

## **Executive Summary**

1. The submitting organisations<sup>1</sup> welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Turkey. This submission focuses on Turkey's compliance with its international human rights obligations with respect to freedom of expression and freedom of information.<sup>2</sup> In particular, it details concerns relating to:
  - The rule of law and the State of Emergency
    - State of Emergency
    - Independence of judges and lawyers
    - State of Emergency Inquiry Commission
  - Legal framework for freedom of expression
    - Restrictions in the Turkish Penal Code (TPC)
    - Misuse of counter-terrorism measures to target expression
  - Media freedom
    - Forced closure of media outlets
    - Reforms to regulatory framework and media pluralism
    - Arrests, trials and harassment of journalists, civil society and academics
  - Freedom of expression online
    - Blocking and filtering
    - Takedown requests
2. During the second UPR cycle, Turkey accepted 19 recommendations to improve freedom of expression online and offline.<sup>3</sup> However in the period under review, the human rights situation has deteriorated severely, in particular for freedom of expression. A crackdown on civic space, media freedom, and a purge of dissenting voices, which escalated in the aftermath of the failed attempted coup in 2016, is ongoing. Changes to the counter-terrorism framework, first introduced under the State of Emergency (SoE) and later made permanent in law, have had far-reaching impacts on the rule of law, and facilitated the arbitrary targeting of journalists, activists, and opposition voices, particularly in the Southeast.

## **The Rule of Law and the SoE**

3. Following the failed coup attempt of 15 July 2016, a three-month SoE was declared on 21 July, which the government renewed seven times until 18 July 2018. Under the auspices of the SoE, the government introduced a series of legal amendments through emergency decrees, bypassing ordinary legislative procedure which resulted in sweeping permanent changes to the legal framework and the model of democratic governance.
4. A constitutional referendum in April 2017, brought forward by the ruling AKP party and held under the highly restrictive conditions of the SoE, resulted in a shift from a parliamentary to a presidential system, concentrating power in the executive. In removing guarantees of political and judicial oversight over the executive, the amendments have severely undermined democratic checks and balances,<sup>4</sup> and placed Turkey at risk of “degeneration into an authoritarian presidential system,” according to the Venice Commission.<sup>5</sup>
5. The adoption of Presidential Decrees have profoundly restructured the system of government, bringing ministries and public agencies within the purview of the President's office, thus empowering the President to appoint heads of regulatory bodies and gravely undermining their independence from political interference. While the majority of the amendments came into effect in 2019, one change which empowered the President to directly appoint members of the judiciary was implemented immediately (para 7).

## **Independence of judges and lawyers**

6. While Turkey supported 10 recommendations related to judicial independence,<sup>6</sup> the government has systematically eroded judicial independence, particularly since July 2016. This has serious implications for the rule of law, and the right to a fair trial for the hundreds of journalists, civil society members and academics who have been judicially harassed since the SoE was enacted. The Turkish Constitution enshrines the principles of the rule of law (Article 2) and independence of the courts (Article 138), establishes the security

---

<sup>1</sup> ARTICLE 19, P24, PEN International, English PEN, Reporters Sans Frontiers (RSF), International Press Institute (IPI), Freemuse, European Centre for Press and Media Freedom (ECPMF), IFEX and Norsk PEN.

<sup>2</sup> Turkey has ratified the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), both of which provide broad protection to the right to freedom of expression in Article 19(2) and 10(1) respectively.

<sup>3</sup> 148.115 (Lebanon); 148.116 (Luxembourg); 148.117 (United States of America); 148.118 (Austria); 148.119 (France); 148.120 (Switzerland); 148.121 (United Kingdom of Great Britain and Northern Ireland); 148.122 (Sweden); 148.123 (Costa Rica); 148.124 (Botswana); 148.125 (Finland); 148.126 (Angola); 148.127 (Angola); 148.14 (Latvia); 148.36 (Italy); 149.10 (Hungary); 149.34 (Norway); 149.37 (France); 150.16 (Republic of Korea). See: 'Report of the Working Group of the Universal Periodic Review on Turkey: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/29/15/Add.1', Human Rights Council, 10 June 2015; Available at: <https://bit.ly/2GvaiEp>.

<sup>4</sup> 'Turkey: Concerns for freedom of expression deepen after referendum', ARTICLE 19, April 18 2017; Available at: <https://bit.ly/2OiqDmo>.

<sup>5</sup> 'Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005', Venice Commission, 13 March 2017; Available at: <https://bit.ly/2rzWd0A>.

<sup>6</sup> United States of America (148.106), Slovakia (148.105), Hungary (149.10), Luxembourg (149.22), Denmark (149.23), Switzerland (149.24), Namibia (149.25), Uruguay (149.26), Australia (149.28), Austria (149.29).

of tenure of judges and prosecutors (Article 139), and outlines that judges must discharge their duties in accordance with the abovementioned principles (Article 140).

7. These guarantees were undermined by the amendment to Article 159 of the Constitution - passed through the April 2017 constitutional referendum - relating to the membership of the Council of Judges and Prosecutors (CJP) which is responsible for the admission, appointment, transfer, promotion, disciplinary proceedings and supervision of judges and prosecutors, and was previously functionally independent. The amendment empowered the President to directly appoint six of 13 members of the CJP, and Parliament to appoint the remaining seven. This has facilitated undue political interference in the judiciary and is contrary to international standards. The Venice Commission has described the development as placing the “the independence of the judiciary in serious jeopardy”.<sup>7</sup>
8. At least 3,673 judges and prosecutors were dismissed in the aftermath of the failed coup,<sup>8</sup> following the adoption of Emergency Decree Law No. 667 on 22 July 2016.<sup>9</sup> This Decree paved the way for the government to label individuals perceived to support the opposition as members of the Fethullahist Terrorist Organization (FETÖ), the movement deemed responsible for the attempted coup, without credible evidence. Very few of those dismissed have been reinstated, with limited recourse for appeal or remedy (para 10).
9. The judiciary has effectively been purged of any perceived government opponents, and replaced with pro-government appointees in contravention of international standards.<sup>10</sup> This has had a chilling effect, with those still in post fearing reprisals, particularly for failing to find in favour of the government in clearly politically motivated cases.<sup>11</sup> The assault on the independence of the judiciary has contributed to hundreds of arbitrary arrests, detentions, and unfair trials of journalists and civil society actors.

### **SoE Inquiry Commission**

10. In May 2017, the government established an SoE Inquiry Commission (Commission) to review appeals related to the over 130,000 dismissals of civil servants and public officials that followed the attempted coup, as recommended by the Council of Europe.<sup>12</sup> As of May 2019, 126,600 applications had been made, of which 70,406 had been reviewed and only 5,250 had led to a reinstatement. 65,156 complaints were rejected and 55,714 applications were pending.<sup>13</sup> The submitting organisations are deeply sceptical that the Commission represents a genuinely independent or effective judicial remedy. It is our opinion that no effective remedy exists in Turkey against dismissals based on emergency decrees, contrary to Turkey's obligations under international law. This is exacerbated in light of decisions of the Turkish Constitutional Court (TCC) and European Court of Human Rights (ECtHR) recognising the Commission as a domestic remedy that must be exhausted before cases are accepted by those courts.
11. Against this backdrop, President Erdoğan's announcement on 30 May 2019 of a new judicial reform package raises serious concerns that this will further entrench political interference in the judiciary, rather than restore its independence.

### **Recommendations:**

- Fully restore the independence of the judiciary, including by repealing constitutional amendment 159, to prevent political interference in the CJP;
- Ensure the separation and independence of governmental branches and to ensure that no political pressure is exerted to any part of the state system;
- Provide all those dismissed under the SoE decrees with an effective appeals mechanism which is in compliance with due process guarantees, full legal representation, access to all files, the opportunity to have a hearing with an adversarial procedure, and access to effective remedies. Reinstatement all those arbitrarily dismissed from their jobs.

### **Legal framework for freedom of expression**

<sup>7</sup> 'Opinion on the Amendments to the Constitution', Venice Commission, 13 March 2017, para. 119; Available at: <https://bit.ly/2rzWd0A>.

<sup>8</sup> This figure is cited by the Venice Commission, based on statistics obtained on 15 November 2016 from the High Judicial and Prosecutorial Council of Turkey. According to the Human Rights Joint Platform, as of March 2018, 4,279 judges and prosecutors were dismissed and 166 subsequently reinstated. See: 'Threats to the independence of the legal profession in Turkey - systematic arrests and detention of lawyers/dismissals of judges and prosecutors', Bar Human Rights Committee of England & Wales, IBAHRI and Law Society of England and Wales, 18 September 2018, para. 28; Available at: <https://bit.ly/2GsvhYG>.

<sup>9</sup> 'Opinion on Emergency Decree Laws Nos 667-676 Adopted Following the Failed Coup of 15 July 2016, CDL-AD(2016)037', Venice Commission, 12 December 2016, para. 147; Available at: <https://bit.ly/2Mjk3ZU>.

<sup>10</sup> Among others: 'UN Basic Principles on the Independence of the Judiciary', United Nations, 6 September 1985, Principle 12; Available at: <https://bit.ly/2JfeGrC>; 'European Charter on the Statute of Judges', Council of Europe, 10 July 1998, Article 3.4; Available at: <https://bit.ly/2YjeZay>; 'Opinion No. 1 on Independence of Judges', Consultative Council of European Judges, 23 September 2001, para. 60; Available at: <https://bit.ly/2QNdzGh>; 'Recommendation on Judges: Independence, Efficiency and Responsibilities, CM/Rec(2010)12', Council of Europe Committee of Ministers, 17 November 2010; Available at: <https://bit.ly/2y7pLGe>; 'Campbell and Fell v UK, Application Nos. 7819/77 and 7878/77', European Court of Human Rights, 28 June 1984, para. 80; Available at: <https://bit.ly/2SEqNd6>.

<sup>11</sup> 'Key Findings of the 2019 Report on Turkey', European Commission, 29 May 2019; Available at: <https://bit.ly/2JQHISL>; '2018 Report on Turkey', European Commission, 17 April 2018; Available at: <https://bit.ly/2HaRBZ6>.

<sup>12</sup> 'Turkey: Events of 2018', Human Rights Watch, 2019; Available at: <https://bit.ly/2W2P1bl>.

<sup>13</sup> See: 'Resolution on ineffective legal remedy for Turkey's journalists', European Center for Press Media and Freedom, 12 February 2019; Available at: <https://bit.ly/2LCWUm1>; '2019 Report', European Commission, 29 May 2019; Available at: <https://bit.ly/2JQHISL>; 'Resolution: Turkey: The myth of domestic legal remedy', International Press Institute, 18 February 2019; Available at: <https://bit.ly/2tnWUa>.

12. The government supported 14 recommendations related to strengthening the legal framework on freedom of expression,<sup>14</sup> and 5 recommendations specifically related to bringing terrorism legislation in line with international human rights standards.<sup>15</sup> However, in the period under review, the government has weaponised the legal system and terror legislation to restrict free expression.
13. The right to freedom of opinion and expression is guaranteed by Article 26 of the Turkish Constitution.<sup>16</sup> Through Act no. 4709, on 3 October 2001, Parliament amended Article 26 to permit restrictions, including vague concepts such as “safeguarding the basic characteristics of the Republic”, “preventing crime”, and “punishing offenders” - which are not recognised as legitimate aims for limiting expression under Article 19(3) of the ICCPR.<sup>17</sup> Furthermore, there are no requirements that any such restrictions be proportionate measures to achieve those aims, only requiring that they be “prescribed by law”. It further broadly restricts the dissemination of information classified as a “state secret”, without providing for public interest exemptions.

### ***Turkish Penal Code (TPC) - Defamation and Insult***

14. The TPC retains numerous content-based restrictions on freedom of expression against international human rights law. Article 125 of criminalises insult, such as defamation against public officials or against beliefs, including religious ones, with penalties of at least one year in prison. Part 3 criminalises insult of the President, national anthem, flag and the institutions and organs of the state, and increases the penalty by one-sixth if made in public. Article 267 criminalises calumny, defined as knowingly spreading false information, with sentences of one to four years. Article 299 criminalises defamation of the President, with sentences of one to four years in prison.
15. Though the Minister of Justice must formally initiate proceedings under these provisions, prominent officials, including the President, frequently bring criminal defamation cases against journalists, artists, and academics. These provisions are widely misused to silence criticism of the President and government officials: between 2010 and 2017, 12,893 cases were filed under Article 299, 12,305 of which were filed during Erdoğan’s presidential term.<sup>18</sup> Fines levied following conviction have increased substantially in recent years.<sup>19</sup>
16. International human rights standards are clear that defamation should be decriminalised, as it is a disproportionate measure to protect reputation. Greater protections should not be provided in law to the reputations or feelings of public figures, since they should be expected to withstand a greater degree of criticism than others.<sup>20</sup>

### ***Misuse of counter-terrorism measures to target expression***

17. The Turkish government rejected two key recommendations<sup>21</sup> aimed at curbing the use of the Anti-Terrorism Law against journalists, stating that “no Turkish legislation includes any provision that would lead to imprisonment of journalists on account of their journalistic work”.<sup>22</sup> However, the TPC, Code of Criminal Procedure, and Anti-Terrorism Law limit Constitutional guarantees.

### ***Anti-Terrorism Law (Law no. 3713)***

18. Several provisions of Law no. 3713 concern membership in and propaganda supporting terrorist organizations, yet the law does not define acts that would constitute terrorism, and other key terms are left undefined.<sup>23</sup>
19. Article 7(2) of the Anti-Terrorism Law prescribes one to five years’ imprisonment for those who make ‘propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations’. The provision also increases the punishment by half for “propaganda” expressed via press and publication. Concepts of “propaganda”, “justification”, or “praising”, where this falls short of actual incitement to terrorist acts, should be protected forms of expression.<sup>24</sup>

### ***Turkish Penal Code – Counter Terror***

<sup>14</sup> Botswana (148.124), Lebanon (148.115), Luxembourg (148.116), Nicaragua (148.8), Austria (148.118), Italy (148.36), Finland (148.125), France (148.119), Switzerland (148.120), United Kingdom (148.121), United States of America (148.117), Latvia (148.14), Angola (148.127), Norway (148.34).

<sup>15</sup> France (149.43), Lithuania (149.11), United States of America (148.117), France (150.22), Netherlands (150.52).

<sup>16</sup> Article 26 in full reads: ‘Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing. Withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented. (Paragraph added on October 3, 2001; Act No. 4709) The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law’. See: ‘Constitution of the Republic of Turkey’, 7 November 1982, Amended on October 3 2001; Available at: <https://bit.ly/20DX3BB>.

<sup>17</sup> *Ibid.*

<sup>18</sup> ‘Record increase in insulting Erdoğan cases since 2014’, Ahval, 8 December 2018; Available at: <https://bit.ly/2y8BV11>.

<sup>19</sup> ‘On the rise in the cases of ‘insulting the President’ (in Turkish), Deutsche Welle, 8 December 2018; Available at: <https://bit.ly/2JPkgT2>.

<sup>20</sup> ‘General Comment No. 34 on freedom of expression and opinion, CCPR/C/GC/34’, Human Rights Committee, 12 September 2011, para. 38; Available at: <https://bit.ly/2Qe9G9A>.

<sup>21</sup> France (150.22) and Netherlands (150.52).

<sup>22</sup> *Ibid.*

<sup>23</sup> Anti-Terrorism Law, Article 1(1) reads: ‘Any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat’. See: ‘Anti-Terrorism Law Act No. 3713’, 12 April 1991; Available at: <https://bit.ly/2YqCLnt>.

<sup>24</sup> ‘General Comment No. 34’, Human Rights Committee, 12 September 2011, para. 46; Available at: <https://bit.ly/2Qe9G9A>.

20. Article 6 of the TPC punishes membership in criminal organisations, including “any person who establishes, controls or joins a criminal organisation”. Many journalists have been charged with membership of a proscribed group, criminalised under Article 314, and punishable by 5 - 10 years’ imprisonment. Simply working, or having previously worked for, newspapers aligned, or perceived to be aligned, with the Gülen movement has been used to label journalists as “members”. Similarly, working for media outlets considered pro-Kurdish has seen journalists charged with membership of the Kurdistan Workers Party (PKK).<sup>25</sup>
21. Article 220(7) criminalises committing an offence on behalf of a proscribed group and sets out that any individual who commits such an act be automatically classified as a member of the proscribed organisation, making them liable to 5 - 10 years’ imprisonment under article 314. This provision has allowed the authorities to vastly expand the concept of membership in terrorist groups, often without credible evidence, targeting persons for the exercise of their right to freedom of expression.
22. Article 220(8) provides for 1 - 3 years’ imprisonment for anyone who makes “propaganda for an organization in a manner which would legitimize or praise the terror organization’s.” The article increases the penalty by half if the propaganda is expressed through the press or broadcasting. Individuals’ posts and shares on social media have been relied on as evidence of terrorist propaganda, among other offences.<sup>26</sup> For example, journalists Hayri Demir and Sibel Hürtaş were detained for their social media posts commenting on a military operation in Syria and convicted of spreading “terrorist propaganda” online.<sup>27</sup>

### **SoE Decrees**

23. Various SoE Decrees radically undermined safeguards against torture and ill treatment in detention, and fair trial guarantees, for individuals investigated in relation to terrorism or threats to national security, including:
  - Decree No. 667 (23 July 2016) enabled the confiscation of passports of anyone under investigation of terrorism or posing a threat to national security, and, following the issuance of Decree No. 672 of 24 October 2016, their spouses and partners. It further allowed for communications between detainees and their legal counsel to be monitored at the request of prosecutors, and for legal counsel to be replaced by the authorities.<sup>28</sup>
  - Decree No. 668 (27 July 2016), extended the period under which individuals could be detained without charge from 48 hours to 30 days (later reduced to 12 days) and restricted detainees’ access to legal counsel, including by extending the period before which they must have access to a lawyer to five days. It granted law enforcement extensive powers to search properties, including law firms, without prior judicial authorisation, and to confiscate broadly defined suspicious materials.<sup>29</sup>
24. The removal of procedural safeguards following the failed coup has led to rising numbers of allegations of torture and other cruel, inhumane or degrading treatment, including against journalist Nedim Turfent, most notably in the Southeast.<sup>30</sup> Although the SoE was lifted on 18 July 2018, the abovementioned powers were effectively made permanent when Law No. 7145 introduced amendments to several laws, including Anti-Terror Law 3713. These amendments were enacted by Parliament on 25 July 2018, for a period of three years, transposing them into the ordinary legal framework.<sup>31</sup>

### **Recommendations:**

- Decriminalise defamation, including specific offences to protect the reputation of the President, by repealing Articles 125, 267 and 299 of the TPC.
- Align counter-terrorism laws with international and European human rights standards, in particular to ensure “terrorist acts” are narrowly defined, and to ensure expression is only restricted under such laws where it poses a genuine threat to national security, reforming Article 7(2) of the Anti-Terrorism Act and Article 220(8) of the TPC to focus only on cases of intentional incitement to terrorist acts, and reforming provisions on membership in a terrorist organisation (Articles 314 and 220(7)) so they are not applied to target persons for the legitimate exercising of their rights to freedom of expression.

### **Media Freedom**

25. Despite accepting a recommendation to ensure media independence, the government has dismantled free and independent media in the country, with grave consequences for public access to pluralistic viewpoints and sources of information, including at key political moments such as the constitutional referendum of 2017, and recent parliamentary and presidential elections.<sup>32</sup>

<sup>25</sup> ‘State of Emergency in Turkey: The Impact on Freedom of the Media’, ARTICLE 19, September 2016; Available at: <https://bit.ly/2hWuIr4>.

<sup>26</sup> ‘Turkey Country Report’, Freedom House, 2018; Available at: <https://bit.ly/2JRP3ih>.

<sup>27</sup> *Ibid.*

<sup>28</sup> The increased use of travel bans to harass journalists and activists, including their family, is a further area of concern. After the lifting of the State of Emergency in 2018, the authorities have continued to seize and hold the passports of individuals that oppose or are perceived to oppose the government. The wife of exiled Turkish journalist Can Dündar, Dilek Dündar, was denied her passport in September 2016 and for three years was unable to leave Turkey to reunite with her husband and son.

<sup>29</sup> ‘Opinion on Emergency Decree Laws Nos 667-676’, Venice Commission, 12 December 2016; Available at: <https://bit.ly/2Mik3ZU>.

<sup>30</sup> ‘In Custody Police Torture and Abductions in Turkey’, Human Rights Watch, 12 October 2017; Available at: <https://bit.ly/2vdO8Um>.

<sup>31</sup> <https://www.tbmm.gov.tr/kanunlar/k7145.html>

<sup>32</sup> Sweden (148.122).

26. Articles 28 and 29 of the Constitution safeguard the freedom of the press. Nonetheless, several grounds are provided for restricting press freedom, including inciting a criminal offence or threatening national security or integrity.<sup>33</sup> Article 28 (6) (7) and (8) and Article 29 provide conditions for the suspension and seizure of publications which do not comply with international human rights law.

### **Forced closure of media outlets**

27. Under nine separate SoE Decrees,<sup>34</sup> at least 170 media outlets – including publishing houses, newspapers and magazines, news agencies, TV stations and radios – were closed without judicial authorisation, on charges that they spread “terrorist propaganda”. As a result, at least 3,000 media workers and journalists were dismissed without access to an effective domestic remedy (see para 10).<sup>35</sup> Just 21 media outlets have been re-opened.<sup>36</sup> Many independent mainstream media outlets have been permanently silenced, following their liquidation and expropriation of all their assets.<sup>37</sup>
28. The crackdown has not only affected media outlets affiliated with, or perceived to have affiliations with, the Gülen movement, such as *Zaman*, which was subjected to a government takeover in March 2016.<sup>38</sup> The 2016 temporary closure of *Özgür Gündem* and 2016 police operation on *Cumhuriyet* are examples of how the SoE was deployed against critical or independent media outlets.<sup>39</sup>
29. The Venice Commission has noted that ‘such measures as mass liquidations of media outlets on the basis of the emergency decree laws, without individualised decisions, and without the possibility of timely judicial review, are unacceptable in light of the demands of international human rights law, and extremely dangerous.’<sup>40</sup>

### **Reforms to media regulatory framework**

30. Government interference in the media landscape has increased. The public broadcaster TRT was brought under the oversight of the Directorate of Communications, which is under executive control following the issuing of Presidential Decree No.14. This development compromised its impartiality and independence, just ahead of the 2018 presidential and parliamentary elections.<sup>41</sup> The television and radio broadcast regulator (RTÜK), has also been brought under the direct control of the Ministry of Culture and Tourism, further undermining media independence.<sup>42</sup>
31. Since 2017, the Directorate of Communications has been responsible for issuing press cards. 682 press cards were cancelled in the subsequent four months.<sup>43</sup> New press card regulations introduced on 14 December 2018 made it easier for the authorities to revoke cards on spurious grounds.<sup>44</sup> Up to March 2019, 14,759 permanent press cards and 5,691 temporary press cards have been cancelled.<sup>45</sup>
32. Major media mergers and acquisitions have further undermined media pluralism and entrenched state control over the media and the public’s access to information.<sup>46</sup> An estimated 90 percent of the country’s media are currently owned by pro-government groups.<sup>47</sup>
33. The independent media’s ability to operate has been further impacted by the public advertising regulation of 5 October 2016, barring public advertising in media outlets that failed to dismiss employees charged with terror-related offences. Although the Press Advertising

---

<sup>33</sup> The full text reads: ‘Anyone who writes or prints any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, are held responsible under the law relevant to these offences’. See: ‘Constitution of the Republic of Turkey’, 7 November 1982, Amended on October 3 2001; Available at: <https://bit.ly/20DX3BB>.

<sup>34</sup> Emergency Decrees 668 (Jul 2016); 675 (Oct 2016); 677 (Nov 2016); 683(Jan 2017); 689 (Apr 2017); 693(Aug 2017); 695 (Dec 2017); 697 (Jan 2018); 701 (Jul 2018).

<sup>35</sup> ‘2016: Journalism Gripped by State of Emergency’, Bianet, 17 February 2017; Available at: <https://bit.ly/2K2JRXB>.

<sup>36</sup> A detailed list of closed media outlets. See: ‘Journalists in Prison (Google Doc); Available at: <http://bit.ly/2Zdn1CW>.

<sup>37</sup> In its March 2017 opinion, the Venice Commission questioned the lawfulness and necessity for these permanent liquidations, finding them to be incompatible with Article 10 of the European Convention on Human Rights. See: ‘Draft Opinion on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media’ Venice Commission, 24 February 2017; Available at: <http://bit.ly/2LEPfdn>.

<sup>38</sup> Former *Zaman* journalists would later be tried in one of the first mass trials of journalists following the coup. On 6 July 2018, former *Zaman* journalists including Şahin Alpay, Mustafa Ünal, İbrahim Karayeğen, Ahmet Turan Alkan, Mümtazer Türköne and Ali Bulaç were sentenced to between eight years and nine months’ imprisonment, and ten years and six months’ imprisonment, following their conviction for “membership of a terrorist organization” (article 314). The case against them was manifestly unfounded, as the weak evidence presented – focused entirely on their connection to *Zaman*, and their journalistic work, a significant proportion of which had been written several years before FETO/PDY was designated as a proscribed terrorist group - demonstrated.

<sup>39</sup> ‘Turkey Country Report’, Freedom House, 2018; Available at: <https://bit.ly/2JRP3ih>. On 16 August 2016, the newspaper *Özgür Gündem*, which extensively reported on the conflict in the Southeast, was temporarily shut down following a court order and more than twenty journalists, editors and publishers of the newspaper were accused of terrorist related charges. A digital version of the newspaper, *Özgürlükçü Demokrasi*, was subsequently launched, although the website has been blocked.

<sup>40</sup> ‘Draft Opinion on the Measures Provided in the Recent Emergency Decree Laws with Respect to Freedom of the Media’ Venice Commission, 24 February 2017; Available at: <http://bit.ly/2LEPfdn>.

<sup>41</sup> ‘International referendum observation mission Republic of Turkey – Constitutional Referendum: Statement of preliminary findings and conclusions’, OSCE, 16 April 2017; Available at: <http://bit.ly/2Y49Xn8>.

<sup>42</sup> *Ibid.* Turkey’s Radio and Television Supreme Council (RTÜK) regulates and supervises radio, television and on-demand media services.

<sup>43</sup> ‘DW: Turkish gov’t cancels press credentials of 682 journalists in 4 months’, Turkey Purge, 9 May 2019; Available at: <http://bit.ly/2YeneVn>.

<sup>44</sup> ‘Government changes Press Card Regulation: Makes cancellations easier’, Evrensel Daily, 15 December 2018; Available at: <http://bit.ly/2SCC0De>; ‘IPI condemns new regulation on press cards in Turkey’, IPI, 18 December 2018; Available at: <http://bit.ly/2Oizu08>

<sup>45</sup> ‘DW: Turkish gov’t cancels press credentials of 682 journalists in 4 months’, Turkey Purge, 9 May 2019; Available at: <http://bit.ly/2YeneVn>.

<sup>46</sup> ‘Joint statement: Turkey; statement on today’s raid at *Özgürlükçü Demokrasi*’ Pen International, 29 March 2018; Available at: <http://bit.ly/2YsWQuM>.

<sup>47</sup> Figures from 2016 found that four holding groups held 71% of the audience share: Turkuvaz / Kalyon Group (30%), Ciner Group (15%), Demirören Group (15%), and the Doğu Group (11%). The Doğan Group sold all its media outlets to Demirören Holding, a pro-government conglomerate whose top management has strong personal ties to President Erdoğan. See: ‘Subscribe Campaign’, International Press Institute, 2019; Available at: <http://bit.ly/2Ois9Srq>.

Authority is required to distribute public advertising based on circulation figures, it is reported that independent media receive less than they are due.<sup>48</sup>

34. On 21 March 2018, Parliament enacted an amendment to Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises ("RT Law"). Under Article 29(a) of the RT Law, service providers that broadcast online are now required to obtain transmission authorization and a broadcast license from RTÜK.<sup>49</sup> Those that fail to obtain a licence face having their content removed within 24 hours of a complaint by RTÜK to a competent magistrate. The RTÜK is empowered to reject requests on the grounds of national security, and to subject content to prior-censorship. The new licensing model affects all Turkish media providers operating outside the country and foreign media operating inside Turkey. Article 29(A) also extends to online video on demand platforms.<sup>50</sup>

#### Recommendations:

- Reverse closures of media outlets, permit independent operation of closed media outlets, the return of all seized assets and halt executive interference with independent news organisations. Any powers to suspend media should be limited to the broadcast sector, administered by an independent regulatory body, ensure proportionality (i.e. suspension is only permissible for the most severe and repeated violations of broadcasting license conditions), and be subject to judicial review.
- Reinstate press cards to all journalists, and ensure that the process for granting, reissuing, and revoking press cards is independent of political influence or interference.
- Amend Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises ("RT Law") to bring into line with international standards, in particular to ensure the independence of the RTÜK.

#### Arrests, trials and harassment of journalists, civil society, and academics

35. The government accepted a recommendation to ensure that journalists can work without fear of reprisals, and 13 recommendations related to ensuring freedom of association.<sup>51</sup> However, it has pursued an unprecedented crackdown against the media and civil society.<sup>52</sup> For the last three years, Turkey been the world's most prolific jailor of journalists. While figures vary, at the time of writing there are at least 140 journalists and media workers in detention, and at least 300 have been detained since the imposition of the SoE. Hundreds more are on trial.
36. Between 2016 - 2018, seven journalists were sentenced to five life sentences and 45 years in prison in total for "attempted coup" and "targeting the security of the state"; 64 journalists were sentenced to 480 years and 2 months in prison in total for "managing a terrorist organization", "being a member of a terrorist organization" and "aiding a terrorist organization"; 52 journalists were sentenced to prison for 122 years, 6 months and 3 days (14 years, 10 months and 7 days of sentences deferred) under the Anti-Terror Law.<sup>53</sup>

#### Right to a fair trial

37. The wholesale dismantling of the independent judiciary, and suspension of fair trial rights and procedural guarantees, has enabled the government's pursuit of dissenting journalists and civil society. Trial monitoring in the cases of journalists and human rights defenders conducted by the coalition members has exposed serious violations of fair trial rights.
38. Indictments have lacked credible, individualised, and convincing evidence required to justify prosecution, often containing factual inaccuracies and objectively absurd claims. As many as 50,000 people were arbitrarily detained with the use or download of the encrypted Bylock app given as evidence, and many thousands more dismissed or subject to disciplinary procedures on the same grounds.<sup>54</sup> Prosecutors routinely fail to disclose evidence of defendants or their legal counsel, and evidence obtained through torture has been deemed admissible.<sup>55</sup> The vast majority of cases have relied exclusively on individuals' legitimate journalistic work, or human rights work, as evidence of membership or promotion of a terrorist organisation, or involvement in the coup attempt. The composition of courts often changes throughout the hearings, raising serious questions of fairness. An increase in the use of the video conference system SEGBIS has also limited the right of individuals to appear physically in court.<sup>56</sup> Nevertheless, cases premised on such weak indictments and flimsy evidence have often resulted in successful convictions.
39. The treatment of individuals facing trial in custody has raised serious human rights concerns. Lengthy pre-trial detention has been used punitively, for periods of several years.<sup>57</sup> In many cases, pre-trial detention has been repeatedly extended in the absence of any credible

<sup>48</sup> 'Media ownership monitor Turkey', RSF and Bianet, 2019; Available at: <http://bit.ly/2LH7F6y>.

<sup>49</sup> 'The age of Internet restrictions in Turkey', Hurriyet Daily News, 24 March 2018; Available at: <http://bit.ly/2YjxY4y>.

<sup>50</sup> *Ibid.*

<sup>51</sup> 148.118 (Austria).

<sup>52</sup> 148.78 (Greece); 148.120 (Switzerland); 148.121(United Kingdom); 148.123(Costa Rica); 148.124 (Botswana); 148.125 (Finland); 148.128 (Norway); 149.39 (Czech Republic); 149.41(France); 149.42 (Australia); 149.36 (Germany); 149.35(Austria); 150.23 (Ireland).

<sup>53</sup> 'Media Monitoring Report 2018: One Year of the Journalist and the Media', Bianet, 20 February 2019; Available at: <http://bit.ly/2ZackBl>.

<sup>54</sup> 'Turkey Country Report', Freedom House, 2018; Available at: <https://bit.ly/2JRP3ih>.

<sup>55</sup> 'Nedim Türfent: One trial, countless injustices' IPI, 16 April 2018; Available at: <http://bit.ly/32Q9FPh>.

<sup>56</sup> 'Turkish courts violate journalists' right to fair trial, new report finds', IPI, 28 January 2018; Available at: <http://bit.ly/2Gu99Ni>; 'Analysis: Use of courtroom video link violates Turkey journalists' rights' IPI, 2 August 2018; Available at: <http://bit.ly/30ZdvtV>.

<sup>57</sup> Osman Kavala spent 2 years in pre-trial detention. Deniz Yücel spent a year in pre-trial detention. A decision by the constitutional court found this to have violated his right to liberty and security, and right to freedom of expression. See:

'Turkey's Constitutional Court gives contradictory decisions on Cumhuriyet journalists' applications' IPI, June 28 2019; Available at: <http://bit.ly/2ZacOHF>.

evidence, or without disclosing evidence before the courts. Prolonged solitary confinement is common and used punitively, amounting to torture.<sup>58</sup> Journalists charged with terrorism offences have family visits and phone calls heavily restricted, and access to letters and books prohibited.

40. The following emblematic cases of prosecutions of journalists for their work are illustrative of these trends:

#### *Altans*

41. Nazlı Ilıcak (journalist for *Özgür Düşünce*), Ahmet Altan (former editor of *Taraf* newspaper and writer) and Mehmet Altan (economics professor) were convicted of “attempting to overthrow the constitutional order” (Article 309(1)) for their alleged involvement in the coup attempt. They were given “aggravated” life sentences without parole on 16 February 2018, having spent more than 2 years in pre-trial detention.<sup>59</sup>
42. The prosecution’s evidence centred on the writers’ joint television appearance the night prior to the coup attempt – during which the defendants allegedly sent “subliminal messages” to the government’s opposition – as well as their news articles and opinion pieces, which commented on the political situation in Turkey and include criticism of the government.<sup>60</sup> The trial was marred by profound violations of the journalists’ right to a fair trial.
43. The case also demonstrated the disintegration of the rule of law in Turkey. In January 2018, the lower courts ignored a TCC decision effectively ordering the release of Mehmet Altan, in breach of Article 153 of the Constitution. A ruling by the ECtHR in his case and that of journalist Şahin Alpay was similarly ignored,<sup>61</sup> demonstrating Turkey’s failure to implement binding decisions of the court.<sup>62</sup> On July 2018, Mehmet Altan was released pending the outcome of his appeal against his conviction and sentence. On 2 October 2018, an appellate court upheld the verdict of “aggravated life sentence” for Ahmet and Mehmet Altan despite the rulings of the TCC and the ECtHR.
44. On 5 July 2019 the Supreme Court of Appeals overruled the life sentence in the case of Ahmet Altan, Mehmet Altan and Nazlı Ilıcak and a new trial will begin in October 2019. Ahmet Altan and Nazlı Ilıcak remain in detention, while Mehmet Altan released under judicial control measures and cannot travel abroad.

#### *Cumhuriyet*

45. On 26 April 2018, 17 staff and board members of the opposition newspaper Cumhuriyet – including journalists Murat Sabuncu, Akın Atalay, Kadri Gürsel, Aydın Engin, Musa Kart and Ahmet Şık– were convicted of ‘assisting a terrorist organisation whilst not being a member’ under Article 220(6) of the Criminal Code. The only evidence introduced in the proceedings was their journalistic writings. Collectively, the defendants served approximately 9.5 years in pre-trial detention.
46. The defendants were sentenced to between two years and six months’ imprisonment, and eight years and one month imprisonment.<sup>63</sup> Their sentences were upheld on appeal in February 2019, and six of the journalists who had been released pending appeal were returned to prison on 25 April 2019.<sup>64</sup>
47. The defendants’ right to fair trial was violated through restrictions on their access to lawyers and interference with their right to communicate confidentially with counsel, as prison officials attended and monitored consultations. The prosecutor in the case, Murat İnam, was himself on trial on charges of being a member of FETÖ and taking part in the coup attempt, a charge carrying a life sentence compromising the defendant’s right to an independent and impartial tribunal.
48. The UN Working Group on Arbitrary Detention found the detention of ten of the *Cumhuriyet* journalists to be arbitrary in a decision of 26 July 2017, but their decision was not implemented.<sup>65</sup>
49. On 3 May 2019, the TCC found that Kadri Gürsel’s rights to liberty, security and freedom of expression had been violated by his extended pre-trial detention but did not find violations in five other identical cases of his former colleagues.<sup>66</sup> The cases of *Sabuncu & Oths. v Turkey* and *Şık v Turkey* are still pending before the ECtHR.

#### *Özgür Gündem*

---

<sup>58</sup> Journalists Deniz Yücel and Nedim Türfent spent months in solitary confinement. See: ‘Turkey: journalist on trial after more than a year in solitary confinement’, Pen International, 13 June 2017; Available at: <http://bit.ly/2Y4NSEF>. Prolonged (of more than 15 days) or indefinite solitary confinement contravenes the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. See: ‘United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) A/RES/70/175’, United Nations, 8 January 2016, Rules 43 to 45; Available at: <http://bit.ly/2LFkYVf>.

<sup>59</sup> ‘Joint statement: Life sentences in the landmark case on journalists at the heart of the Constitutional Crisis in Turkey’, ARTICLE 19, 19 February 2018; Available at: <http://bit.ly/2LFTteh>.

<sup>60</sup> ‘Altans: Expert Opinion’, ARTICLE 19, 5 June 2017; Available at: <http://bit.ly/30W1gbq>.

<sup>61</sup> ‘Turkey: Free expression cases trigger constitutional crisis’, ARTICLE 19, January 22 2018; Available at: <http://bit.ly/2JOCAf4>.

<sup>62</sup> ‘European Convention on Human Rights (ECHR), Council of Europe, 1 June 2010, Article 26(1); Available at: <http://bit.ly/32RQLaX>.

<sup>63</sup> ‘Joint statement: Cumhuriyet Verdict Huge Blow to Freedom of Expression’, ARTICLE 19, 26 April 2018; Available at: <http://bit.ly/2Za7xzz>. The sentences were upheld on appeal on 19 February 2019 – six of the defendants have since seized the Court of Cassation.

<sup>64</sup> ‘Turkey: Cumhuriyet convictions strike a further blow to the rule of law’, ARTICLE 19, 20 February 2019; Available at: <http://bit.ly/2K2SILP>.

<sup>65</sup> ‘Opinion No. 41/2017 concerning 10 individuals associated with the newspaper Cumhuriyet (Turkey), A/HRC/WGAD/2017/41’, UN Working Group on Arbitrary Detention, 26 July 2017, para 67; Available at: <http://bit.ly/2Y3bhqn>.

<sup>66</sup> ‘Turkey’s Constitutional Court fails to uphold journalists’ rights’, IPI, 3 May 2019; Available at: <http://bit.ly/2y6t94b>.

50. When the pro-Kurdish daily *Özgür Gündem* was shuttered, 56 people took part in a solidarity campaign. Of these, 49 have been subjected to criminal proceedings on charges including “making propaganda for a terrorist organisation” under Article 7(2). Of the 36 people whose trials have concluded, 27 have been convicted, receiving a total of 24 years in prison. Many have been held in pre-trial detention for extended periods, including RSF representative, Erol Önderoğlu who was arrested in June 2016, and detained for ten days.<sup>67</sup> On 17 July 2019, he was acquitted of all charges. In a second trial due to start on 7 November 2019, Önderoğlu is again accused of “terrorist propaganda” along with 16 other activists for expressing their solidarity with hundreds of university academics prosecuted in connection with a peace petition (para 59).

#### *Physical attacks*

51. The hostile environment for the media, created by the government’s own pursuit of journalists through the criminal law and its depiction of journalism as a national security threat, has contributed to physical attacks against journalists.
52. On 6 May 2016, then-editor-in-chief of *Cumhuriyet*, Can Dündar, survived an assassination attempt after President Erdoğan repeatedly called him a traitor for publishing evidence of Turkey’s arming of Islamic militants in Syria. In May 2019, five journalists - Selahattin Önkibar, Yavuz Selim Demirağ, İdris Özyol, Ergin Çevik and Hakan Denizli were brutally attacked in separate incidents which appear to be in retaliation for their work.<sup>68</sup>

#### *Arbitrary arrests and judicial harassment of civil society*

53. Members of civil society and human rights defenders have been targeted as part of the crackdown on freedom of expression, the majority under counter-terrorism provisions.
54. Taner Kılıç, Honorary Chair of Amnesty International Turkey, was arrested in June 2017 and spent more than fourteen months in pre-trial detention. Subsequently, eight human rights defenders were detained in July 2017 while holding a digital security workshop.<sup>69</sup> All were charged with ‘membership of a terrorist organisation’. Trials were ongoing at the time of writing.<sup>70</sup>
55. In March 2019, leading civil society figure Osman Kavala, professor Yiğit Aksakoğlu and 14 other prominent human rights defenders including journalists Can Dündar and Çiğdem Toker were indicted on charges of “attempting to overthrow the government” or “preventing the government from doing its duty” (TPC 312/2).<sup>71</sup> Kavala had already spent 400 days in pre-trial detention ahead of the indictment being issued.
56. The indictment relates to the defendants’ involvement in the peaceful Gezi Park protests in 2013, which the authorities are seeking to retrospectively rewrite as an “insurrection attempt” and, as such, a precursor to the coup attempt of 2016.<sup>72</sup> If convicted, the defendants face aggravated life sentences without parole. The trial began in June 2019 and is ongoing. It sets an alarming precedent in enabling the government to draw ever more tenuous connections between the coup attempt of 2016, and any displays of dissent.
57. In October 2018, the ECtHR admitted the application of *Mehmet Osman Kavala v. Turkey*.<sup>73</sup> In May 2019, the TCC rejected an application to end Osman Kavala’s prolonged pre-trial detention filed on the grounds that it violated his human rights.

#### *Judicial harassment of academics*

58. More than 5,800 academics have been dismissed from their public university posts on alleged terrorism charges in the aftermath of the coup.<sup>74</sup>
59. On 10 January 2016, a group of 1,128 academics – which later grew to 2,212 - signed a peace petition calling for peace in the Southeast titled “We will not be a party to this crime”.<sup>75</sup> Currently over a thousand of them have been charged, including with “making propaganda for a terrorist organisation” (7/2). More than 200 of them have been sentenced, while 581 trials are ongoing.<sup>76</sup>

#### **Recommendations:**

<sup>67</sup> ‘RSF’s Turkey representative is facing up to 14 and a half years in prison’, RSF, 27 February 2019; Available at: <http://bit.ly/2ZgCX7K>.

<sup>68</sup> ‘Turkey Crackdown Chronicle: Week of May 26, 2019’, Committee to Protect Journalists, 30 May 2019; Available at: <http://bit.ly/2MfbWgX>.

<sup>69</sup> ‘Turkey: Amnesty International, Helsinki Citizens’ Assembly representatives and other activists detained during digital security training’, ARTICLE 19, 6 July 2017; Available at: <http://bit.ly/2YeYrR2>.

<sup>70</sup> ‘Turkey: Judicial farce must end with acquittal of human rights defenders’, Amnesty International, 20 March 2019; Available at: <http://bit.ly/2OjNQVh>.

<sup>71</sup> Can Dündar, Mücella Yapıcı, Memet Ali Alabora, Ali Hakan Altınay, Ayşe Pinar Alabora, Çiğdem Mater Utku, Gökçe Yılmaz, Handan Meltem Arıkan, Hanzade Hikmet Germiyanoglu, İnanç Ekmekçi, Mine Özerden, Can Atalay, Tayfun Kahraman and Yiğit Ali Ekmekçi.

<sup>72</sup> The Gezi Park protests saw hundreds of thousands of protesters across Turkey calling for the preservation of ecological areas and for the respect, protection and promotion of fundamental rights of freedoms in Turkey. See: ‘Turkey: Gezi Park trial seeks to rewrite narrative on failed coup attempt’, ARTICLE 19, 20 June 2019; Available at: <http://bit.ly/2YnINqE>.

<sup>73</sup> ‘Commissioner Mijatović intervenes before the European Court of Human Rights in the case of Mehmet Osman Kavala v. Turkey’, Council of Europe, 10 January 2019; Available at: <http://bit.ly/30T4Y5t>.

<sup>74</sup> ‘Turkey: Government Targeting Academics’, Human Rights Watch, 14 May 2018; Available at: <http://bit.ly/2OircMI>.

<sup>75</sup> ‘Hearing Statistics as of 25.07.2019’, Academics for Peace, 25 July 2019; Available at: <http://bit.ly/2GGIRZJ>.

<sup>76</sup> ‘Turkey: Nobel laureates and renowned professors call for freezing collaborations amid mass trials of academics’, ARTICLE 19, 28 March 2019; Available at: <http://bit.ly/2Gvck7t>.

- End the arbitrary arrest and detention of journalists, human rights defenders, and academics for the exercise of their rights to freedom of expression, and/or for supposed connections to proscribed organisations, and immediately release all those currently arbitrarily detained;
- Ensure the right to a fair trial, including by ensuring an independent and impartial judiciary, effective, impartial and fair prosecutions, and respect for the right of access to counsel;
- Investigate all allegations of torture and ill-treatment in detention, ensure the prosecution of perpetrators, and provide remedies to victims;
- Investigate cases of physical attacks against journalists and bring those responsible to justice, and ensure that measures are put in place to prevent and protect against such attacks, to create a safe and enabling environment for the media;
- Guarantee full implementation of ECtHR rulings in relation to freedom of expression and journalism cases and ensure that judges take into consideration all ECtHR rulings when reaching decisions;
- Provide all journalists, media workers and academics dismissed under the SoE decrees with an effective appeals mechanism which is in compliance with due process guarantees, full legal representation, access to all files, the opportunity to have a hearing with an adversarial procedure, and access to effective remedies. Reinstate all those arbitrarily dismissed from their jobs.

## **Freedom of Expression Online**

60. Despite accepting recommendations to improve access to information and the internet, the government has tightened its grip on the free flow of information online.<sup>77</sup>

### *Blocking and filtering*

61. The 2007 Internet Law No. 5651 enables the government to restrict access to online content and telecommunications networks.<sup>78</sup> Amendments in March 2015 set out four blocking procedures, vastly broadening the state's censorship powers.<sup>79</sup> Of particular concern is the expedited procedure set out in Article 8A, "Removal of content and/or blocking of access in circumstances where delay would entail risk", extending the powers of the Presidency and Telecommunications Authority (Telekomunikasyon İletişim Başkanlığı - TİB) to order the removal and blocking of content, within four hours of a complaint by the Prime Minister. The entire website is blocked until the content at issue is removed, in a wholly disproportionate measure.
62. Emergency Decree No. 671 transferred the powers previously granted to TİB to the Information and Communications Technologies authority (BTK) and authorised the BTK to take "any necessary measures" to protect "national security, public order, prevention of crime, protection of public health and public morals, or protection of rights and freedom".<sup>80</sup> This provided carte blanche to the BTK, which is under executive control, to authorise the removal, without judicial oversight, of content that is lawful under international human rights law, that may be critical of the government or express oppositional viewpoints. The BTK was tasked with ensuring the implementation of blocking orders; any ISP was obliged to enforce an order by the BTK within two hours.<sup>81</sup> As of December 2018, more than 10 VPN services, 220,000 sites and more than 150,000 URLs were subject to blocking orders.<sup>82</sup>
63. Wikipedia has been blocked since April 2017, after it refused to remove content alleging the Turkish government supported militant groups in Syria. YouTube was temporarily banned in 2015 for the same reason. In July 2019, the ECtHR awarded priority status to the petition filed by Wikimedia to lift the blocking order.<sup>83</sup>
64. Content blocking and broadcasting restrictions have been most widespread in relation to coverage of the conflict in the Southeast.<sup>84</sup> At times these restrictions have amounted to a complete blackout on coverage of the conflict, severely restricting the public's right to information.

### *Takedown requests*

<sup>77</sup> Austria (148.118), United States of America (148.117), Latvia (148.14), Republic of Korea (150.16), Hungary (149.10), Luxembourg (148.116), Norway (149.34), Costa Rica (148.123), Netherlands (150.52).

<sup>78</sup> Article 8 ("The decision to deny access, and implementation thereof"); Article 8A ("Removal of content and/or blocking of access in circumstances where delay would entail risk"); Article 9 ("Removal of content from publication, and blocking of access"); Article 9A ("Blocking access to content on grounds of the confidentiality of private life").

<sup>79</sup> Opinion on Law No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed By Means of Such Publication ("The Internet Law") CDL-AD(2016)011, Venice Commission, 15 June 2016; Available at: <http://bit.ly/2OrCwGK>.

<sup>80</sup> 'Turkey's Internet Policy after the Coup Attempt: The Emergence of a Distributed Network of Online Suppression and Surveillance', Yeşil, B.; Sozeri, E.K.; Khazraee, E., Internet Policy Observatory, February 2017; Available at: <http://bit.ly/2YoAOJO>.

<sup>81</sup> 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3', Human Rights Council, 21 June 2017, para. 21; Available at: <http://bit.ly/2LIGhFd>.

<sup>82</sup> 'Turkish activists battle internet censorship in court', Ahval News, 4 December 2018; Available at: <http://bit.ly/2YeBJL>.

<sup>83</sup> 'Wikimedia Foundation petitions the European Court of Human Rights to lift the block of Wikipedia in Turkey', Wikimedia Foundation, 23 May 2019; Available at: <http://bit.ly/2JOHuZw>.

<sup>84</sup> 'Turkey Country Report', Freedom House, 2018; Available at: <https://bit.ly/2JRP3ih>.

65. Turkey issues the highest number of legal content removal requests from Twitter globally and a comparatively high number of takedown requests to Facebook.<sup>85 86</sup>
66. Online expression on social media has also been more aggressively investigated, and prosecuted, since 2016. In just the second half of 2016, 3,847 people were subject to criminal investigation for social media posts deemed to be inciting, praising or spreading propaganda for terrorist organisations or insulting to state officials.<sup>87</sup> 1,729 of them were imprisoned.<sup>88</sup> In total, from the latter half of 2016 to end of May 2019, approximately 93,351 social media accounts were investigated and 43,387 individuals subject to criminal investigations for their social media posts. This trend has prompted self-censorship.

#### **Recommendations:**

- Refrain from all measures to intentionally disrupt access to the Internet or mobile networks - including Internet shutdowns, blocking and filtering measures – in particular during protests, and elections;
- Lift the blocking order on Wikipedia;
- Take all necessary steps to guarantee freedom of expression and information online, including by ceasing the harassment of individuals exercising their right to freedom of expression online.
- Enact clear laws to ensure online content is only blocked on the basis of judicial decisions, and only where it is strictly necessary and proportionate to a legitimate objective.

---

<sup>85</sup> 'Transparency Report "Turkey"', Twitter, 2018; Available at: <http://bit.ly/2Mc2xqx>. Turkey's takedown requests amount to 45% of global take-down requests and 8.5% of all account information requests

<sup>86</sup> 'Transparency – Turkey', Facebook, 2018; Available at: <http://bit.ly/2LHqwPa>.

<sup>87</sup> 'Republic of Turkey Ministry of Interior', 2019; Available at: <http://bit.ly/2JYhKc8>.

<sup>88</sup> *Ibid.*