

Joint UPR Submission on Freedom of Expression in Turkey
By
International Observatory of Human Rights, The Press Emblem Campaign and
London Advocacy

For
The 35th Session of UPR – January-February 2020

EXECUTIVE SUMMARY

1. This joint submission of International Observatory for Human Rights (IOHR), The Press Emblem Campaign (PEC) and London Advocacy (LAG) highlights a number of key areas of concern regarding Turkey's compliance with its international human rights obligations relating to freedom of expression with all its implications.
2. This submission examines nine areas that need urgent reform and correction at the side of Turkey.
3. This submission ends with a recommendations section.

FOLLOW UP TO THE PREVIOUS REVIEW

1. At the Report of the Working Group on the Universal Periodic Review – Turkey (A/HRC/29/15) in 2015 Turkey examined and supported 39 recommendations coming from other countries on freedom of expression and media. A majority of these recommendations were calling Turkey to “strengthen protection of the freedom of expression by allowing discourse and greater access to information, both online and offline, and to ensure the penal code and anti-terror laws are consistent with international obligations.”
2. Regrettably, during the period under review, the Turkish government did not make sufficient effort to implement these recommendations. In fact, the situation appears to have worsened in all areas.
3. The situation has worsened in other areas that Turkey presented in its National Report (A/HRC/WG.6/21/TUR/1) as progress made during the previous period of review.
4. By means of freedom of expression and freedom of press Turkey now stands far below where it was back in 2010, when the first Universal Periodical Review cycle was compiled.

INTERNATIONAL AND CONSTITUTIONAL OBLIGATIONS OF TURKEY

5. Freedom of expression is a right that was declared by the UN as part of the International Human Rights Declaration, and it was signed and accepted by Turkey, like many other countries, on 6 April 1949.¹ Turkey signed and affirmed the International Covenant on Civil and Political Rights (Turkey signed the agreement on 15 August 2000 and it was confirmed on 23 September 2013) and signed and accepted the European

¹ İnsan Hakları Evrensel Bildirgesi, Bianet, 10 December 2002,
<https://m.bianet.org/biamag/insan-haklari/15169-insan-haklari-evrensel-bildirgesi>

Convention on Human Rights, which regulates Freedom of Expression at Article 10 and Article 19.

6. Turkey is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19(2) of the ICCPR entitles “everyone has the freedom of expression” including “the freedom to seek, receive, and impart information and ideas of all kinds.”
7. Turkish authorities declared on 21 July 2016 to the European Council’s General Secretary that some of the measures taken after the coup might include derogation of some of obligations predicated by the European Council of Human Rights. However, in terms of ICCPR and European Covenant of Human Rights, the right of freedom of expression is exempt from any limitation of obligations, whether in normal conditions or extraordinary conditions.²
8. The Constitution of the Republic of Turkey guarantees freedom of thought and opinion (Article 25), freedom of expression and dissemination of thoughts and opinions (Article 26), freedom of press and inadmissibility of censorship (Article 28) and unacceptability of confiscation of printing houses and their annexes on grounds of having been used in a crime (Article 30).

LEGAL FRAMEWORK RESTRICTIONS

9. According to data from the ECtHR regarding its legal work in 2018, Turkey breached Article 10 of the ECtHR regarding the protection of freedom of expression in 40 court cases. As it stands, Turkey has been delivered the highest number of sentences in trials concerning freedom of expression cases at the European Court of Human Rights.³
10. A majority of the cases that came in front of the ECHR relate to the legal framework restrictions of deliberate misinterpretation of the Turkish Penal Code (TCK) and the Prevention of Terrorism Act (TMK).
11. In TMK no 3713, membership and propaganda of a terrorist organisation is prohibited, but certain terminology used in the text is either ambiguous or left undefined. The law does not specify which actions are considered to be terrorism.
12. In June 2014 the Turkish government took a major step back from previous reforms by establishing the Criminal Peace Judgeships (CPJs), which were given exclusive power of determining pre-trial detention and release or continuation of said detention; to authorise searches, seizures, appointments of trustees, and disclaimer trials; and to examine objections against decisions given in these proceedings. The CPJs do not meet the requirements of a ‘judge’ or a ‘court’ which are ‘independent, impartial and previously establishment by law’ vis a vis the European Convention on Human Rights or International Covenant on Political and Civil Rights.⁴
13. The TMK and TCK still contain numerous provisions that are unreasonably broad or imprecise, allowing arbitrary enforcement and censoring of critical, dissenting, and minority views on the pretence of protection of national security. Thus, individuals involved in non-violent speech and association are prosecuted for ‘membership of an

² Düşünce ve İfade Özgürlüğünün Korunması ve Geliştirilmesine ilişkin Özel Raportörün Türkiye Ziyaretine İlişkin Raporu, 6-23 June 2017, A/HRC/35/22/Add,

<http://www.un.org.tr/humanrights/images/pdf/ifade-ozgurlugu-ozel-raportoru.pdf>

³ “Türkiye, AIHM’de düşünce ve ifade özgürlüğünden en fazla mahkum olan ülke oldu”, Euronews, 24 January 2019,

<https://tr.euronews.com/2019/01/24/turkiye-aihm-de-dusunce-ve-ifade-ozgurlugunden-en-fazla-mahkum-olan-ulke-oldu>

⁴ <http://www.platformpj.org/wp-content/uploads/CPJreport.pdf>

armed organisation' (TCK 314), 'committing crimes on behalf of a criminal organisation without being a member of that organisation' (TCK 220/6), 'making terrorist propaganda' (TCK 220/8 and TMK 7/2) or 'publishing statements of a terrorist organisation' (TMK 6/2). Moreover, Article 5 of the TMK allows for the application of aggravated sentences for prosecutions under anti-terror legislation in the TCK.

14. Article 299 of TCK states that insulting the President incurs up to four years of imprisonment. To open a court case the permission of the Minister of justice is needed, while high level bureaucrats including the President are able to file a suit against journalists and members of civil society, including artists and academics on the basis of insulting the President.
15. The article 301 of the TCK which regulated defamation of "Turkishness, the Republic, the state, the Turkish Parliament, the government or judicial organs" had always been a concern for freedom of expression. Although, the number of people prosecuted under Article 301 declined sharply following a 2008 amendment, that introduced a ministerial approval requirement, the article continues to have a chilling effect and critical expression is still under attack by use of certain other legal provisions.
16. Turkish National Intelligence Law (No. 6532 (2014)) gave permission to the Turkish National Intelligence Organization to access the personal data of individuals without first obtaining a court order. The article also provides for heavy punishment for the gathering and publishing of information concerning the National Intelligence Organization.⁵
17. There are also limitations set within the Constitution itself. Articles 28 of the Constitution limits the very freedom it endorses.
18. Again, Article 26(2) states that the exercise of freedom of expression "may be restricted for the purposes of protecting national security, public order...safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory" which in itself could be used by the authorities as a leeway to escape the essence of Article 26.
19. Article 5651, the Internet law, gave the government the authority to block access and censor any internet content in the name of national security. After the 17-25 December 2013 corruption and bribe investigations, the Turkish government increased the penal responsibilities of access suppliers using article 5651 and introduced more limitations.⁶
20. Article 8 (A) was added to the Law No. 5651 with a change in March 2015 and this allowed the Ministry of Communication and Telecommunication to block access to websites with ambiguous reasons without any court decision.
21. Constitutional changes approved in 2017 took force upon President Recep Tayyip Erdoğan's re-election, introducing a new presidential system of government that vastly expanded executive powers and eliminated the post of prime minister. The president can now rule by decree and appoint various officials and judges who are ostensibly meant to play an independent oversight role, eradicating key checks on executive power.

⁵ "Yeni MİT Yasası Hakkında Bilmeniz Gereken 20 Şey", Onedio, 29 April 2014, <https://onedio.com/haber/iste-mit-yasasi-hakkinda-her-sey--295452>

⁶ Türkiye İnternet Yasası 5651 sayılı Kanunun Değişiklik Tasarısı Üzerine Değerlendirme, January 2014 www.osce.org/fom/110823?download=true

THE IRREPARABLE HARM DONE BY THE STATE OF EMERGENCY (OHAL) TO THE FREEDOM OF EXPRESSION

22. On 21 July 2016, the Turkish Parliament declared a State of Emergency (OHAL), that continued for two years and left irreparable harm on both the legal and institutional framework and the culture of freedom of expression in Turkey.
23. Under OHAL, Turkey invented *iltisak* (coherence) is a form of terrorist activity. Accordingly, “Coherence, i.e. to moving as conjoined to one another, voluntarily submitting, facing the same direction, interpreting circumstances from the same viewpoint, conducting oneself with suggestions, instructions and directions of an organization or structure, and in doing so anticipating worldly or unworldly gains; as well as communication i.e. establishing voluntarily or involuntarily and for personal gains, one’s own course of action by taking into account messages one receives either through personal contact or through the press, mass media or social media.” (Decision of Ankara Regional Court of Appeals, No: 2019/246, 24 April 2019).
24. Executive Decree 680 Articles 16-21 concerning media service providers have introduced numerous provisions on the laws relating to media introducing severe restrictions to press freedoms, enhancing the powers of the Radio and Television Supreme Council (RTÜK) to impose a broadcasting ban and abrogating the broadcast licenses of TV and radio stations or rejecting issuance of further licenses.
25. Executive Decree 687 imposed further restrictions on the transmission facilities used by private TV and radio stations, practically putting the state in charge of all transmission services. The same Decree eliminated any Supreme Election Board (YSK) control on broadcasting violations such as not giving sufficient air time to opposition parties.
26. Executive Decree 690 imposed restrictions on commercial broadcasting, banning chat programs, friend and spouse finding programs and programs selling food supplements.
27. By the end of 2016, 178 media outlets including news agencies, newspapers and television channels were closed by the Executive Decrees.⁷ A further 30 publishers were closed down and their books banned.⁸ The total number of books banned through these closures reached the thousands and people apprehended while in acquisition of books, magazines and journals faced prison sentences. OHAL decrees closed 19 labour unions, one of which was Ufuk-Haber Sen, one of the largest media workers union and membership to Ufuk-Haber Sen was recognized by the Supreme Court of Appeals as evidence of collaboration with a terror organization.⁹
28. According to Reporters Without Borders (RSF) The number of journalists detained only in the first year of the State of Emergency surpassed 100.¹⁰ Other organizations gave much larger figures, with Free Journalists Initiative claiming that 187 journalists were under arrest by the end of the OHAL on July 2018.¹¹ The discrepancies among numbers given by different organizations underline a more dangerous trend of churn in Turkish

⁷ Bianet, <https://m.bianet.org/bianet/medya/182458-kapatilan-basin-yayin-radyo-televizyon-ve-haber-ajanslari>

⁸ “OHAL’de 30 yayinevi kapatıldı”, Susma, 7 June 2017, <http://susma24.com/ohalde-30-yayinevi-kapatildi/>

⁹ <https://www.memurlar.net/haber/728893/yargitay-in-bank-asya-ve-sendika-uyeliklerine-dair-kararinin-tam-metni.html>

¹⁰ <https://rsf.org/en/reports/2016-round-number-journalists-detained-worldwide-continues-rise>

¹¹ <https://ipa.news/tr/2018/09/03/ogi-raporuna-gore-turkiyede-187-gazeteci-tutuklu/>

- jails and lack of information about the fate of journalists in the country.¹² By the time this submission was prepared the Free Journalists Initiative's number was 154,¹³ and of RSF was 34.¹⁴ A further 167 journalists were under search warrant and had to flee Turkey to escape arrest according to the Stockholm Centre for Freedom's database.¹⁵
29. Judges who are not willing to bow vis-a-vis the political pressure were either replaced, or even implicated for cooperating with "terrorists", to ensure maximum punishment for any arrested journalist.¹⁶
 30. Opposition politicians, particularly those with Kurdish or Alevite backgrounds have also suffered from the OHAL measures. 13 members of parliament from the pro-Kurdish Peoples' Democratic Party (HDP) lost their parliamentary immunities under the OHAL conditions. 11 of them are still in prison, including the former co-chair of the party Selahattin Demirtas.¹⁷
 31. OHAL conditions also presented the Turkish authorities with a chance to avenge previous public protest which it saw as nothing but coup attempts. Hence, the Gezi Park case was reopened and over five years after the original Gezi Park Protests, new arrests were made. Prominent civil society leader and philanthropist Osman Kavala was arrested in 2017 and is still in pre-trial detention.¹⁸
 32. OHAL conditions caused the already weak academic freedom conditions of Turkey to deteriorate even further. During the state of emergency 7,619 academics were expelled from the profession and 1,400 academics were arrested.¹⁹ To demand an end to the government's counter-terrorism policy in Turkey's eastern and south-eastern provinces, The Academics for Peace Initiative (BAK) signed the declaration 'We will not be partners in this crime'.²⁰ The Council of Higher Education (YÖK) took action and the signatories started to be exported from universities. Separate cases were filed against the 499 academics on charges of making propaganda of a terrorist organization. As of 8 May 2019, 191 academics were sentenced to 15 months of imprisonment.²¹

THE MISUSE OF THE ANTI-TERROR LAW (TMK) AND CERTAIN ARTICLES IN THE TURKISH PENAL CODE (TCK) AGAINST JOURNALISTS AND MEDIA ORGANS

33. Although the TMK and counter-terrorism provisions in the TCK have been reformed on a number of occasions, terms like 'terrorism,' 'organised crime' and 'propaganda' are so broadly defined that they still allow for the prosecution of journalists based merely on the coverage of terrorist activities. Similarly, students, lawyers, and activists are

¹² Kerim Balci, "How many journalists are behind bars in Turkey?" 18 February 2019,

https://observatoryihr.org/priority_posts/how-many-journalists-are-behind-bars-in-turkey/

¹³ http://www.cumhuriyet.com.tr/haber/turkiye/1465423/Ozgur_Gazeteciler_insiyatifi_154_gazeteci_tutuklu.html

¹⁴ https://rsf.org/en/barometer?year=2019&type_id=235#list-barometre

¹⁵ <https://stockholmcf.org/updated-list/>

¹⁶ Medya davasında gazetecilere hapis cezası yağdı <https://ahvalnews.com/tr/tutuklu-gazeteciler/medya-davasinda-gazetecilere-hapis-cezasi-yagdi>

¹⁷ <https://www.sabah.com.tr/gundem/2019/03/01/eren-erdem-davasinda-karar>

¹⁸ <https://www.bbc.co.uk/news/uk-wales-38690471>

¹⁹ "AKP'nin 20 Temmuz Darbesi ve Bilançosu", Romanya Haber, 10 January 2017, <http://news.romhaber.com/2017/01/10/akpnin-20-temmuz-darbesi-ve-bilancosu/>

²⁰ Barış İçin Akademisyenler Vakasının Kısa Tarihi, TİHV, 11 January 2019, <http://www.tihvakademi.org/wp-content/uploads/2019/03/Barisicinakademisyenlervakasi.pdf>

²¹ "Barış Akademisyeni Füsün Üstel Cezaevine girdi", Evrensel, 8 May 2019, <https://www.evrensel.net/haber/378998/baris-akademisyeni-fusun-ustel-cezaevine-girdi>

- arrested under anti-terror laws for the legitimate exercise of their rights to freedom of expression and freedom of peaceful assembly.
34. Year 2014 saw use of TMK against journalists working at media organs run by the Gülen Movement. On December 14, security forces conducted raids across the country against outlets with suspected affiliation to the Gülen Movement, such as *Zaman*. Several media workers and journalists were arrested, including Ekrem Dumanlı, *Zaman*'s editor-in-chief, under suspicion of "establishing and managing an armed terror organization" with the intent of seizing state power.
 35. Soon, the pressure on the media organizations known for their close proximity to the Gülen Movement took the form of seizing all their assets. On October 27, 2015 İpek Media Group's media outlets and newspapers such as Bugun Newspaper, Millet Newspaper, Kanaltürk TV and Kanaltürk Radio, were confiscated. The administration of these broadcasting organs was given to individuals close to the government.²² 58 journalists and columnists who were critical got fired in a day.²³ All the news archives of these media outlets were erased.²⁴
 36. The now infamous Özgür Gündem Case also reveals how Turkey's TMK and TCK are usurped by the courts of the country to silence critical voices. When the then editors of Özgür Gündem were arrested, a solidarity campaign for Özgür Gündem, the one-day symbolic editor-in-chief routine was conducted between May and August 2016, in which 56 journalists, lawyers and human rights activists participated. Under OHAL, the government didn't only close down Özgür Gündem, but also sued 49 of the participants of the solidarity campaign. A majority of them were given 15 months prison sentences for "disseminating terrorist propaganda."
 37. A related restriction on freedom of expression is about the union activities, including the right to strike. In September 2018, authorities broke up a strike that was organized to protest unsafe working conditions on the site of a new airport under construction in Istanbul. Most of the 500 strikers detained were ultimately released, but 67 people, 31 of them still under arrest, awaited trial for their role in the strike at the time of preparation of this submission.²⁵
 38. Human rights activists and lawyers are also being targeted with prosecution, violence and in some instances arbitrary arrest and detention for their non-violent opinions and activities. Lawyers who defend their client's civil and political rights in politically sensitive cases are frequently subjected to judicial harassment because the state wrongly identifies them with their clients or their clients' causes.
 39. Another form of censorship is the gag orders issued by Turkish courts and regulators on issues of public interest. Gag orders were issued by courts to prevent criticism of their collaboration with the government in its persecution of all opposition groups. At a recent case, a gag order was issued about an investigation into opposition leader

²² "İşte Koza-İpek'e atanan kayyumlar", *Hürriyet*, 28. Oktober 2015, <http://www.hurriyet.com.tr/gundem/iste-koza-ipeke-atanan-kayyumlar-40007103>

²³ "İşte Koza-İpek'e atanan kayyumlar", *Hürriyet*, 28. Oktober 2015, <http://www.hurriyet.com.tr/gundem/iste-koza-ipeke-atanan-kayyumlar-40007103>

²⁴ "500 çalışan işsiz kaldı... İpek Medya böyle batırıldı", *Cumhuriyet*, 2 March 2016, http://www.cumhuriyet.com.tr/haber/ekonomi/490391/500_calisan_issiz_kaldi..._ipek_Medya_boyle_batirildi.html

²⁵ <https://t24.com.tr/haber/istanbul-havalimani-insaatina-iliskin-davasinda-3-durusma-basladi,827760>

Meral Aksener's alleged links to the Gülen Movement, though Aksener herself called for a transparent and public hearing.²⁶

THE MISUSE OF TCK 5237-299, THE LAW THAT REGULATES THE DEFAMATION OF THE PRESIDENT OF THE COUNTRY

40. The offense of insulting the President regulated in Article 299 of the TCK was used as an obstacle to freedom of the press and expression. Only in 2017, 20,539 investigations were opened from Article 299, and 2,099 people were convicted.²⁷ It is noteworthy that even children ranging from 12 to 15 years of age are being prosecuted for insulting the President by sharing content on social media.²⁸
41. Use of Article 299 against politicians extended its reach when Turkey decided to switch to a presidential system. In an iconic case, opposition party CHP's Istanbul branch chair Canan Kaftancıoğlu was sued for her social media post that belonged to the parliamentary era, on claims that by way of not deleting that post, she continued to defame the president. The prosecutors asked for a 17-year prison sentence for Ms Kaftancıoğlu.²⁹
42. The government used not only criminal defamation laws, but also civic liability laws against journalists on the basis of Article 41 ('intentional wrongful harm') and Article 49 ('harm to personal interests') of the Code of Obligations.
43. Academics and students continued to be prosecuted for expressing critical views of the government or for peaceful political action in 2018 and 2019. For example, at the end of 2018, four students from Middle East Technical University still faced charges of "insulting the president" after holding up a satirical banner at their graduation ceremony in July. In 2019, students from the same university were detained even before the graduation ceremony and were questioned about unrest similar to Gezi Park that they were allegedly planning.³⁰
44. After his party's candidate lost the election for Istanbul's mayoral post in the 23 June 2019 repeat election, President Erdoğan hinted that the winning CHP candidate Ekrem İmamoğlu might not be able to continue as a mayor of the city if a defamation case, that would have been filed against him by the governor of the city of Ordu, ended with conviction. Mr İmamoğlu denied that he referred to the governor as "dog" in a pre-election brawl about his use of the VIP lounge in Ordu airport.³¹

LACK OF TRANSPARENCY IN OWNERSHIP AND MANAGEMENT OF MEDIA ORGANS AND POLITICAL INTERFERENCE IN SALES AND MANAGEMENT OF MEDIA ORGANS

45. Since the AKP came to power in 2002, the Turkish press has entered into a major transformation. The first steps of AKP's restructuring of the media began in 2007. From

²⁶ <https://t24.com.tr/haber/meral-aksener-hakinda-gizli-feto-sorusturmasi,828178>

²⁷ "Türkiye: "Cumhurbaşkanına Hakaret" Davalarının Açılmasına Son Verilsin", HRW, 17 Oktober 2018, <https://www.hrw.org/tr/news/2018/10/17/323507>

²⁸ "Türkiye: "Cumhurbaşkanına Hakaret" Davalarının Açılmasına Son Verilsin", HRW, 17 Oktober 2018, <https://www.hrw.org/tr/news/2018/10/17/323507>

²⁹ <https://bianet.org/bianet/insan-haklari/209806-cumhurbaskanina-hakaret-davasi-icin-kaftancioglu-na-destek-istanbul-da-onu-savunacak>

³⁰ <https://bianet.org/bianet/insan-haklari/209915-odtu-de-mezuniyet-toreni-oncesinde-6-ogrenci-gozaltina-alindi>

³¹ <https://www.takvim.com.tr/guncel/2019/06/20/baskan-erdogandan-valiye-kufur-eden-ekrem-imamogluna-tepki>

this period onwards, the AKP has done its best to strengthen pro-government media outlets alongside the mainstream media outlets and mobilized state capabilities to this effect. Powerful media outlets were stuck between bending to the will of the AKP or facing charges or tax fines that threatened their existence.

46. Only 17 percent of Turkey's entire newspaper circulation between May 8-June 3, 2018 comprised opposition newspapers (Cumhuriyet, Sözcü, Evrensel, BirGün, AMK, Korkusuz, Yeni Asya, Yeniçağ, Milli Gazete). As for television, out of 10 stations with the highest ratings, nine (ATV, TRT, TV 8, Kanal D, Show TV, A Haber, Star TV, CNN Türk, NTV) are pro-government stations.³²
47. The government was involved in sales of media groups to friendly business people. This involvement included the arrangement of credits from state-owned banks and the appointment of unofficial "party commissaries" to the editorial teams of media organs. The President's office intimidated media outlets through various tactics including, occasionally forcing resignations or sacking critical journalists.³³
48. Self-censorship in the mainstream media has increasingly become a barrier to media freedom as editors and media owners seek to maintain good relations with the government with whom they have strong business links. Journalists report that their work has been censored or that they have been forced out of their jobs to prevent criticism of the government. Fear of legal reprisals or loss of employment in a concentrated media market has led to widespread self-censorship in recent years.

REGULATORY RESTRICTIONS IMPOSED UPON LOCAL AND INTERNATIONAL JOURNALISTS AND MEDIA ORGANS

49. Media regulatory bodies including the Radio and Television Supreme Council (RTÜK) and Information Technologies and Communications Authority (BTK) function under the direction of the government and are therefore not independent. As a result, the judgements of such boards are often politically motivated and target individuals or groups that are critical of the government.
50. RTÜK, whose members are elected by the parliament, has the power to issue and cancel broadcasting licenses, a process which is heavily politicized. The warnings and fines issued by RTÜK against broadcasting channels always favoured pro-government media. Only in 2018, the body issued 37 fines against two opposition TV channels, while the six pro-government outlets were given 19 fines in total.³⁴
51. Amendments made in 2014 to Law No. 5651, commonly known as the Internet Law of Turkey, expanded the power of the Telecommunication and Communication Presidency (TİB) to order the blocking of websites, allowing it to do so on vaguely defined grounds and without prior court approval, though a court must uphold the order within 48 hours for a block to remain in place. In August 2016, the TİB, which the government said was infiltrated by the Gülen Movement, was disbanded by a decree; folding its functions into the BTK.
52. A discriminatory accreditation system enforced by the Directorate General of Press and Information (BYEGM), a body that was under the control of the prime minister's

³² <https://stockholmcf.org/wp-content/uploads/2018/08/Clamp-down-on-foreign-journalists-in-Turkey.pdf> and <https://turkey.mom-rsf.org/tr/bulgular/siyasi-iliskiler/>

³³ <https://tr.euronews.com/2019/05/03/medya-sahipligi-turkiye-de-medyayi-kim-kontrol-ediyor->

³⁴ <https://www.haber3.com/medya/televizyon/iste-rtukun-ceza-karnesi-2018de-kanallara-bu-kadar-ceza-kesildi-haberi-5013250>

office until 2017, was used to screen out critical journalists, restricting access to the offices of the president and cabinet ministers. Under OHAL 1,954 journalists' press cards were cancelled.³⁵ When the prime ministry was abrogated under the new presidential system that followed the 2017 Referendum, BYEGM was replaced with The Directorate of Communications (İDB), directly answerable to the President. President Erdoğan suggested in June 2019 that the IDB "would calibrate the media if need be."³⁶

53. The government has also used various forms of financial pressure to punish dissent, including the withholding of state advertising from critical outlets.
54. Turkey also used its regulatory institutions and the visa extension authorities to punish and censor foreign journalists working in Turkey. Several foreign correspondents were deported from Turkey, including, Dutch journalist Frederike Geerdink (September 9, 2015)³⁷, American journalist Lindsey Snell (October 2016), French journalist Olivier Bertrand (November 14, 2016), Italian journalist and documentarian Gabriele Del Grande (April 24, 2017), Spanish journalist Beatriz Yubero (August 2016), French journalist Mathias Depardon (May 2017), German-Turkish reporter of Die Welt Deniz Yucel (February 16, 2018).³⁸
55. An indirect way of deportation is cancellation or rejection of renewal of press cards. Norwegian journalist Silje Rønning Kampesæter was denied a press-card on February 8, 2016 and had to leave the country. On March 17, 2016 Hasnain Kazim, the Istanbul reporter for Der Spiegel, was assigned to Vienna due to an inability to renew his accreditation. On April 27, 2017 Stern magazine announced that the press credential of Raphael Geiger, a Stern reporter, was not renewed for insulting President Erdoğan.

NEW RESTRICTIONS ON FREEDOM OF EXPRESSION ON ONLINE PLATFORMS

56. On the 5th of February 2014, the Turkish Parliament approved a new law tightening government control over the internet. The legislation amended Turkey's original 2007 Internet Law, allowing Turkey's Telecommunications Authority (TİB) to block websites without first obtaining a court order. Following the said amendments, Ministry of Telecommunications took a number of administrative decisions preventing the public from accessing Facebook, Twitter and YouTube platforms on 18 and 27 March 2014 and 2015 respectively. Decisions were subsequently found unconstitutional by the Constitutional Court and the TİB decisions to block public access the platforms in question were cancelled.³⁹
57. Digital surveillance and blocking of internet exacerbated under OHAL and continued afterward. During the six-month period after July 15, 3,710 people faced judicial processes because of social media shares. 1,656 people were arrested. According to 2018 data, the police detained 7 thousand 109 people after investigating 110,000 social media accounts in one year. In 2017, 39 thousand social media accounts were examined, 3,000 suspects were arrested by a court and 1,400 people were released on

³⁵ "1954 Gazetecinin Basın Kartı İptal Edildi", Bianet, 19 December 2018,

<https://bianet.org/bianet/medya/203679-1954-gazetecinin-basin-karti-iptal-edildi>

³⁶ <https://www.gazeteduvar.com.tr/gundem/2019/06/04/erdogandan-gazeteciye-size-ayar-gerekirse-iletisim-baskanligimiz-o-isi-gorur/>

³⁷ <https://www.sabah.com.tr/gundem/2015/09/09/geerdink-sinir-disi-ediliyor>

³⁸ <https://stockholmcf.org/wp-content/uploads/2018/08/Clamp-down-on-foreign-journalists-in-Turkey.pdf>

³⁹ "Anayasa Mahkemesi ve Youtube Kararı", Bianet, 9 June 2014,

<https://bianet.org/bianet/siyaset/156280-anayasa-mahkemesi-ve-youtube-karari>

condition of judicial control.⁴⁰ 2,000 754 of them were arrested on the grounds that they shared crime related content.⁴¹

58. The government blocked access to Wikipedia on 29 April 2017, when Wikipedia rejected taking down an article which claimed that the Turkish Republic supported terrorist groups in Syria.⁴² At the time of the writing of this report, Wikipedia had already carried the case to the ECtHR.
59. In January and February 2018, hundreds of people, including doctors, construction workers, and high school students, were detained for social media posts criticizing a Turkish military offensive in the Afrin district of Syria.
60. According to ‘Blocked Web 2018’ report of the Freedom of Expression Society (İÖD), only in 2018, access to 54,903 web sites were blocked in Turkey. Though a majority of these blocking decisions were given by BTK, between 2007 and 2018, 587 different state institutions were involved in decisions of blocking access to 245,825 websites.⁴³
61. The same report suggested that only in 2018, 3,306 online news URLs were blocked in Turkey. All of these were blocked upon decisions of 159 different Criminal Peace Judgeships. The report underlined that a majority of these decisions were given about opposition media outlets, which, under pressure of the government, chose to erase the blocked content from their websites.
62. On 2 February 2018, a new law authorised RTÜK with control and inspection of online broadcasting of all types. This practically means absolute control of online communications by a state regulatory body.

INTIMIDATION OF CRITICAL JOURNALISTS THROUGH VERBAL AND PHYSICAL VIOLENCE AND FAILURE TO PUNISH CRIMES PERPETUATED AGAINST ACADEMICS, JOURNALISTS AND MEDIA ORGANS

63. Non-judicial means of harassment are common, including public condemnation of journalists by politicians or putting undue political pressure on news outlets to change their editorial line. Impunity of crimes against academics, journalists and media organs exacerbates the fear of journalists and cause them to self-censor. Constitutional protections have also been subverted by hostile public rhetoric against critical journalists and outlets from Erdoğan and other government officials, which is often echoed in the pro-government press.
64. Journalists working in the country’s predominantly Kurdish southeast continued to face serious obstacles to their reporting—such as threats, physical violence, and criminal investigations—in the context of a counterinsurgency campaign against Kurdish separatist fighters.
65. The 2017 report “Journalists under Pressure: Unwarranted interference, fear and self-censorship in Europe” by the European Council was based on a survey of journalists in

⁴⁰ “Emniyet bir yılda 39 bin sosyal medya hesabında suç tespit etti”, 26 December 2017, <https://www.politikyol.com/emniyet-bir-yilda-39-bin-sosyal-medya-hesabinda-suc-tespit-etti/>

⁴¹ “Sosyal medyadan suç içerikli paylaşım yapan 2 bin 754 kişi tutuklandı”, Sputnik News, 19 December 2018, <https://tr.sputniknews.com/turkiye/201812191036707573-sosyal-medya-tutuklama/>

⁴² “Wikipedia, Türkiye’de tam 2 yıldır yasaklı!”, T24, 29 April 2019, <https://t24.com.tr/haber/wikipedia-turkiye-de-tam-2-yildir-yasakli,818867>

⁴³ <https://www.dw.com/tr/engelli-web-2018-turkiyede-erisim-engelleri-raporu-aciklandi/a-49447237>

all European countries,⁴⁴ and pointed at Turkey as the country with the highest rate of threat of violence, sexual violence, and online threat against journalists. Accordingly, 87 percent of Turkish journalists felt themselves under continuous surveillance, 71 percent received some form of online harassment, 72 percent faced police threats and 64.4 percent experienced threats from political groups.

66. According to CPJ, there was one media-related killing in 2014; this number increased to three in 2015 and dropped to two in 2016. In 2018 another journalist was killed in Turkey. In May 2016, Can Dündar, the *Cumhuriyet* editor in chief, was attacked by a gunman outside the courthouse where his trial was taking place. He escaped unharmed, but a nearby journalist with the NTV television station was shot in the leg. The gunman was first freed pending trial, and in October 2018 was given a fine less than a thousand US dollars.⁴⁵
67. On 10 May 2019, journalist and TV anchor Yavuz Selim Demirağ was attacked in front of his house and was heavily beaten presumably by a nationalist mob who were angry at Demirağ's criticism of the Nationalist Movement Party (MHP). Six attackers were detained initially, but they were all released as Mr Demirağ's situation was not deemed critical by the prosecutor.⁴⁶
68. The attack on Mr Demirağ was not an isolated incident. In May 2019, journalists İdris Özyol, Ergin Çevik, Hakan Denizli and Sabahattin Önkibar were all attacked, either by a group of people, or by fire arms.⁴⁷

ONGOING CAMPAIGN AGAINST FREEDOM OF EXPRESSION OF CRITICAL VOICES FROM OUTSIDE TURKEY

69. Intimidation of critical journalists and media organs are not confined within the borders of Turkey. Turkey has carried out a policy of irregular renditions against a number of members of civil society, including journalists and academics.⁴⁸
70. Turkey usurped Interpol to intimidate journalists that have managed to leave the country. In October, a Turkish court requested that Interpol issue "red notices" for Can Dündar and İlhan Tanir, two prominent journalists now living abroad who were standing trial on espionage charges in absentia.⁴⁹
71. Turkey filed extradition requests against journalists living abroad. In 2018 and 2019, former boss of Ipek Media Group Akin Ipek, and former president of the Journalists and Writers Foundation Mustafa Yeşil defeated Turkey's requests for their extradition in English courts.⁵⁰
72. Turkish journalists working for foreign outlets are often targeted by the pro-government media and social media trolls. A particularly worrying development is a recent report prepared by pro-government think-tank SETA, on "The Turkey Links of the International Media Organizations," where SETA researchers literally profiled all

44

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070ad5d>

⁴⁵ <https://www.ntv.com.tr/turkiye/can-dundara-silahl-saldiri-davasinda-karar,NfY-c1JovEi13lwGwo9Mhg>

⁴⁶ <http://www.hurriyet.com.tr/gundem/gazeteci-demiraga-saldiri-suphelisi-6-kisi-serbest-41212137>

⁴⁷ <https://bianet.org/bianet/nefret-soylemi/208890-son-iki-haftada-bes-gazeteci-saldiriya-ugradi>

⁴⁸ <https://www.nationalreview.com/2019/01/turkish-government-program-of-kidnappings/>

⁴⁹ <https://ahvalnews.com/interpol/turkey-may-be-worlds-most-prolific-abuser-interpol-red-notice>

⁵⁰ <https://www.theguardian.com/law/2018/nov/28/uk-court-rejects-turkish-extradition-request-for-media-boss>

Turkish journalists working for media outlets like BBC Turkish, Deutsche Welle Turkish, Voice of America, Sputnik TR, Euronews Turkey, CRI Turk, and Independent Turkish.⁵¹

RECOMMENDATIONS

The co-authors call upon the government of Turkey to significantly improve the overall conditions for freedom of expression. In particular, the government of Turkey should:

Cooperation with International Bodies

1. Stop disregarding its obligations under international agreements, and the Universal Periodical Review;
2. Fully cooperate with ECtHR and apply its decisions immediately;
3. Abide by the decisions of the UN Human Rights Committee;
4. Open ongoing cases of journalists, academics, lawyers and other human rights defenders to foreign observers;

Anti-terror legislation

5. Cease the abuse of anti-terror legislation and the penal code to prosecute journalists, bloggers, activists and other civil society actors, release those detained from prison, and drop pending charges;
6. Comprehensively reform counter-terrorism legislation, including Article 6/2 and 7/2 of the TMK and Articles 220/6, 220/8 and 314 of the TCK, to narrow definitions of ‘terrorism’, ‘organised crime’, and ‘propaganda’.
7. Stop using *iltisak* (coherence) with the aims of terrorist organizations as a legal pretext to sue individuals and journalists under TMK and drop all *iltisak* charges against all journalists, lawyers, human rights advocates, activists and individuals.

Defamation, insult to the state and blasphemy

8. Decriminalise defamation by repealing Article 125 of the Penal Code altogether;
9. Reform the Code of Obligations on civil defamation to ensure adequate defences for expression that is true or is in the public interest, and to guard against the abuse of law suits to silence criticism of public officials;
10. Repeal Article 301 of the Penal Code on ‘Insulting the Turkish nation’ fully and unconditionally;
11. Reform Article 216/3 of the Penal Code criminalising ‘inciting the population to enmity and hatred’ to bring it in line with Article 20(2) of the ICCPR;

Freedom of press

12. Remove any restrictions or regulations that might place the media under political influence or compromise the vital role of the media as public watchdog, in particular oversight of RTÜK and BTK;
13. Take appropriate action, consistent with relevant human rights standards, to promote media diversity and prevent undue media dominance or concentration;

⁵¹ <https://ahvalnews.com/journalism-turkey/pro-akp-think-tank-publishes-report-profiling-journalists-working-foreign-news> and <https://setav.org/assets/uploads/2019/07/R143Tr.pdf>

14. Promote transparency of media ownership making public the identity of their owners;
15. Guarantee the safety of journalists and media workers. Take legislative and political steps to prevent attacks against journalists and eradicate impunity in episodes of violence and intimidation;

Pre-trial detention

16. Release all persons in pre-trial detention or facing prison sentences for exercising their right to freedom of expression;

Surveillance and Freedom of Expression

17. Reform the National Intelligence Agency Law (No. 6532), and ensure adequate judicial and political oversight for the security services;

Freedom of expression online

18. Amend Law 5651 to protect freedom of expression online, and ensure that any blocking of websites, IP addresses, ports, network protocols or types of use (e.g. social networking) is justified in accordance with international standards;

Domestic Remedies

19. Abrogate the OHAL Review Commission and the Individual Right of Appeal to the Constitutional Court which are clearly designed to delay consummation of domestic remedies and stop presenting these two inefficient institutions as efficient remedies to the ECtHR.