TURKEY: SPECTRE OF A DIGITAL LOCKDOWN

JOINT INTERNATIONAL PRESS FREEDOM MISSION TO TURKEY

(OCTOBER 6 – 8, 2021)

MISSION REPORT

#FreeTurkeyJournalists

This project is funded by the European Union

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International Press Institute

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- Article 19
- Committee to Protect Journalists (CPJ)
- English PEN
- European Centre for Press and Media Freedom (ECPMF)
- Human Rights Watch (HRW)
- Norwegian PEN
- Osservatorio Balcani Caucaso Transeuropa (OBCT)
- PEN International
- Reporters without Borders (RSF)
- South East Europe Media Organisation (SEEMO)

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İsveç Sverige

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Introduction

A coalition of 11 international press freedom and journalists' organizations participated in a hybrid mission to Turkey from October 6 to 8, 2021, to investigate threats to independent journalism in the country. The mission included meetings with editors, journalists, local civil society groups, Constitutional Court officials, and members of the Turkish Parliament, including MPs serving on the Human Rights Monitoring Commission and the Digital Platforms Parliamentary Committee. The mission was not granted meetings with the Ministry of Justice or the Office of the President. It also met with representatives of the EU Delegation and the Ankara diplomatic corps.

The mission concluded with a press conference hosted by the Turkish Journalists Union in Istanbul where the preliminary conclusions were presented.

This was the third successive international press freedom mission led by IPI in Turkey, building on those organized in September 2019[1] and October 2020[2].

[1] Press Freedom Mission 2019: Turkey's Journalists in the Dock:

[2] Press Freedom Mission 2020: Turkey's Journalists on the Ropes:

Overview of Key Developments in 2021

The mission took place in a febrile atmosphere defined by grave economic instability, growing public anger stoked by the government's handling of wildfires and other national issues, as well as the administration's plummeting approval ratings ahead of the 2023 elections. Earlier in the year the government had also been rocked by allegations made by the organized crime leader Sedat Peker including on the involvement of state actors in the assassinations of investigative journalists Ugur Mumcu and Kutlu Adali in the 1990s.

In an effort to re-establish control over the narrative and increase pressure on critical journalists, the Turkish government relaunched its campaign against social media platforms, accusing them of spreading disinformation by refusing to censor images of the forest fires. The government also called for the regulation of foreign funding of media.

With the threat of further legislation restricting media freedom and free expression being placed before the parliament, a key focus of the mission was examining the impact of the 2020 social media law and assessing the likelihood and impact of plans to further tighten legislation to fight 'disinformation' and regulate 'foreign funding'.

New rules related to social media platforms were rolled out from October 2020, requiring social media platforms to establish legal entities in Turkey in a move designed to make them more responsive to government takedown requests. Following an initial period of resistance, all the major companies eventually complied. The government nevertheless continues to accuse these companies, including Twitter and Facebook, of failing to deal with certain content it deems illegal and has vowed to introduce a new law on disinformation that would strengthen its online censorship powers.

Notably, while social media platforms are considered one of the last refuges for independent journalism in Turkey, research published in January 2021 by IPI[3] revealed how algorithms of the social media platforms promote pro-government media content while restricting the reach of independent media beyond its immediate bubbles.

[3] https://freeturkeyjournalists.ipi.media/wp-content/uploads/2021/03/ENG-IPI-Turkey-Digital-Media-Report-01032021-final-.pdf

Alarmingly, the summer of 2021 saw new calls in government circles to regulate the use of foreign funds to finance media in Turkey. This came after smear campaigns targeting Medyascope[4], one of Turkey's leading independent online broadcasters. The calls seem to echo the 'foreign agent' law in Russia that has had such a devastating impact on independent media and civil society groups more broadly.

Outside the immediate legislative agenda, media monitoring shows that dozens of journalists remain in Turkey's jails. IPI's records at the time of the mission showed 49 journalists in prison, down from 79 at the end of 2020. The drop in numbers is due largely to the completion of many legal cases initiated following the 2016 failed coup, and the drop in the use of the abusive practice of pre-trial detention following a judicial reform process in 2019. While this is a welcome development, hundreds of journalists still face politically motivated prosecution, and many remain free yet are either pending trial, awaiting appeals, or serving suspended sentences.

During 2021, according to IPI's own monitoring records, 241 journalists were prosecuted in 135 separate trials. Of those trials, 16 ended in convictions, with 28 journalists sentenced for a total of 83 years. Nine of those convictions were for terrorism-related charges and two for insulting the president[5], two of the charges most commonly used to prosecute journalists in Turkey.

Meanwhile, journalist safety has become an issue of growing concern. In particular, police brutality targeting journalists at demonstrations rose in 2021. Furthermore, a policy directive decreed by the Interior Ministry sought to criminalize the filming of public demonstrations and violations committed by the security forces. Introduced in April 2021, the directive was later suspended on November 11 by the Council of State pending a final ruling.

At least 49 journalists were targeted with violence (including police violence) in at least 30 separate incidents including shootings and armed attacks by the end of 2021, according to IPI monitoring. The perpetrators were often groups of hooligans seeking out journalists who were publicly criticized by government officials or government-aligned pundits or media organizations. Journalists Levent Gultekin, and Orhan Uğuroğlu were assaulted in public for their critical views.

[4] https://ipi.media/turkey-concern-over-proposals-to-introduce-new-regulation-of-fake-and-foreign-funded-news/

[5] https://freeturkeyjournalists.ipi.media/ipi-at-least-241-journalists-faced-trial-in-turkey-in-2021-nearly-half-on-terrorism-charges/

Judicial independence remains a core concern as courts continue to be instrumentalized against government critics. A meeting with Constitutional Court officials was therefore arranged to assess the judiciary's record in protecting the rights of journalists laid out in the constitution.

Meanwhile, Turkish media regulators including the state broadcast watchdog, the High Council of Radio and Television (RTUK), and the Press Advertising Agency (BIK), continue to issue fines and penalties disproportionately against independent media while fundamental concerns about the accountability and governance of these regulators have still gone unaddressed. The instrumentalization of RTUK and BIK is one of the most visible examples of Turkey's captured media landscape, where the vast majority of mainstream media is under the sway of the government, directly or indirectly, and key state institutions are abused by the ruling parties to harass the remaining independent media.

Meeting with Diplomatic Missions, Ankara; Photo by Ronja Koskinen / IPI

Mission Participants

The mission was convened by the International Press Institute (IPI), and comprised representatives from the following organizations:

- International Press Institute (IPI)
- ARTICLE 19
- Committee to Protect Journalists (CPJ)
- English PEN
- European Centre for Press and Media Freedom (ECPMF)
- Human Rights Watch (HRW)
- Osservatorio Balcani Caucaso Transeuropa (OBCT)
- PEN International
- PEN Norway
- Reporters Without Borders (RSF)
- South East Europe Media Organisation (SEEMO)

Mission Delegation, Ankara

Meetings

The mission held meetings with the following institutions and stakeholders:

- Global Network Initiative (GNI), Google, Twitter, Facebook
- Parliamentary Human Rights Monitoring Commission
- Digital Platforms Parliamentary Committee
- Turkish Constitutional Court
- Delegation of the European Union to Turkey
- Newsroom visits: Fox TV, Evrensel
- Radio and Television High Council (RTÜK)
- Foreign diplomatic missions in Turkey
- Roundtable of Turkish investigative journalists, civil society and journalism groups

Our meeting requests to the following institutions were declined or left unanswered:

- Council of State (Danıştay)
- Turkish Ministry of Justice
- Turkish Ministry of Transport and Infrastructure
- Communications Directorate of the Presidential Office

Agenda

OCTOBER 4	OCTOBER 6	OCTOBER 7	OCTOBER 8
Meeting with GNI & Members	Parliamentary Human Rights Monitoring Commission (CHP, HDP, TİP)	Delegation of the European Union to Turkey	Newsroom visits (Fox TV, Evrensel)
	Digital Platforms Parliamentary Committee (CHP)	Turkish Constitutional Court	Roundtable of Turkish civil society and journalism groups
	Radio and Television High Council (RTÜK)	Foreign diplomatic missions in Ankara	Press conference hosted by Journalists' Union of Turkey (TGS)
	Meeting with Investigative Journalists		

Key Issues

Legislative Changes / Online Censorship

Restricting the Online Space

Key questions for the mission were:

- What has been the impact of the social media law in 2020?
- What will be the impact of new legislation the government has planned?

While there has been much speculation about new legislation to tackle disinformation and foreign funding of media, at the time of writing (April 2022) the government still had not placed any new bills before the parliament. The mission discussed these issues firstly with leading social media platforms through a meeting organized by ARTICLE 19 and convened jointly with the Global Network Initiative (GNI), as well as with members of the Turkish parliament's Human Rights Monitoring Committee and Digital Platforms Parliamentary Commission.

Global Network Initiative Meeting

Social media companies and tech platforms such as Facebook, Twitter and Google, after some initial resistance, all eventually established the legal entities required of them by the 2020 social media law. In practice they established the minimum mandatory legal presence with the individuals nominated as legal representatives mostly remaining based outside Turkey and therefore beyond the reach of Turkish law. Meanwhile, there has been no effort by the government to implement the law requiring platforms to move the data of all Turkey-based subscribers to Turkish servers.

The law was originally designed to increase the malleability of the platforms to government requests to remove content. However, the platforms the mission spoke with claimed that the process has made no difference to how they manage complaints and takedown requests. They all insisted that any complaint, whether from the public or government, is assessed according to each platform's own internal guidelines.

It is unfortunately not possible to independently verify whether government pressure has made platforms more compliant or not, as the platforms' reports on the processing of complaints, tackling disinformation and breaches of their terms of use are insufficiently transparent to analyze with confidence.

Public protests at the government's handling of the wildfires over the summer on social media appear to have bolstered the ruling party's determination to further censor opinions expressed through digital platforms.

The platforms continue to be the subject of significant criticism from the Turkish government, which accuses them of evading taxes and spreading "disinformation". While these criticisms of the platforms are not unique to Turkey, government antipathy is in large part driven by the fact that these platforms are one of the most important spaces for free expression and journalism that does not toe the government line. Indeed, up to now, while the state has successfully co-opted much of the mainstream media, it has been less successful in silencing critical discussion and debate online. Turkey's recent efforts to regulate social media – far from being a principled attempt to tackle genuine challenges brought by online platforms – must therefore be seen as primarily geared at establishing increased control over online speech.

In this context, last year's social media law was a barely veiled effort by the Turkish government to establish greater sway over the platforms and subject their content removal processes to the oversight of captured Turkish courts and regulatory institutions. As noted above, when asked by the mission to evaluate this law's impact, the platforms claim their processes have not changed. Indeed, they believe that the limited impact of the social media law is the reason that the government has announced a new law on "disinformation" to shore up its online censorship powers.

The so-called "disinformation law," is expected to criminalize dissemination of "fake news" and to introduce prison sentences of up to five years for perpetrators. While the details of the law are not known, any legislation that seeks to criminalize "fake news" is inherently problematic due to the question of who defines which news is legitimate and how these definitions are implemented, all the more so in a context in which courts and prosecutors interpret legislation according to the will of the executive branch. The "disinformation law", if passed, is highly likely to further restrict space for critical speech in Turkey.

Legislative Issues and Threats

Meetings with the Human Rights Monitoring Commission and the Digital Platforms Parliamentary Committee

Despite inviting all political parties, the delegation was only granted meetings with opposition members of the two parliamentary commissions. In these meetings, violence and judicial harassment against journalists and the prospect of legislation on disinformation and foreign funding were discussed

The Members of Parliament firstly criticized the neutering of parliament by the government practice of drafting laws in the presidency before rushing them through parliament without time for a proper debate. The role of the two committees on human rights and digital platforms are minimized by the ruling Justice and Development Party (AKP) and the Nationalist Movement Party (MHP), preventing any scrutiny of the text. For example, the 2020 amendment to the social media law was presented to parliament on the week of July 20 and approved on July 29 during the Covid-19 lockdown. The parliamentarians the delegation met with called for a proper participatory process involving input from a wide range of stakeholders including journalists and media experts, academics and big technology company representatives.

Opposition MPs believe that the law will be used primarily to protect members of the government and their allies. They cited "the right to be forgotten"[6] and how this is used to protect public officials by removing content to erase the public's collective memory of crimes committed by the highest echelons of the government. They said it has been used to restrict reporting on government corruption such as public contracts unfairly awarded to cronies or tax evasion or to censor pictures taken of politicians with representatives of criminal gangs or terrorist groups.

The MPs cited research by the Media Studies Association,[7] showing that the vast majority of complaints to take down or block online news content are filed by AKP politicians, deputies, and bureaucrats, to cover up incriminating evidence.

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[6] Turkish courts order removal of news content based on 'right to be forgotten' , IPI article: https://freeturkeyjournalists.ipi.media/turkish-courts-order-removal-of-news-content-based-on-right-to-be-forgotten/

[7] https://medarder.org/wp-content/uploads/2021/12/Impact-of-Social-Media-Law-on-Media-Freedom-in-Turkey-Monitoring-Report-Extended-Research.pdf

The opposition MPs proposed what they described as a comprehensive and holistic approach to online regulation that would hold big tech companies accountable to ethical and legal standards for storing data as well as for the protection of personal information and individual rights.

Lastly the parliamentarians dismissed comparisons with the German Network Enforcement Act (NetzDG) that the government consistently cites as a model for the Turkish law; the MPs expect the Turkish law to be fundamentally different. While IPI and other rights groups have criticized the NetzDG as flawed, it cannot be compared to the plans proposed in Turkey. The NetzDG has no provision for prison sentences, focuses on harmful content and is applied in a country of due process, independent courts and the rule of law.

The mission also discussed fears of a new law to regulate foreign funding of media outlets and NGOs. Speculation was rife over the summer after a smear campaign against the leading digital news channel Medyascope and its acceptance of foreign funds.

At the time of the mission, an MHP MP, Halil Öztürk, had submitted a draft law as his own initiative without the formal backing of either the AKP or MHP. Political observers suggested to the mission that the draft was produced to test the public response before the government proposed its own. The draft required media in receipt of foreign funds to register as a foreign centre representative within 30 days with the Interior Ministry and to ensure any beneficiary of such a media is fully informed that the media is a “foreign centre representative”. The draft passed responsibility to the broadcast regulator, RTUK, to define the regulatory procedures for how a media company should inform its beneficiaries it is a “foreign centre representative”. It recommended penalties for breaches of the regulation of up to five years’ imprisonment. Such provisions, should they come into effect, would be similar to the Russian “Foreign Agents Law,” which has effectively damaged independent media in the country.

The deputies who met with the mission suggested such a law would most likely be designed to target international NGOs represented in Turkey who report fundamental rights violations to the rest of the world. They also suggested such a bill would be incompatible with existing legislation governing corporations.

Physical Attacks, Impunity and Surveillance

Assaults against journalists rose in 2021 with at least 30 incidents recorded by IPI as of December 31, 2021 including shootings, armed attacks and police violence targeting at least 49 journalists and four media outlets. Prominent cases include radio journalist Hazım Özsu, shot and killed by a man who disliked his programme's content and Halk TV commentator, Levent Gültekin, beaten in front of the Halk TV offices by an unknown group just days after the MHP Vice Chair, Semih Yalçın, labelled him an "enemy of Turks".

Turkish journalists were also targeted outside the country. Journalist Erk Acarer, exiled in Germany in 2017 after being targeted with trumped-up charges of publishing state secrets, was attacked twice in the summer by three assailants who threatened more violence if he did not stop writing. German authorities also reported the circulation of an "execution list" of Turkish nationals in Germany including Acarer and at least five other journalists. Acarer has been placed under police protection while investigations continue.

Meanwhile, in Turkey, police have failed to hold perpetrators to account, with investigations leading nowhere and known perpetrators released without charge[8]. At the same time, there has been a significant rise in police aggression against journalists, particularly when reporting on protests.

In July, at least 20 reporters and photojournalists were beaten or injured by rubber bullets while covering commemorations in Istanbul and Izmir of the 2015 Suruc bombing. In June there were shocking images of AFP photojournalist Bülent Kılıç being brutally detained and dangerously held down, unable to breathe, while attempting to cover the Pride March in Istanbul.

On April 27, Turkey's Security General Directorate (EGM) issued a directive on April 27 banning all audio-visual recording of demonstrations, which would also prevent coverage of police violence against demonstrators and journalists.[9] Over 40 bar associations appealed against this act of prior censorship as a violation of the constitution and in

[8] https://www.cumhuriyet.com.tr/haber/halk-tv-yayinina-saldiranlarin-tamami-serbest-birakildi-1858550

https://bianet.org/english/law/240720-the-fine-for-injuring-a-journalist-is-apparently-4-500-lira

[9] https://freeturkeyjournalists.ipi.media/turkey-ipi-condemns-police-directive-preventing-audio-visual-reporting-on-protests/

November it was eventually, and rightly, suspended by Turkey's highest administrative court, the Council of State.

The problem of police violence is exacerbated by the accreditation process of journalists by the Presidential Communications Directorate, which is known for mass cancellations of journalists' press cards and for denying accreditation to critical journalists. Journalists were often blocked from accessing public protests, beaten by the police or injured by plastic bullets and taken into police custody.[10]

Meanwhile, significant revelations about historical attacks on journalists came from the YouTube confessions of the infamous Turkish organized crime boss Sedat Peker. Among the hundreds of admissions were allegations of state-orchestrated murders of investigative journalists Ugur Mumcu and Kutlu Adali, killed in Turkey and Northern Cyprus in 1993 and 1996, respectively.

In June, IPI and 17 international free expression groups sent an open letter[11] to Turkish Justice Minister Abdulhamit Gül to urge authorities to investigate the allegations. However, the Turkish authorities have refused to take any action. We renew our call on Turkey's authorities to fully investigate the allegations made by Peker about the unsolved murders of Mumcu and Adali.

All of these cases were raised with the Parliamentary Human Rights Commission, urging them to use their position to take action. The members of the commission however pointed out that, under the AKP chairmanship, all efforts to put such cases on the commission's agenda are blocked. An attempt to establish an investigative committee into the Sedat Peker allegations was rejected by the majority AKP-MHP coalition members in the parliament. The parliament in Northern Cyprus, by contrast, has set up a commission of inquiry[12].

[10] https://freeturkeyjournalists.ipi.media/turkey-ipi-condemns-police-directive-preventing-audio-visual-reporting-on-protests/

[11] https://freeturkeyjournalists.ipi.media/international-groups-call-turkey-to-investigate-allegations-on-mumcu-and-adali-killings/

[12] https://www.birgun.net/haber/kutlu-adali-cinayeti-kuzey-kibris-ta-meclis-arastirma-komisyonu-kuruldu-346221

According to IPI's Death Watch, at least 19 journalists have been killed due to their work or died on assignment since 1997. This does not include the killings of Mumcu and Adali, which occurred prior to the start of IPI's Death Watch.

The opposition MPs who met with the mission agreed that while the courts are frequently used to persecute journalists, they turn a blind eye to violence against media professionals. The parliamentarians further accused President Erdoğan, MHP leader Devlet Bahçeli, Interior Minister Süleyman Soylu and other government officials of encouraging a climate of violence through their verbal attacks on critical journalists.[13]

Meeting with Members of Parliamentary Committee on Human Rights

The commission members criticised the silence of the committee on human rights, due to the control of AKP and MHP, and the lack of action by parliament at large and listed numerous more cases of attacks and intimidation of journalists including the attacks on

[13] https://t24.com.tr/haber/bahceli-den-ozdag-a-saldiri-yorumu-serok-ahmet-in-mhp-yle-didismesi-onun-haddi-degildir-ulkuculeri-saldirilarla-iliskilendirmek-komplodur,927300

the Dokuz8 Internet News Agency's Erdem Şahin and the commentator Levent Gültekin; the illegal detentions of journalists, online harassment by the pro-government trolls, and the presence of a division at the presidential office dedicated to monitoring the social media interactions of government critics.

Meeting with CHP members of Parliamentary Committee on Digital Platforms

CHP MP, Mahmut Tanal, stressed that any assault on a journalist should be treated as an attack on a public servant under the Turkish Penal Code as journalism is a public service.

Surveillance of Journalists a Growing Global Concern

Following the Pegasus scandal in the summer of 2021, which revealed that at least 200 journalists had been spied on by governments across the world, the questions of government surveillance tools, their regulation and how they may be deployed against journalists were raised with the parliamentary Human Rights committee.

Among those journalists targeted with Pegasus spyware was the Washington Post columnist Jamal Khashoggi who was murdered in the Saudi consulate in Istanbul.

The committee members said there were reports that the Turkish National Intelligence Agency had advanced surveillance technology including the Pegasus spyware. The recordings taken of Kasshoggi's murder, one MP claimed, demonstrated the security services' surveillance capabilities.

Alarmingly, they said that there was no oversight of the use of such technologies and no restriction to its use against critical journalists and opposition politicians.

Constitutional Court Jurisprudence, Prioritization and Non-implementation

Meeting with the Constitutional Court

The instrumentalization of the judiciary as a weapon against opposition politicians and critical journalists is well established. The dozens of journalists in jail and many hundreds more facing prosecution based on contradictory, trumped-up charges testify to the systematic judicial harassment at play. A key driver of this instrumentalization is the executive branch's control over the appointments process to the Council of Prosecutors and Judges, which oversees promotions and discipline of judges, as has been consistently noted in previous mission reports.[14]

[14] IPI 2020 Mission Report: https://freeturkeyjournalists.ipi.media/wp-content/uploads/2020/11/20201125_Turkey_PF_Mission_Report_ENG.pdf

Constitutional Court Building, Ankara; Photo by Ronja Koskinen / IPI

For its part, the Constitutional Court is often seen as the last judicial institution not yet captured by the state and therefore a crucial line of defence in the protection of fundamental human rights while operating under intense political pressure.

In some cases, the Constitutional Court does make positive rulings on freedom of expression issues. However, it has been deeply criticized for the delays in issuing its rulings, delays which often render any benefits effectively redundant with the passage of time. Justice delayed is justice denied.

Compounding the problem, when positive rulings are made, such as the ruling against the closure of the website sendika.org, lower courts have ignored or resisted implementing these decisions. And, still further, when the Constitutional Court issues positive and precedent-setting rulings on topics like defamation or digital censorship, lower courts have ignored the precedent in similar subsequent cases so that victims need to pass through the entire judicial apparatus before having their case heard and settled in the Constitutional Court.

Specific media-related cases raised by the mission include:

- ***Özgür Gündem*:** The mission welcomed the Constitutional Court decision on June 30, 2021[15] on the temporary closure of newspaper Özgür Gündem in 2016. The Court ruled that the closure violated freedom of expression and freedom of the press, safeguarded in Articles 26 and 28 of the Constitution. The decision also recognized readers' rights were violated as a result of the closure. However, mission members noted that a four and a half year wait for the ruling is too long to provide justice.
- ***sendika.org*:** The Constitutional Court ruled in favour of Sendika in March 2020, five years after the news website was first blocked in July 2015[16]. The lower courts however refused to act on the ruling and only ordered the unblocking of the site in October 2020 after the European Court of Human Rights began to examine the case.[17]
- ***Nedim Türfent*:** Journalist Nedim Türfent was arrested in 2016 and later convicted and sentenced to eight years and nine months in jail in June 2018 on terrorism charges following a trial in which numerous witnesses claimed they were tortured into testifying against him. The Constitutional Court has yet to consider his case. The mission called for Türfent's case to be prioritized for a decision as the violation of rights is ongoing. On November 3, 2021, he marked 2,000 days behind bars[18].
- ***Online Censorship*:** The Constitutional Court delivered a leading judgment in the Ali Kidik *case* in 2017 and established a "prima facie violation" test for lower courts to apply before issuing orders to block access to internet content under the relevant legal provision (Article 9 of Law 5651). In the future, orders to block access can only be issued where violations of personal rights can be recognized at first sight without the need for further investigation. Lower courts (criminal judgeships of peace) are therefore required to make this "prima facie violation" assessment before issuing orders to block access to internet content. This judgment is binding on the lower courts.

However, according to the EngelliWeb 2020 report, despite this key ruling, of the 3,173 internet blocking orders issued in 2020 relating to "personal rights violation" only 92 cases referred to the Constitutional Court's Ali Kidik ruling[19]. The mission asked the Constitutional Court to issue a pilot decision such that all cases that fail to meet the test established under the Ali Kidik ruling would automatically be dismissed by the court.

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[15] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/54096

[16] https://kararlarbilgibankasi.anayasa.gov.tr/BB/2015/16368

[17] https://bianet.org/5/100/233530-banned-for-over-five-years-sendika-org-news-site-opened-to-access

[18] https://ipi.media/turkey-global-appeal-marks-2000-days-in-prison-for-journalist-nedim-turfent/

[19] See the EngelliWeb report 2020 Farenheit 5651: The scorching effect of censorship, page 64

In the meeting with the mission, the Constitutional Court acknowledged many of the criticisms and outlined some of the measures being taken to address them.

Firstly, it said the rate of implementation of the Constitutional Court verdicts by the lower courts is improving. It claimed that of 8,000 decisions only 33 had not been implemented or were initially resisted by the lower courts. The rulings of cases involving leading journalists including Şahin Alpay, Ahmet and Mehmet Altan, and Enis Berberoğlu were initially resisted but have since been implemented. Meanwhile the court has established a directorate to monitor the implementation of its decisions which they say is expediting the lower courts' compliance with the Constitutional Court's decisions.

Secondly, the Court reported that it had issued 22 rulings on online rights violations. It acknowledged that lower courts have not always followed the precedents set by the Constitutional Court and pointed to the need to improve legislation in this area. The Court said it had commissioned experts to study how this issue is being regulated in other countries and has called on parliament to amend legislation on internet access to bring it into line with international standards and reduce the number of appeals to the Constitutional Court.

Thirdly, the court said it had now made a number of rulings on defamation cases filed by public officials or business people against critical journalists or others exercising their right to free expression, and one ruling on insulting the President in 2021. The TCC's ruling in the presidential insult case of Şaban Sevinç[20], a former TV commentator, is highly significant as it established that a suspended sentence violated the applicant's freedom of expression and created a chilling effect on critical voices.

However, TCC rulings have not led to a change in practice by local courts where the number of investigations filed against critics has gradually escalated. According to the Justice Ministry's 2020 statistics[21], a total of 160,169 investigations into insulting the president have been opened since Erdoğan was first elected president in 2014. According to official

[20] Şaban Sevinç ruling on May 26, 2021 by the Turkish Constitutional Court / Application No. 2016/36777 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/36777

[21] https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/16920211162011adalet_ist-2020.pdf

statistics, 682 investigations were opened in 2014 and 31,297 in 2020, representing a 45-fold increase in seven years.[22]

Additionally, the Court argued that the root cause of its delay in issuing rulings is the sheer volume of petitions that overwhelm it and increase year on year. In 2020 the Court received 40,000 individual appeals and, at the time of the meeting in October 2021, the Court had already received another 40,000 petitions for 2021. With 15 members and 106 rapporteurs, 80 of whom are looking at the individual applications, the Court said that it is doing its best to process these cases. The Court reported that the list of pending cases before it now exceeds 60,000.

The Court however did acknowledge that deferment of judgments on certain cases exacerbates the pressure on freedom of expression and said that it had repeatedly called on the Turkish parliament to review related legislation to ensure it reflected the court's decisions.

It was the view of the mission that the record of the Court demonstrates that it remains an important source of redress of rights violations in Turkey amid a politicized judiciary. It is precisely because of this role that it must redouble its efforts to issue judgments in a timely manner and establish precedents for lower courts to follow. However, it is undoubtedly under political pressure and the continued failure of lower courts in some cases to implement its rulings remains a point of major concern.

Continued Sanctions by Media Regulatory Bodies

Favouritism of Pro-Government Media

Meeting with the Radio and Television High Council

The mission met with İlhan Taşçı, an opposition member of the Radio and Television High Council (RTÜK), having met him also during the 2020 mission, to discuss the continuing penalties issued by RTÜK against critical broadcasters, the lack of transparency over rulings

[22] Bianet article: https://m.bianet.org/bianet/hukuk/251048-erdogan-in-yok-dedigi-davalari-bakanligin-istatistikleri-yalanladi

and structural problems within the institution. Meeting requests to the RTÜK President and all other members of the High Council were left unanswered.

Meeting with RTÜK member İlhan Taşçı

While RTÜK regularly penalizes independent broadcasters, it rarely takes action against pro-government media despite a high number of public complaints and evident breaches of the law – suggesting clear pro-government bias on the part of RTÜK.

According to the RTÜK 2020 Activity Report[23], the broadcasting authority issued 3,020 penalties totaling nearly 60 million Turkish lira (TL) to 421 broadcasters for various violations of relevant broadcasting regulations. The number of alerts submitted to the RTUK citizen platform was 283,498.

According to Taşçı, the critical news broadcasters Halk TV, KRT, FOX TV, Habertürk and TELE 1 were collectively fined 10,000,000 TL in 2020 as a result of 45 administrative sanctions. Pro-government news outlets, on the other hand, received just 400,000 TL in fines. Taşçı said

[23] https://www.rtuk.gov.tr/Media/FM/Birimler/strateji/raporlar/2020sonfaaliyetraporu_1051_(1).pdf

that despite a high number of public complaints, many pro-government news outlets faced no sanctions at all[24].

The pursuit of independent media continued in the first nine months of 2021, with four prominent critical news outlets – Halk TV, TELE 1, KRT and FOX TV – receiving a total of 50 fines, while no case has been presented to the council relating to pro-government broadcasters.

Newsroom visit to FOX, Photo by Ronja Koskinen / IPI

Broadcasters can appeal against RTUK's rulings through local courts, and a small number of the fines are subsequently overturned. According to the RTÜK 2020 Activity Report, of 239 appeals, ten have been overturned, while in 65 cases the courts found in favour of the regulator. The majority of appeals remain pending.

RTÜK does not publish the contents of the rulings, making it harder to track the details of all the cases, however some rulings have been presented by the media outlets concerned.

[24] İlhan Taşcı'dan RTÜK'ün 2020 yılı karnesi raporu: İktidara yakın kanallara 400 bin lira, muhaliflere 25 katı ceza! (t24.com.tr)

For example, Halk TV appealed successfully against a three-day programme ban[25] issued in early 2021 for broadcasting a folk song that RTUK alleged "spread terrorist propaganda". A court in Ankara ruled against RTUK stating that "the song does not contain lyrics that openly support terrorism neither was the song performed with the goal of supporting terrorism"[26]. However, by the time the court ruled against the penalty, one of the three bans had already been implemented.

In another case, Halk TV successfully appealed against a five-day programme ban and a fine of five per cent of the broadcaster's annual revenue over on-air comments made by CHP İstanbul Chair Canan Kaftancıoğlu in May 2020. The court ruled that RTÜK had issued the sanction without receiving and considering Halk TV's defence. Again, however, by the time of the court's ruling, one of day programme bans had already been implemented, resulting in a serious infringement of the public's right to information.

Taşçı also underlined serious problems with Turkish Radio and Television (TRT), which is nominally Turkey's public service broadcaster but in practice is tightly controlled. Monitoring has shown that TRT does not provide balanced coverage. For instance, during the 2018 presidential election campaign, TRT aired 181 hours of coverage of AKP and MHP candidates, 15 hours of the CHP candidate, three hours for the İYİP candidate and only 32 minutes of the pro-Kurdish HDP leader Selahattin Demirtaş.[27] In 2014, RTÜK had itself warned TRT that it must comply with rules regarding the "unbiased and impartial" coverage of the electoral candidates. Then in 2017, ahead of the constitutional referendum, the electoral law prohibiting biased coverage by TRT of political parties was cancelled by presidential decree.

Role of public pressure

The governing AKP / MHP coalition dominates the RTÜK board and while that persists there will be little change in the political control of the body. Yet, according to Tasci, RTÜK is not completely indifferent to public opinion.

[25] RTUK can issue either programme bans or full broadcast bans. A programme can be banned for a number of days and only applies to the programme in question while a full broadcast ban can close the entire broadcaster for the set number of days

[26] https://www.cumhuriyet.com.tr/turkiye/rtukun-halk-tvye-verdigi-cemo-cezasi-hakkinda-yargidan-karar-1875292

[27] The monitoring was conducted by İlhan Taşçi and former CHP RTÜK member İsmet Demirdogen https://twitter.com/ilhantasci/status/1010103643939405827

For instance, RTÜK acts upon public complaints, and so public campaigns in response to clear violations of broadcasting standards by pro-government media can create pressure on RTÜK to act.

In 2020 RTÜK was overwhelmed with complaints against the pro-government broadcaster Ülke TV after a guest, Sevda Noyan, made incendiary comments in support of lynch mob violence during the July 15 coup and, despite the RTÜK Chair initially dismissing the incident as “no big deal”, the programme was eventually fined and given three broadcast bans.

Newsroom visit to Evrensel; Photo by Ronja Koskinen / IPI

The 2020 RTÜK Activity Report showed a 163.9 per cent increase in the number of public complaints compared to 2019. However, this trend may soon be reversed. In May 2021, the complaints platform started requiring citizens to provide their ID and addresses. This loss of anonymity for complainants has, according to Taşçı, already led to a drop in complaints by almost 80 per cent. The impact of this change can be more fully assessed after RTÜK publishes its 2021 report (P.85).

Conclusions

Turkey's press freedom crisis is being compounded by increasing digital censorship as the government seeks to assert further control over online information in the build-up to the next elections scheduled for 2023

Plans for a disinformation law are likely to result in further criminalization of freedom of expression and independent journalism online. Meetings with MPs and journalists confirmed that the law is expected to introduce criminal penalties – and possible jail sentences – for those who spread "disinformation" online. Such a law – an authoritarian move which flies in the face of international standards on freedom of expression – would cement control over one of the last spaces for free expression remaining in Turkey and increase pressure on social media companies to become complicit in Turkey's censorship regime.

The mission concluded with a press conference hosted by the Turkish Journalists Union where the preliminary conclusions were presented. Photo by Ronja Koskinen / IPI

A further significant threat is the plan to regulate foreign funding of media. An initial draft of this law, tabled by an MP from the AKP's coalition partner, has unmistakable echoes of Russia's foreign agent law, which has had a devastating impact on Russia's media sector. Even if the initial draft is not as severe as the law in Russia, the likelihood that the Turkish government will ultimately adopt similar legislation cannot be discounted. Foreign funds are often the only option for independent media to operate in a media market heavily captured by the government. In addition to the economic considerations, such a law would provide the authorities with a further tool to smear independent publications.

Parliamentary bodies established to monitor the impact of legislation on human rights are sidelined as laws are drafted under the Presidential administration and presented to parliament with minimal time for review and debate before it is rubber-stamped.

Journalists continue to face arbitrary prosecution and judicial harassment through anti-terror, defamation and other laws. While the number of journalists behind bars has dropped significantly, 2021 still saw 135 different trials involving journalists, of which almost half involved anti-terrorism charges.

The politicization of the judiciary has profoundly eroded the rule of law in the country, leaving it unable to protect fundamental rights. All interviewees identified the lack of an independent judiciary as the root of Turkey's press freedom problems. The Constitutional Court provides a certain level of protection, but where it has ruled in key cases affecting journalists and freedom of expression, it has usually done so many years after the infraction and often only after the ECtHR in Strasbourg has initiated steps to review the cases. Where the court has issued rulings, lower courts too often resist implementation of the rulings or simply ignore precedent set by the Constitutional Court.

The judicial reform strategy initiated in 2019 has helped reduce pre-trial detention and enabled more journalists to remain notionally free pending the results of appeals, but the courts continue to prosecute and punish journalists for their journalism.

The broadcast regulator, RTUK, and advertising agency, BIK[28], both continue to target predominantly independent and critical media. The surge in fines and penalties witnessed

[28] According to the BIK website in 2021 BIK issued a total of 220-day ad bans to 88 newspapers for violating the general regulations and a further 219-day ad bans to 37 newspapers for violating press ethics. For further information https://freeturkeyjournalists.ipi.media/intl-groups-call-for-greater-transparency-from-turkeys-public-ad-agency/

in 2020 have levelled off in 2021 or even declined under RTUK but it remains a powerful instrument with which to threaten media.

Interestingly the foreign press association reported that in 2021 the government has initiated what may pass as a charm offensive towards foreign correspondents. After several years of administrative harassment and deportations, the presidential administration is now providing assistance to ensure early extension of press passes and therefore work permits.

There has been no charm offensive however towards frontline journalists reporting on public demonstrations with numerous incidents of violent police assaults against journalists. The much criticized ban on audiovisual recordings of demonstrations was eventually suspended after months of violence.

While the worst fears of new legislation had not come to pass by the end of 2021 journalists and the press freedom community will remain vigilant and continue to monitor violations and advocate for media freedom reform.

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