

# REPORTERS WITHOUT BORDERS

FOR FREEDOM OF INFORMATION

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## Written contribution by Reporters Without Borders on freedom information in TURKEY June 2014

### *Introduction*

**Freedom of information has declined alarmingly in Turkey since its first Universal Periodic Review** during the 8th session in May 2010. It was then ranked 138th out of 178 countries in the Reporters Without Borders press freedom index. In the past four years it has fallen 16 places and is now **ranked 154th out of 180 countries in the 2014 index.**

Although the Turkish authorities rejected the 2010 UPR's most specific recommendations, they did accept several general recommendations regarding freedom of information (100.71 and, partially, 102.19) and issues directly affecting it – judicial independence and impartiality (100.66), impunity (100.70) and penal code amendments (101.5 and partially, 102.23). **Despite the very vague nature of these undertakings, none of them can be regarded as fulfilled at this time.** In fact, Turkey has moved steadily in the opposite direction.

Recep Tayyip Erdogan's government has largely turned its back on the democratic reforms that were promoted during the initial years with a view to joining the European Union. The army's self-appointed right to influence political developments has been rightly curtailed and a number of taboos linked to the Kemalist heritage have gone, but new taboos are emerging and the government is becoming more and more authoritarian.

The legislative shackles inherited from the military era still impose many constraints on journalists' work. At the same time, journalists are hostages to the relentless power struggles between the government and its rivals. Media pluralism is being undermined by growing self-censorship and the concentration of ownership in ever fewer hands, while the police increasingly resort to violence against journalists with complete impunity.

During the first UPR cycle, Turkey said "the continuation of enhancements on the freedom of speech and the freedom of media is one of the fundamental aspects of Turkey's human rights reforms." But progress in the past four years has in practice been very limited and the government has instead embarked on an increasingly authoritarian and repressive course. This second UPR should be used to remind the Turkish authorities of their past undertakings and to make them face up to their responsibilities.

## ***I. Journalists criminalized by courts***

It is still much too easy in Turkey to arbitrarily portray journalists as terrorists in order to imprison them.

- **The vagueness of many laws give prosecutors and judges too much interpretive leeway.** The anti-terrorism law is used arbitrarily against journalists while the public's right to information is ignored.
- **The judicial culture is still dominated by an obsession with security, in which defence of the state is put before defence of the citizen** to the detriment of journalists' work and the right to information.
- Finally, although some progress has been made, the judicial system is still not very independent, a problem exacerbated by the judicial reform adopted at the start of 2014.

Major judicial investigations into the ultranationalist network known as Ergenekon and the outlawed Union of Communities in Kurdistan (KCK) have been leading examples of these abuses.

- The **Ergenekon** investigation was initially hailed as a sign of determination to address the "deep state" issue, but the government has used it to persecute the opposition and outspoken independent commentators. Ever broader circles, including many journalists, have been the victims of succeeding waves of arrests.  
A turning point was the March 2011 arrests of Ahmet Sik and Nedim Sener, two well-known investigative journalism pioneers whose only crime was to have criticized the way the government was exploiting the investigation. They were released after a year in pre-trial detention but continue to face the possibility of long jail terms on charges of belonging to Ergenekon, with which they have nothing in common ideologically. The police tried to destroy all copies of *The Imam's Army*, a book that Sik was finishing at the time of his arrest, and banned anyone from having a copy until it was published clandestinely in 2012.  
Several other journalists, including Mustafa Balbay and Tuncay Özkan, spent more than five years in provisional detention until released conditionally in 2013. More than 20 journalists were given long jail terms at the end of a trial in August 2013. Most of them are currently on provisional release pending the outcome of their appeal, but could be detained again at any time. Their sentences have had an intimidatory effect on all journalists.
- Another major example of media personnel being criminalized was the December 2011 arrest of 44 journalists and other Kurdish media employees on suspicion of being members of a "**KCK media committee**" because of their coverage of Kurdish issues. The case was marked by arbitrary interpretation of the anti-terrorism law, investigations that violated the confidentiality of journalists' sources and a lack of due process. They are all now on conditional release but most of them spent two years in provisional detention and are still facing the possibility of long jail terms at the end of a trial that began in September 2012.

Aside from these major cases, there are new examples of arbitrary judicial proceedings against news and information providers almost every week.

## ***II. Legislative vice loosened, but not enough***

**The authorities have amended several especially repressive laws**, above all in response to the many European Court of Human Right rulings against Turkey. These “reform packages” represent a move in the right direction but fall far short of the required changes to legislation restricting freedom of information that is still in effect.

- Adopted in July 2012, Law 6325 (the “3rd judicial reform package”) provides for a three-year suspension of all prosecutions and convictions for “press and opinion crimes” with a maximum sentence of five years in prison. If the person concerned refrains from committing an offence of the same kind during the three years, the case is dropped for good. It leaves journalists with a threat hanging over them for three years, during which they are forced to remain silent or to censor themselves.
- By adopting the “4th judicial reform package” in April 2013 as part of the peace process with the PKK, parliament at last began to address the archaic and repressive nature of the anti-terrorism law, which constitutes a major obstacle to the activities of the media and civil society. The reform finally distinguished between expressing support for an illegal organization, inciting violence and committing terrorist acts. It nonetheless fell far short of what is needed and did not change the status of most jailed journalists, who are arbitrarily accused of “belonging to a terrorist organization,” a crime not affected by the reform.
- Law 6526, a reform of the Code of Criminal Procedure adopted in March 2014, reduced the maximum period of pre-trial detention from ten to five years. As a result, 37 journalists have been granted conditional release since the start of 2014. Pre-trial detention nonetheless continues to be the rule, and conditional release the exception.

These measures, and the abolition of “special jurisdiction courts” for major cases, including political ones, have had a short-term effect (as evidenced by the release of 37 journalists this year). But **much broader reforms are needed to end the judicial system’s structural abuses**. Many journalists are still being prosecuted in connection with their work and the sentences they get are still disproportionate. Articles 125, 299, 300, 301 and 305 criminalizing criticism of state institutions, and Law 5816 penalizing attacks on the memory of the Turkish Republic’s founder, Mustafa Kemal Atatürk, remain unchanged.

**It has been very disturbing to see new repressive reforms being adopted while these moves in the right direction were under way.** On 17 April 2014, for example, parliament adopted a law increasing the powers of the National Intelligence Agency (MIT). It tramples on several of the civil liberties enshrined in Turkey’s constitution but its leading victim is freedom of information, because journalists are now obliged to surrender all information to the MIT if so requested, to the detriment of the confidentiality of sources. Those who refuse can be jailed for two to four years. Furthermore, **journalists face a possible 10-year jail sentence if found guilty of publishing “sensitive” documents about the MIT**. This article’s vague wording is open to the most arbitrary interpretation. Yet again, no account has been taken of the concept of information in the public interest. On the contrary, MIT employees enjoy a judicial immunity that only the prime minister can lift.

### ***III. Alarming increase in cyber-censorship***

Recep Tayyip Erdogan, Turkey's prime minister since 2003, is encountering growing opposition because of his authoritarianism and the corruption allegations that have come to light since December 2013. The major anti-government protest movement known as "Occupy Gezi" and Erdogan's power-struggle with his former ally, the movement led by Fethullah Gülen, has exacerbated the government's repressive tendencies and this has been reflected in the increasing regulation of the Internet.

A proposed extension of Internet censorship in 2011 did not materialize because of strong civil society opposition but, in an alarming development, a reform of Law 5651 on the Internet that was adopted in February 2014 **allows the government to censor the Internet much more widely, contrary to the previous UPR's recommendations**. Content that "violates privacy" or is "discriminatory or insulting" can be blocked "as a preventive measure" without a court order. A judge is supposed to approve the blocking within 48 hours. But this safeguard is widely seen as lacking in credibility given the judicial system's current overload. It is hard to imagine judges having time to examine each case. This reform also requires technical intermediaries to keep all user connection data for two years and surrender it to the High Council for Telecommunications (TIB) on request.

**The possibility of abuses was quickly seen when the government had the TIB block Twitter and YouTube on the eve of municipal elections in March 2014** to restrict access to a series of compromising clandestine recordings circulating on social networks. Several subsequent court decisions ordering the TIB to restore access to the two websites were simply ignored. It took Constitutional Court rulings that the blocking was contrary to the rule of law for Twitter and YouTube to be unblocked, and only then after a delay. In all, YouTube was inaccessible for two months.

### ***IV. Police violence and impunity***

The police made extensive use of violence to crush the "Occupy Gezi" street protests during the summer of 2013. **At least 153 journalists were attacked and 39 others were arrested during the demonstrations from May to September 2013**. Journalists were the victims of both targeted attacks and the indiscriminate violence used by the police to disperse the protesters.

A year later, in June 2014, **those responsible for the police violence are still unpunished** although many of the protest leaders are being tried. An administrative investigation into 132 riot police members and 32 brigade leaders was launched in September 2013 but is still under way.

Since then, the authorities have made no attempt to improve protection for journalists during demonstrations. On the contrary, **impunity for police violence and the climate of hysteria fostered in official discourse and certain pro-government media have often encouraged further violence against journalists** and other news and information providers during demonstrations.

## ***V. Attacks on media independence and self-censorship***

Despite the Turkish media's diversity and marked polarization, the crackdown on the "Occupy Gezi" protests highlighted growing government influence over the editorial policies of many news organizations. Leading TV news channels failed to cover the demonstrations in Istanbul during the protest movement's initial stages. At the same time, many news outlets highlighted the government's virulent attacks on the protesters and on independent and foreign journalists, who were accused of being part of an international conspiracy or complicity with terrorist organizations.

**At least 22 journalists were fired during the protests and 37 were driven to resign.** The conservative Turkish daily *Sabah* fired Yavuz Baydar as its ombudsman on 23 July 2014 after refusing to print a commentary he had written on the way some Turkish newspapers were denigrating the foreign media. A week later, the liberal daily *Milliyet* fired its columnist, Can Dündar, and then its editor, Derya Sazak. Other journalists reported that articles had been censored or owners had meddled in a heavy-handed fashion in editorial policies. Clandestine phone call recordings circulated in early 2014 (whose authenticity was never denied by the authorities) showed that **these owners were often acting on direct government orders.**

This self-censorship is not new. *Milliyet* columnist Hasan Cemal was forced to resign in March 2013 over a controversial article on the Kurdish issue. Many other journalists have suffered the same fate. Ahmet Altan had to resign from *Taraf* in December 2012. Aysenur Arslan was fired from *CNN Türk*, Andrew Finkel from *Today's Zaman*, Banu Güven from *NTV*, Ece Temelkuran from *Haber Türk*, Mehmet Altan from *Star* and so on.

**Although the media are still very diverse, more and more leading media are owned by businessmen who support the government or depend on being awarded state contracts. This allows the government to exercise increasing influence over editorial policies and endangers diversity.**

## **Recommendations**

Reporters Without Borders urges the Turkish authorities to:

- Reform the penal code in order to decriminalize media offence and increase the space for democratic debate; above all, repeal articles 125, 299, 300, 301 and 305, which criminalize criticizing state institutions, and Law 5816, which criminalizes attacking the memory of the Turkish Republic's founder, Mustafa Kemal Atatürk.
- Adopt legislation that enshrines the right to information about matters of public interest, in order to counter-balance the priority given to the confidentiality of judicial investigations, state security and respect for privacy.
- Go further with reforming the anti-terrorism law so as to bring it into compliance with the international conventions ratified by Turkey.
- Repeal recent draconian reforms, especially the February 2014 Internet law and the April 2014 law on the intelligence services; reform Internet legislation in order to provide for better judicial control of decisions to block websites, instead of facilitating censorship.
- Continue the overhaul of the Code of Criminal Procedure in order to make provisional detention an exception and ensure that it cannot be used for media offences; guarantee journalists the right to a fair trial.
- Guarantee protection for journalists while they are covering demonstrations; bring those responsible for police violence against journalists to justice.
- Respect media pluralism and independence by refraining from meddling in editorial policies or putting pressure on media owners.
- Set an example as regards respect for civil liberties and civil society, end inflammatory verbal attacks on critics, consult civil society before adopting reforms, promote media self-regulation and foster an evolution in judicial attitudes.

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