



**HREIT**

**HUMAN RIGHTS AND EQUALITY  
INSTITUTION OF TÜRKİYE**

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**CONTRIBUTION OF THE HUMAN RIGHTS AND EQUALITY  
INSTITUTION OF TÜRKİYE (HREIT)  
TO THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR  
BELIEF'S THEMATIC REPORT TO BE DELIVERED TO THE 55<sup>TH</sup>  
SESSION OF THE UN HUMAN RIGHTS COUNCIL**

29 October 2023

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**Contribution of the Human Rights and Equality Institution of Türkiye (HREIT)  
to the Special Rapporteur on Freedom of Religion or Belief's Thematic Report to be  
Delivered to the 55th Session of the UN Human Rights Council**

**Advocacy of Hatred Based on Religion or Belief**

The principles of non-discrimination, equality before the law, and the right to freedom of thought, conscience, religion, or belief, which are the basic principles of international human rights law, are proclaimed in the Universal Declaration of Human Rights and the International Covenants on Human Rights and are recognized in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.<sup>1</sup>

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that the disregard and violation of human rights and fundamental freedoms, in particular the right to freedom of thought, conscience, religion or belief of any kind, directly or indirectly bring wars and great suffering to humanity, in particular serve as a means of foreign interference in the internal affairs of other States and foment hatred among peoples and nations.<sup>2</sup>

Recently, advocacy of hatred based on religion or belief, hate speech and Islamophobia have reached serious dimensions. Islamophobia is a criminal act that violates international human rights conventions and legal regulations. Islamophobic discourse and hate advocacy are considered as discrimination. In line with universal legal principles such as equality before the law, a supranational protection system against discrimination has been envisaged and various legal arrangements have been made.<sup>3</sup>

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<sup>1</sup><https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination> (Access Date: 18.10.2023)

<sup>2</sup><https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination> (Access Date: 18.10.2023)

<sup>3</sup>Muharrem KILIÇ, Socio-Political Context of Legal Reason - Norm, Meaning, Interpretation, 2018, Ankara, p. 227-229.

According to the reports of international institutions and non-governmental organizations, States are obliged to prohibit advocacy of hatred based on religion in the context of discrimination and violence in national level.<sup>4</sup>

In Türkiye, Turkish legislation contains preventive and punitive regulations related to advocacy of hatred based on religion or belief. First of all, **Article 10 of the Constitution of the Republic of Türkiye**, regulates “**equality before the law**”. The first paragraph of Article 10 is “*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*” and the last paragraph of the article is “*State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings*”.<sup>5</sup> While the issues regulated in this article of the Constitution emphasize that everyone is equal before the law, it obliges state organs and administrative authorities to act without discrimination based on language, race, religion, and such. This article is important because it is a guiding regulation that can be taken as a basis for preventing advocacy of hatred based on religion or belief.

**Article 122 of the Turkish Penal Code**<sup>6</sup> regulates “**Hatred and Discrimination**”. According to the Article 122: “*Any person who prevents the sale, transfer or rental of a movable or immovable property offered to the public, prevents a person from enjoying services offered to the public, prevents a person from being recruited for a job, prevents a person from undertaking an ordinary economic activity on the ground of hatred based on differences of language, race, nationality, colour, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years.*”

**Article 115 of the Turkish Penal Code**<sup>7</sup> regulates “**Prevention of the Exercise of Freedom of Belief, Thought and Conviction**” and states that: “*Any person who uses force against, or threatens, another person in order to compel him to alter or declare, or in order to prevent him from declaring or disseminating, his religious, political, social, or philosophical beliefs, thoughts or convictions shall be sentenced to a penalty of imprisonment for a term of one to three years. Where communal religious worship or ceremony is prevented by the use of*

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<sup>4</sup><https://www.tihk.gov.tr/public/editor/uploads/obU3Lc2y.pdf> (Access Date: 25.10.2023)

<sup>5</sup>[https://www.anayasa.gov.tr/media/7258/anayasa\\_eng.pdf](https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf) (Access Date: 19.10.2023)

<sup>6</sup>[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e) (Access Date: 18.10.2023)

<sup>7</sup>[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e) (Access Date: 18.10.2023)

*force, threats or by any other unlawful act a penalty in accordance with paragraph 1 shall be imposed. Where life styles originating from beliefs, thoughts or convictions are interfered with or altered involuntarily by using force, threats or by any other unlawful act, a penalty in accordance with paragraph 1 shall be imposed.”*

**Article 216 of the Turkish Penal Code<sup>8</sup>** regulates “**Provoking the Public to Hatred, Hostility or Degrading**” and states that: “*A person who publicly provokes hatred or hostility in one section of the public against another section which has a different characteristic based on social class, race, religion, sect or regional difference, which creates an explicit and imminent danger to public security shall be sentenced to a penalty of imprisonment for a term of one to three years. A person who publicly degrades a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a penalty of imprisonment for a term of six months to one year. A person who publicly degrades the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace.”*

**Article 153 of the Turkish Penal Code<sup>9</sup>** regulates “**Damaging Places of Worship and Cemeteries**” and states that: “*Any person who damages the buildings, associated buildings (or structures upon such) of a place of worship or the removable property therein, or a structure with the purpose of protecting a cemetery by destroying, damaging or breaking such, shall be sentenced to a penalty of imprisonment for a term of one to four years. Any person who soils the places or structures listed in the first paragraph shall be sentenced to a penalty of imprisonment for a term of three months to one year, or a judicial fine. Where the offences in paragraphs one and two are committed with the aim of defaming a related religious group then the penalty shall be increased by one third.”*

National human rights institutions are independent bodies with significant powers to protect and promote human rights and uncover violations of rights and freedoms, and should work on combating advocacy of hatred based on religion or belief and developing tools for monitoring and preventing it.<sup>10</sup> The founding law of the Human Rights and Equality Institution of Türkiye (HREIT), **the Law No. 6701 on the HREIT<sup>11</sup>**, mandated the institution in three

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<sup>8</sup>[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e) (Access Date: 18.10.2023)

<sup>9</sup>[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e) (Access Date: 18.10.2023)

<sup>10</sup><https://www.asiapacificforum.net/news/nhris-urged-counter-rise-hate-speech/> (Access Date: 19.10.2023)

<sup>11</sup><https://www.tihек.gov.tr/public/editor/uploads/1660833133.pdf> (Access Date: 19.10.2023)

main areas. According to this, HREIT has national human rights institution mandate, which covers protecting and promoting human rights; equality body mandate which contains fighting against discrimination, and lastly, national preventive mechanism mandate.

In the context of equality body mandate, HREIT has the authority to inquire into, examine and take a final decision on and monitor the violations of non-discrimination principle – ex officio or upon an application. Within the scope of the national human rights institution mandate which covers protection and promotion of human rights, HREIT has the authority to; ex officio inquire into, examine, take a final decision on and monitor the results of violations of human rights.

HREIT has administrative and financial autonomy, a special budget, and a public legal entity. On 10.10.2022, the Global Alliance of National Human Rights Institutions (GANHRI) Sub-committee on Accreditation granted the Institution with “B” Status accreditation.<sup>12</sup>

According to **Article 3/1-2 of Law No. 6701**, “*All are equal in the exercise of legally recognized rights and freedoms.*” and “*It is prohibited under this Law to discriminate against persons based on the grounds of sex, race, colour, language, religion, belief, sect, philosophical or political opinion, ethnical origin, wealth, birth, marital status, health status, disability and age.*”<sup>13</sup> This rule about the principle of equality and the prohibition of discrimination in the relevant law is a significant regulation that can be effective in combating advocacy of hatred based on religion or belief. With this law, discrimination is prohibited, and sanctions may be imposed on real and legal persons who do not comply with these rules. Although the law does not directly regulate advocacy of hatred based on religion or belief, religion and belief are listed among the 15 prohibited grounds of discrimination in the law. In this regard, the establishment of HREIT is one of the important steps taken at the national level to combat advocacy of hatred based on religion or belief.

In this context, HREIT’s efforts to understand the structural and systematic basis of hatred, and how to transform those structures, in order to eliminate the roots of the cancer of hate are listed below:

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<sup>12</sup><https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf> (Access Date: 19.10.2023)

<sup>13</sup><https://www.tihk.gov.tr/public/editor/uploads/1660833133.pdf> (Access Date: 19.10.2023)

- In the first issue of HREIT’s academic journal, the article titled **“Hate Speech Expressed by Members of Parliament: The Dilemma and Key for Its Resolution”**<sup>14</sup> has been published.
- In the **Protection and Promotion of Human Rights 2020 Report**<sup>15</sup> prepared by HREIT, recommendations were made to carry out studies on **“digital rights and digital hate speech”** in order to determine the areas of rights and responsibilities that arise with digitalization.
- On 27 October 2021, a symposium on **“Hate Speech and Hate Crimes”** was held by HREIT.<sup>16</sup> Afterwards, the proceedings book for the symposium<sup>17</sup> was published and shared with all stakeholders.
- Within the mandate of being an equality body, the first **Consultative Commission Meeting on Non-Discrimination** was held in Ankara on November 2021 and it was decided to form three sub-commissions to carry out studies in cooperation with public institutions and agencies, non-governmental organizations, unions, social and professional organizations, higher education institutions, media, researchers and relevant agencies and organizations. One of the sub-commission established in this context is the **“Sub-Commission on Combating Xenophobia and Hate Speech”**.
- In September 2022, **Fact Sheet No. 5: Hate Speech**<sup>18</sup> was published in English on the HREIT’s website. This fact sheet prepared in the scope of HREIT’s mandate on protecting and promoting human rights and aims to raise awareness in the relevant matter.
- A thematic report titled **“Special Report on the Principle of Non-Discrimination and the Role of Equality Bodies in the Context of Combating Hate Speech and Xenophobia”** is being prepared by HREIT with the aim of providing an informative resource for those who want to research or learn about the roles that equality bodies can play. This report will include an evaluation of the concepts of hate speech and xenophobia in the context of human rights law, in line with Law No. 6701 and examples

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<sup>14</sup><https://www.tihек.gov.tr/public/editor/uploads/1550837081.pdf> (Access Date: 19.10.2023)

<sup>15</sup><https://www.tihек.gov.tr/public/editor/uploads/ihGR2020.pdf> (Access Date: 19.10.2023)

<sup>16</sup><https://www.tihек.gov.tr/kurumumuz-tarafindan-nefret-soylemi-ve-nefret-suclari-sembolyumu-duzenleniyor> (Access Date: 19.10.2023)

<sup>17</sup><https://www.tihек.gov.tr/public/editor/uploads/1662712481.pdf> (Access Date: 19.10.2023)

<sup>18</sup><https://www.tihек.gov.tr/public/editor/uploads/Hate%20Speech.pdf> (Access Date: 19.10.2023)

of good practice in the fight against hate speech and xenophobia, and is planned to be published in 2023.

- HREIT conducted an ex officio investigation to determine whether the expressions in the content of a column on the website of a newspaper constituted hate speech. **The decision dated 09.08.2022 and numbered 2022/490<sup>19</sup>** emphasized that *“Since freedom of expression has a norm area, like every right protected in the Constitution, some expressions remain within the scope of freedom of expression, while others are not considered within the norm area in terms of human rights. When hate speech comes into existence, a conflict arises between freedom of expression and the right not to be discriminated against, hate speech is outside the scope of protection provided by freedom of expression and is accepted as an exception to it.”*

In its decision, HREIT stated that *“At this point, it is evaluated that the aforementioned statements are not a part of reporting and news analysis based on concrete information and data within the scope of the performance of the duty of journalism, but rather an attack on human dignity and stigmatization of individuals belonging to a community simply because of their ethnic origin and belief.”*

*“It is considered that the hateful expressions in the column written by the columnist expand the area where the discourse spreads and cause more people to be marginalized, excluded, and stigmatized, both by the fact that they are published in a newspaper with a high circulation and by the fact that the newspaper contents are published on the internet and spread easily in this environment thanks to today's new technologies.”*

*“It has been concluded that Law No. 6701 is compatible with values such as tolerance, social peace, and the prohibition of discrimination and that content of the column constitutes hate speech because it contains discriminatory and marginalizing elements against ethnic origin and belief.”*

- The report titled **“The Principle of Non-Discrimination and the Role of Equality Institutions in the Context of Combating Hate Speech and Xenophobia”<sup>20</sup>** was published in 2023.

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<sup>19</sup><https://www.tih.gov.tr/public/images/kararlar/4v4zt8.pdf> (Access Date: 19.10.2023)

<sup>20</sup><https://www.tih.gov.tr/public/editor/uploads/obU3Lc2y.pdf> (Access Date:25.10.2023)

- The press releases published by the HREIT to combat advocacy of hatred based on religion or belief are as follows:
- ✓ On 09 February 2022, HREIT published a **Press Release on Expressions of Hate Speech against Individuals of Alevi Faith.**<sup>21</sup>
- ✓ On 21 January 2023, HREIT published a **Press Release on Permission to the Act of Burning the Quran in Sweden.**<sup>22</sup>
- ✓ On 27 January 2023, HREIT published a **Press Release on Increasing Islamophobic Acts.**<sup>23</sup>
- ✓ On 15 March 2023, HREIT published a **Press Release on 15 March International Day to Combat Islamophobia.**<sup>24</sup>
- ✓ On 22 May 2023, HREIT published a **Press Release on Statements Containing Hate Speech.**<sup>25</sup>
- ✓ On 18 June 2023, HREIT published a **Press Release on International Day for Countering Hate Speech.**<sup>26</sup>
- ✓ On 23 June 2023, HREIT published a **Press Release on the Attack to Mosque and the Quran in Palestine.**<sup>27</sup>
- ✓ On 21 July 2023, HREIT published a press release **Press Release on the Reoccurring Attack on Holy Quran in Sweden.**<sup>28</sup>
- ✓ On 22 July 2023, HREIT published a **Press Release On the Burning of the Quran in Denmark.**<sup>29</sup>

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<sup>21</sup><https://www.tihек.gov.tr/alevilik-inancina-sahip-bireylere-yonelik-nefret-soylemi-barindiran-ifadeler-hakkinda-basin-aciklamasi/> (Access Date: 19.10.2023)

<sup>22</sup><https://tiheк.gov.tr/press-release-on-permission-to-the-act-of-burning-the-quran-in-sweden> (Access Date: 19.10.2023)

<sup>23</sup><https://tiheк.gov.tr/press-release-on-increasing-islamophobic-acts> (Access Date: 19.10.2023)

<sup>24</sup><https://tiheк.gov.tr/15-march-international-day-to-combat-islamophobia> (Access Date: 19.10.2023)

<sup>25</sup><https://www.tihек.gov.tr/press-release-on-statements-containing-hate-speech/> (Access Date: 19.10.2023)

<sup>26</sup><https://www.tihек.gov.tr/en/press-release-on-international-day-for-countering-hate-speech> (Access Date: 19.10.2023)

<sup>27</sup><https://tiheк.gov.tr/press-release-on-the-attack-to-mosque-and-the-quran-in-palestine> (Access Date: 19.10.2023)

<sup>28</sup><https://tiheк.gov.tr/press-release-on-the-reoccurring-attack-on-holy-quran-in-sweden> (Access Date: 19.10.2023)

<sup>29</sup><https://tiheк.gov.tr/press-release-on-the-burning-of-the-quran-in-denmark> (Access Date: 19.10.2023)



- ✓ On 26 July 2023, HREIT published a **Press Release on the Resolution of UN General Assembly Deploring Violence Against Holy Books as a Violation of International Law.**<sup>30</sup>
- ✓ On 24 September 2023, HREIT published a **Press Release Regarding the Acts of Tearing the Quran in the Netherlands.**<sup>31</sup>

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<sup>30</sup><https://tihek.gov.tr/press-release-on-the-resolution-of-un-general-assembly-deploring-violence-against-holy-books-as-a-violation-of-international-law> (Access Date: 19.10.2023)

<sup>31</sup><https://tihek.gov.tr/press-release-regarding-the-acts-of-tearing-the-quran-in-the-netherlands> (Access Date: 19.10.2023)

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