemented, repetitive plans are not considered convincing by the human rights activists.

The second reason is that the laws which clash with the constitution are enacted by the majority in the parliament while the applications against the law are realized by the

executive power. The incumbent party does not show any sign of will to remove the infringements of rights it has caused in every field.

The third reason is that the international documents which were issued for long years to establish human rights in Turkey were not taken seriously and the necessary changes were not made by the party in power. On the contrary, it rather used the established norms to the detriment of citizens. Among countless examples, we can signify the noncompliance with the opinions for Turkey under the European Commission for Democracy through Law (the Venice Commission), to which Turkey is a party since its foundation in 1990. While the European Commission for Democracy through Law suggests that the Turkish Criminal Law, Article 299 should be removed, the Turkish President applies to the article more than the total number of all the predecessors in a single year and launches night raids to people's homes.

The fourth reason is the guarantee issue. The guarantee for rights and freedoms is completely destroyed due to the noncompliance with the decisions of the European Court of Human Rights of which jurisdiction is recognized, the disobedience by the courts of first instance to the decisions by the Constitutional Court and the violation of the compulsory norms by the law enforcers and judicial authorities. Most times, infringements of rights result in impunity due to the demanding identification procedures or lack of an effective investigation. The execution of the constitutional rights of citizens is further precluded by the rejection of the positive norms by the judicial authorities and its acceptance as a culture during the last 19 years, and dubious assignments to reshape the judicial system.

### **The Preparation process of HRAP**

As the introduction also suggests, the preparation process of HRAP was held as necessary meetings and reception of opinions. Before the plan was shared with the public, various human rights organizations such as the Human Rights Association, the Human Rights Foundation of Turkey and Amnesty International claimed that their opinions were received at the beginning of the process but no further feedback was provided.

The following paragraph from the plan concretely shows that the introduction and reality completely contravene each other: *"The reformative spirit that has been maintained since*

*2002 without interruption has been tangibly set forth through the legislative amendments in the field of human rights. Throughout this process the presumption of innocence, one of the universal principles of law, has been established as an essential value to be borne in mind by judicial authorities at all stages."*

However, in reality, the amendments (to the Constitution, in particular) deteriorated the independence and the objectivity of the judicial system, and repetitively amended regulation disrupted the foundations of rights by directly intervening with the fundamental rights such as freedom of expression, freedom of organization and right to a fair trial. The presumption of innocence is an assurance by the Constitution of 1982 which cannot be limited even during war, mobility and state of emergency. This principle, which interprets that no one can be sentenced unless there is a court order thereto, also applies when allegations result in acquittal. On the other hand, in reality, we see that all the opponents are claimed to be "terrorists" and are deprived of their freedom for long years even without an indictment.

As is the case with the given example, each and every sentence of the plan is far from reality, an illusion and a proof of infringement by the incumbent power.

HRAP consists of nine goals which are: A Stronger System for Protection of Human Rights; Strengthening Judicial Independence and the Right to a Fair Trial; Legal Predictability and Transparency; Protection And Promotion Of The Freedoms Of Expression; Association And Religion, Strengthening Personal Liberty and Security; Safeguarding the Physical and Moral Integrity and the Private Life of the Individual; A More Effective Protection of the Right to Property; Protection Vulnerable Groups and Strengthening Social Wealth; High-Level Administrative and Social Awareness on Human Rights. **All these goals consist of the rights which are secured by the Constitution and the international conventions to which the Republic of Turkey is a party.**

Similarly, the Basic Principles for the Human Rights Action Plan suggest the guarantee offered by the Constitution of 1982, which was already in effect before the AKP. The following table clearly shows each principle corresponding to a regulation in the present Constitution.



### Basic Principles of the Human Rights Action Plan

1. Every human lives with the unalienable rights he/she inherently holds since birth. The main purpose and duty of the State is to protect and promote these rights.	<p>This is regulated under the Introduction and Article 5 "The State's goals and missions" of the Constitution of the Republic of Turkey.</p> <p>Article 1 "Obligation to Respect Human Rights" of ECHR prescribes that the contracting parties must ensure the rights and freedoms given in this convention.</p>
2. Human dignity, as the essence of all rights, is under the active protection of law.	<p>It is among the main principles given in the introduction of the Constitution. Article 2 of the Constitution cements the concept with the expression "state... respecting human rights."</p>
3. Everyone is equal before the law without any discrimination based on language, race, colour, sex, political view, philosophical belief, religion, sect or similar other reasons.	<p>Article 10 "Equality before the Law" of the Constitution. Furthermore, Articles 24 "Freedom of Religion and Conscience" and 25 "Freedom of Thought and Opinion" also directly regulate concerns based on this principle.</p> <p>ECHR Art. 14 Prohibition of Discrimination.</p>
4. The equal, impartial and honest provision of public services to everyone is the main feature of all executive activities.	<p>Article 10 "Equality before the Law" of the Constitution.</p>
5. The legislation contains sufficiently clear, non-ambiguous, understandable and foreseeable rules not to allow any doubt; in turn, the public authorities implement those rules without prejudice to the principle of legal security.	<p>Article 2 "Characteristics of the Republic" of the Constitution pronounces the "rule of law" principle. The rule of law principle means that laws are predictable and clear.</p>
6. No interference incompatible with the principle of legal security or the principle of protection of acquired rights may be performed in any way on the freedom of contract.	<p>Vested right and legal certainty principles are the essential elements of rule of law. Article 2 of this Constitution provides this condition. Furthermore, Article 48 "Freedom of Work and Contract" of the Constitution regulates the freedom of contract.</p>
7. The State protects and promotes the freedom of enterprise and labour within the framework of the rules of competitive free market and the principle of social state.	<p>Article 48 of the Constitution regulates the freedom of enterprise and working. On the other hand, social state principle is pronounced under Article 2 of the Constitution.</p>
8. Judicial and administrative operations adopt at their core an approach that protects, upholds and strengthens the principles of presumption of innocence, right of individuals not to have their honour and reputation tarnished, and individuality of criminal liability	<p>The presumption of innocence is regulated under paragraph four, Article 38 of the Constitution. (See also paragraph two, Article 15 concerning the suspension of the exercise of fundamental rights and freedoms)</p> <p>Certain regulations have been made as regards to the right of not to have one's honour and reputation tarnished. In this respect, the Law of Criminal Procedure regulates this right with paragraph 6, Article 158 "Notice and Complaint". Besides, the Turkish Criminal Law, Article 285 "Breach of Confidentiality" also provides regulations to that effect.</p>

	<p>The individual criminal responsibility is regulated under Article 38 of the Constitution. It is also handled in Article 20 of Turkish Criminal Law.</p> <p>Article 6 "Right to a Fair Trial" of ECHR regulates the presumption of innocence in the second paragraph.</p>
9. No one may be deprived of liberty due to criticism or expression of thought.	<p>Article 25 "Freedom of Thought and Opinion" of the Constitution regulates "the freedom of expression." Article 38 of the Constitution states that "No one shall be punished for any act which does not constitute a criminal offense under the law in force at the time committed."</p> <p>Article 10 "Freedom of Expression" of the ECHR provides regulations in this regard.</p>
10. The rule of law shall be fortified at every area as a safeguard for rights and freedoms as well as justice.	Article 2 "Characteristics of the Republic" of the Constitution regulates the "rule of law" principle.
11. Anyone who claims to be the victim of a violation of their rights should be able to access effective legal remedies effortlessly. Access to justice is at the core of the respect for rights and freedoms.	Article 36 "Freedom to Claim Rights" of the Constitution offers a regulation to this purpose.
	On the other hand, Articles 13 "Right to an Effective Remedy" and 6 "Right to a Fair Trial" of ECHR

The analysis of the activities given in the plan has shown that the great majority of them were ambiguous or, in other words, indefinite. As there is no monitoring system created based on indicators, it is impossible to impartially make out what is the activity referred to. To speak in concrete terms, it must be clearly identified which regulation and practice will be reviewed, by whom and with which methods or who will take the necessary measures and when in order that the expression *"The legislation and the practice will be reviewed on a regular basis and the necessary measures will be taken in order to strengthen the rule of law and the rights and freedoms."* can be regarded as an activity. On the other hand, the public must be able to transparently observe whether this activity is carried out or not. The action plan can be effective only if implemented with such concrete steps. Otherwise, it will only remain as a paper of "wishes and requests."

If intended by the AKP, all the activities can be implemented in the first quarter of the 2 years which has been determined as the implementation period. Indeed, the reason why these activities are not performed is the AKP's political choice. All these activities can be realized with administrative procedures and steps.



The only new field which requires legislative amendment is *"Protection of Human Rights in Digital Environment and against Artificial Intelligence Applications."*

It is stated that ***"Necessary changes will be made to the legislation on political parties and elections with a view to empowering democratic participation"*** but the removal of or reduction in the election threshold, which is the first move to do such an amendment, has not been made by the AKP, the only political party in power for the last 19 years. The goal still remains unfulfilled although pronounced for almost two decades. The regulations such as the extension of the term of study in faculties of law to 5 years, introduction of assistant judges and prosecutors and plans to change the periods for pronouncements, notifications and administrative applications were already given under previous papers.

The plan also asserts that ***"The structure of the Human Rights and Equality Institution of Turkey will be rendered compliant with the UN Principles relating to the Status of National Institutions and its accreditation by the Global Alliance of National Human Rights Institutions will be secured"*** but the human Rights and Equality Institution of Turkey was not established in accordance with the Paris Principles. The Law no. 6701 on the Human Rights and Equality Institution of Turkey dated 06.04.2016 was referred to the Constitutional Court by the Republican People's Party for cancellation but all the applications were rejected by the court. (CONS. COURT DECREE, Official Gazette Date – No: 26.12.2017 – 30282). As per OPCAT, the Human Rights and Equality Institution of Turkey, which is also known as the National Prevention Institution, is not a body that can conduct monitoring activities. It is noted that an independent *"Commission for Monitoring Human Rights at Penitentiary Institutions"* will be established by those who accept that the Human Rights and Equality Institution of Turkey is an independent institution.

***"The damages incurred due to lengthy proceedings will be remedied quickly by the Human Rights Compensation Commission without a need to lodge an application with the Constitutional Court."*** It is suggested that the Compensation Commission will also investigate the personal applications filed to the Constitutional Court until 31 July 2018, for it was complained that the prosecutions under the temporary article included in the Law no.

6384 took an extended period of time and that judicial decisions were delayed or not enforced.

It is stated that ***“A vertical objection procedure will be introduced against the magistrate judges’ orders for detention and other preventive measures.”*** but the present closed-cycle objection system was brought by the AKP. The penitentiary monitoring boards were terminated by the AKP. It was the AKP that brought the restrictions to the interviews with defence counsels.

It is stated that ***“The applicable scope of the mediation procedure in civil disputes will be expanded and mediators will be directed to specialise in different fields. A court-based family mediation system will be created, in consideration of the standards enshrined in international conventions, with a view to preventing in particular the traumatising of women and children over the course of the divorce process.”*** but mediation is provided as an obligation rather than an alternative controversy solution. Applying to mediation as a condition for action promotes the protection of the powerful before the weak and contrasts with the social state principle. In this sense, mediation for marital discords can cause irrevocable consequences for both women and children.

Instead of the activity which claims that ***“The legislation related to personal liberty and security will be reviewed within the framework of the principle of proportionality and an analysis report will be prepared in this regard”***, it is necessary to comply with the present constitutional guarantees and give up detention as a means of punishment. All in all, the action plan still alleges to issue an analysis report despite countless decisions by the Constitutional Court and ECHR and hundreds of reports by the national and international human rights organizations.

***Attachment: Comparative Table for the Human Rights Action Plan***