



Committee to Protect Journalists



**ARTICLE 19, the Committee to Protect Journalists,
English PEN, Freedom House, P24 and PEN International
Joint Submission to the UN Universal Periodic Review of Turkey**

For consideration at the 21st session of the UN working group in January/February 2015

14 June 2014

1. ARTICLE 19, the Committee to Protect Journalists, English PEN, Freedom House, P24 and PEN International welcome the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) process of Turkey. This submission focuses on Turkey's compliance with its international human rights obligations with respect to freedom of expression.

Executive Summary

2. In 2010, the Turkish government accepted eight recommendations on the steps necessary to bring its national legislation and practice in line with international freedom of expression obligations. Regrettably the government has made inadequate efforts to implement these recommendations, and the situation for freedom of expression has worsened in Turkey.
3. During the period under review, Turkey adopted a series of judicial reform packages that aimed to harmonise domestic laws with EU norms. However, the reforms fell short of fully implementing the recommendations Turkey accepted in the first cycle of the UPR.
4. This submission examines the following five key freedom of expression issues:
 - Legislative restrictions to freedom of expression;
 - The misuse of the Anti-Terror Law (TMK) and organised crime provisions within the Turkish Penal Code (TCK);
 - Attacks on freedom of expression and freedom of press, including political interference in media;
 - New restrictions on freedom of expression, including the National Intelligence Agency Law (No. 6532)
 - Increasing restrictions on freedom of expression online.

Legislative restrictions to freedom of expression

Reform Process

5. The Turkish government accepted six general recommendations to align the Penal Code with international standards during its first UPR, but rejected three.

6. The Third, Fourth and Fifth Judicial Reform Packages (passed in July 2012, April 2013, and February 2014, respectively) were directly aimed at ameliorating the human rights and freedom of expression situation in Turkey.
7. The Third Judicial Reform Package made headway by suspending trials brought prior to 31 December 2011 under legislation restricting expression. Other articles in the package placed incomplete checks on excessive pre-trial detention. However, the bulk of writers and journalists in prison were excluded from this partial amnesty because they were being tried under the TMK. Those who 'benefitted' were effectively granted suspended sentences: the charges would be dropped only if they did not commit 'similar offences' within the subsequent three years. The threat of old trials being reopened is a thinly veiled incentive for self-censorship.
8. The Fourth Judicial Reform Package constituted more of a success. Commendable steps were taken regarding various propaganda laws (TCK Article 220/8 and TMK Articles 6/2 and 7/2). Propaganda now was only illegal if it 'legitimises or praises, or incites others to resort to an organisation's coercive, violent or threatening practices.' A similar requirement was introduced for the law on praising offences or offenders (TCK Article 215). However, there was widespread dissatisfaction with the reform's failure to produce substantial numbers of releases.
9. The Fifth Judicial Reform Package was the most substantial of the reforms, focusing primarily on problems with the judicial process. Special Authority Courts and Prosecutors were removed, bringing an end to an era of anti-terror trials conducted by a judiciary given extraordinary powers; a five-year cap and more stringent evidence requirements were placed on pre-trial detention, leading to scores of releases in subsequent months; and restrictions on lawyers' rights to access investigation dossiers were lifted, ending the longstanding practice of keeping individuals in the dark about the accusations they faced.
10. These positive moves, however, did not come in response to ongoing human rights concerns. Rather they were a means of declawing an all-too-powerful judicial apparatus that had recently turned its attention to alleged government corruption.
11. While positive steps were taken as part of the reforms, the revisions were not comprehensive and fell short of bringing Turkish laws in line with international human rights standards on freedom of expression.
12. During the period 2010-2014, Turkey continued to abuse the TMK and TCK to prosecute journalists, writers, editors, publishers, translators, civil/political rights activists, lawyers, elected officials and students for exercising their rights to freedom of expression. The number of convictions and instances of pre-trial detention in violation of freedom of expression remained high, with at least 3347 violations reported in 2013 alone.
13. The TMK and TCK still contain numerous provisions that are broad and imprecise, allowing for arbitrary enforcement and the censoring of critical, dissenting, and minority views on the pretence of protecting national security.

Imprisonment of Journalists

14. Turkey jailed more journalists than any other country in the world in both 2012 and 2013. The number of journalists behind bars on December 1 2013 was 40, down from the 49 jailed on December 1 2012, according to research by the Committee to Protect Journalists. In these years, Turkey held more journalists in custody, in relation to their work, than Iran, China, or Eritrea. Most journalists were jailed on charges under Turkey's broadly worded anti-terror and penal code, and many of them had spent months, even years, in detention without conviction.

15. As of 1 June 2014, Turkey was detaining a total of 11 journalists; since December 2013, 29 had been released awaiting trial. The 29 conditional releases were enabled by amendments in the Fifth Judicial Reform Package that put a five-year cap on detentions without a verdict and dismantled the Special Authority Courts. Though commendable, the 29 releases are conditional, which means that the freed journalists could be re-incarcerated if their trials end in convictions. The prospect of incarceration remains an incentive to self-censorship.

Criminal Defamation

16. The TCK currently criminalises defamation, which can result in fines or prison terms. Article 125 of the Criminal Code provides that defaming a public official for the commission of their duty carries a higher minimum sentence or fine than for defamation of ordinary citizens.
17. Many criminal defamation cases are initiated by highly placed officials, including the Prime Minister, following statements they see as defamatory, including statements made in the press or broadcast media. There is no official report of the number of defamation charges brought by officials but it is estimated to be in the hundreds.
18. On 12 November 2013, Anadolu University student Osman Garip was sentenced to just over a year in prison for continually 'insulting' Prime Minister Erdoğan on Facebook. The investigation was opened pursuant to an official complaint made by Erdoğan himself.

Civil Defamation

19. The legal basis for civil law defamation claims in Turkish law is Article 41 ('intentional wrongful harm') and Article 49 ('harm to personal interests') of the Code of Obligations.
20. On 25 December 2012, Prime Minister Erdoğan won compensation in a libel suit against Ahmet Altan, former editor-in-chief of the daily newspaper, *Taraf*, for a column that called the prime minister 'arrogant, uninformed, and uninterested.' Altan was found to have violated Erdoğan's personal rights and was forced to pay 15,000 lira (approx. 7000 USD). On 18 July 2013, Altan was charged with defamation against the Prime Minister once again and given an 11 months and 20 days prison sentence, commuted to a 7000 lira (approx. 3300 USD) fine. The charges were brought for confronting the Prime Minister about his defence of and refusal to apologise for an airstrike which resulted in the death of 34 civilians in Uludere, Turkey.
21. On 20 January 2014, Prime Minister Erdoğan won compensation in a libel suit against author İhsan Eliaçık who had accused Erdoğan of being a "dictator, a corrupt leader, provocateur, liar and arrogant" on his Twitter account on 18 June 2013, during the Gezi Park protests. Erdoğan was awarded 2,000 lira (approx. 900 USD) in damages.
22. The judgment of the European Court of Human Rights in *Tuşalp vs. Turkey* (2012) underlines that using civil defamation laws to afford greater protection to public officials is a violation of Article 10.
23. The application of civil or criminal defamation charges to criticisms against public figures, and imposing higher penalties for such criticisms, explicitly discourages debate about official institutions. A major flaw of the defamation law that allows for abusive convictions is the protection of feelings, rather than reputations, as shown through judgements passed with regards to 'insults.'

Insulting the Turkish Republic and Religious Defamation

24. TCK Article 301 criminalises 'Insulting the Turkish nation, the State of the Turkish Republic, the Turkish Grand National Assembly and the Government of the Republic of Turkey or the judicial organs of the state'. Three recommendations during Turkey's previous UPR cycle called on the State to specifically revise or abolish Article 301 but were rejected by Turkey.

25. This controversial article is notorious for its application against numerous journalists and writers, including the Turkish Nobel laureate Orhan Pamuk (2007) and Turkish-Armenian journalist Hrant Dink (2004), who was murdered in 2007. The number of people prosecuted under Article 301 declined sharply following a 2008 amendment that introduced a ministerial approval requirement, but the article still has a chilling effect and critical expression is still targeted through other provisions.
26. Article 216 of the TCK criminalises 'inciting the population to enmity or hatred', where 'insulting religious values' (216/3) is used as a pretext to stifle free speech, carrying a prison term of six months to three years, and continues to be used against those with contrarian religious views. The number of trials brought under this article rose in 2013.
27. On 15 April 2013, pianist Fazıl Say was given a 10-month suspended sentence for 'insulting religious values' in a series of tweets. The tweets included a verse from an 11th-century poem by Omar Khayyam which challenged the understanding of 'heaven' in Islam.
28. Similarly, on 25 May 2013, the Turkish-Armenian writer and linguist Sevan Nişanyan was sentenced to over 13 months in prison for alleged blasphemy in a blog post defending the controversial film 'The Innocence of Muslims' on grounds of freedom of expression.
29. On 7 August 2013, Sedat Kapanoğlu, owner of the user-generated satirical dictionary Ekşi Sözlük, and 40 contributors to the site were charged with religious defamation, and 'committing a public order offence via press or broadcast.' The charges relate to entries satirising the Prophet Muhammed.

Anti-Terror Legislation

30. 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, or for interviewing Partiya Karkerên Kurdistan (PKK) leaders. Similarly, students, lawyers, and activists are arrested under anti-terror laws for the legitimate exercise of their rights to freedom of expression and freedom of peaceful assembly.
31. Individuals are vulnerable to prosecution for advocating non-violent political ideas of legitimate public concern just because of the association of these ideas with certain armed organisations. Offences within the TCK are so broad that they allow prosecution of legitimate expression without proving involvement in violent acts or their incitement. Thus, individuals involved in non-violent speech and association are prosecuted for 'membership of an 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.
32. The use of mass indictments is common practice in Turkey. Some of the most significant trials including those against the military establishment, the alleged urban wing of the PKK, trials against radical left-wing organisations, and the recent Gezi Park trials, are carried out through mass indictments that level charges against multiple individuals. Moreover, the use of anti-terror legislation in prosecutions results in longer prison sentences and pre-trial detention periods. To give one example, Muharrem Erbey, a human rights defender charged with membership of an illegal organisation, was released on 12 April 2014 due to a 'lack of evidence' after 1,570 days of pre-trial detention.
33. The government's comprehensive abuse of anti-terror laws to restrict dissent is marked by the prosecution of hundreds of Kurdish activists, elected politicians, journalists, editors, students and lawyers as members of Koma Civakên Kurdistan (KCK), the alleged urban wing of the

PKK. The Peace and Democracy Party (BDP) states that between April 2009 and November 2011, 7748 people were detained and 3895 were arrested in relation to the KCK investigation.

34. Other major cases where journalists have been or are currently being prosecuted as members of organised criminal organisations include the Ergenekon trials and cases where they have been prosecuted as members of radical leftist organisations such as The Revolutionary People's Salvation Party–Front (DHKP/C) and The Marxist Leninist Communist Party (MLKP). The Ergenekon trials were initiated following the discovery of arms in an Istanbul suburb in June 2007. The initial 2500-page indictment accepted on 28 July 2008 focused on an alleged coup plot against the government. On 5 August 2013, the expanded trial containing 23 indictments sentenced 15 people to life without parole and handed harsh sentences to nearly 300 defendants. Whilst the trial was supposed to hold to account deep state structures, fair-trial concerns and prolonged pre-trial detentions throughout the legal proceedings cast a shadow over the process.
35. In March 2011, investigative journalists Ahmet Şık and Nedim Şener were among 14 people arrested in connection with the criminal investigation against OdaTV, a news portal known for its criticism of government policies. Whilst OdaTV is accused of being the 'media arm' of the Ergenekon, both Şık and Şener were accused of 'knowingly and willingly aiding and abetting an illegal organisation' (TCK 220/7) and of 'membership of an armed organisation' (TCK 314). They spent more than a year in pre-trial detention and were released on 12 March 2012. As of June 2014, the trial is ongoing.
36. On 20 December 2011, police launched a series of coordinated operations called 'the KCK Press operation' in which 46 journalists working for Kurdish media outlets were arrested for alleged membership of KCK. While the defendants have gradually been released from pre-trial detention, they are all charged under Article 314 of the TCK in conjunction with Article 5 of the Anti-terror Law (TMK), which provides for the aggravation of sentences for terror offences.
37. On 23 December 2013, the Gezi Protest indictment charged 36 people with terrorism related crimes for organising the peaceful occupation of Gezi Park and related protests. The charges included 'membership of an armed organisation' (TCK 314), and 'committing crimes on behalf of a criminal organisation without being a member of that organisation' (TCK 220/6). The indictment makes sweeping accusations and associates individual members of lawful organisations and guilds that allegedly organised the protests with illegal armed groups, presenting them as the legal wing of groups such as the DHKP/C and MLKP.

Attacks on freedom of expression and press, including political interference in media

38. The government accepted two recommendations during Turkey's first UPR cycle calling for the protection of freedom of expression and press freedom.
39. Under the period of review, writers and publishers were subject to prosecution on grounds of defamation, denigration, obscenity, separatism, terrorism and insulting religious values. Authorities investigated or continued court cases against multiple publications and publishers.
40. Non-judicial means of harassment are common, including public condemnation of journalists by politicians, and political pressure on news outlets to change their editorial line.

Political interference in media outlets

41. Prime Minister Erdoğan is known for persistently launching personal attacks against journalists for publishing columns that are critical of the government, prompting the media houses that employ them to fire them. In February 2012, journalist Nuray Mert was fired from *Milliyet* daily newspaper following government pressure. Similarly, in March 2013, Hasan Cemal was fired after being indirectly targeted for maintaining that his paper was right to publish leaked documents that shed light on PKK leader Abdullah Öcalan's thoughts on the peace process.

42. There have been documented instances of the government interfering directly in the coverage of political events by private media companies, including a leaked telephone conversation between the prime minister and the controller of HaberTürk television, in which the prime minister ordered the controller to remove an opposition leader's criticism of Erdoğan from the ticker at the bottom of the news broadcast. The Prime Minister later justified his intervention, thus confirming the conversation was real.

Government Unaccountability towards Media Outlets

43. The government has increasingly consolidated power over state institutions. Decree Law No. 649 stripped away the financial and administrative autonomy of independent higher regulatory boards, handing them over to state ministries. 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 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.
44. Prime Minister Erdoğan denounced an article published by journalist Mehmet Baransu in *Taraf* newspaper on 28 November 2013, detailing a decision that had been taken during a 2004 National Security Council (MGK) meeting to 'finish off' the Gülen religious movement. A case was initiated upon a complaint from the National Intelligence Agency, with the prosecutor demanding a 52-year sentence. The application is being considered by an Ankara court.

Media censorship during and after the Gezi Park protests

45. During the early days of the Gezi protests in May 2013, the largest media outlets were silent and ignored the unfolding events, provoking sit-ins in front of media headquarters. The media blackout observed in much of Turkey's primary news outlets highlights the wider issue of media outlets being so scared of attracting the government's ire that they engaged in self-censorship.
46. Pro-government station NTV provided a platform for the government to make statements in opposition to the protests without accommodating the views of the protesters, undermining the principle of impartiality. *NTV Tarih*, a history magazine owned by NTV, was shut down overnight after preparing a special 'Gezi Park' edition.
47. Throughout the protests, journalists who documented the events, supported the protestors or defended their rights were arrested, beaten, threatened and harassed, as the government sought to silence and smear those speaking out against it. According to Bianet statistics, 153 journalists were attacked during the protests.
48. Over 80 journalists and commentators writing critically of the government in different media organisations were fired or forced to resign from their jobs in the wake of the Gezi Protests.
49. On 23 June 2013, Ankara Mayor Ibrahim Melih Gokcek described BBC Turkish reporter Selin Girit as an 'English agent' and launched a campaign against her on Twitter, resulting in a large number of threatening messages.
50. On 11 June 2013, Turkey's broadcast regulator RTÜK issued warnings and imposed a fine of 11,000 Turkish lira (approx. 5250 USD) each on Ulusal TV, Halk TV, EM TV and Cem TV for their live coverage of the Gezi Park protests on grounds that it comprised 'content that encouraged or trivialised violence, violated broadcasting principles of impartiality and failed to fulfil obligations not to report unverified news'. In November 2013, prosecutors requested a sentence of up to 13 years' imprisonment for Ulusal TV director Naci Eriş on charges of 'inciting the public to commit offenses' through broadcasts of Gezi Park protests.
51. Police manhandled CNN correspondent Ivan Watson on the street in front of his office during a live broadcast marking the first anniversary of the Gezi Park demonstrations on 31 May

2014. According to Watson, police later apologised for their conduct and for kneeling him in the back in what they said was a routine passport check. However, the Prime Minister was unrepentant in his own presentation of the incident, referring to Watson as 'a flunky' and 'an agent' who was 'caught red-handed' attempting to provoke an incident. This is part of an increasing pattern of intimidation of foreign correspondents based in Turkey, ostensibly targeted for not respecting government spin on events.

52. Mahir Zeynalov, an Azeri national employed by the English-language *Today's Zaman* was formally deported in February 2014 for posting a tweet linking to an article in his newspaper which accused police chiefs loyal to the Prime Minister of protecting al-Qaeda affiliates.

New Restrictions on Freedom of Expression

53. In response to a corruption scandal beginning in December 2013, the government has sought to exert greater control over the media, social media, and access to information. The result is a number of significant legal changes affecting freedom of expression.

National Intelligence Agency Law (No. 6532)

54. Among the changes is the 'Law Amending the Law on State Intelligence Services and the National Intelligence Agency' (No. 6532), which entered into force 26 April 2014. The law amends an older law (No. 2937) to dramatically expand the powers and reduce the accountability of the National Intelligence Agency (MİT). The changes negatively affect the right to privacy, media freedom, journalists' and citizens' rights to free expression, and the public's right to access information.
55. The law gives the MİT wide-ranging powers to conduct surveillance and collect information. Under Article 3 of the new law, the MİT has the authority to collect information, documents, and data from public institutions, financial institutions and entities with or without a legal character. All institutions and entities must comply with MİT demands for access to their data and archives, and no other law foreign or domestic can override this obligation. Interfering with the activities of the MİT, for instance by refusing a request for data, is punishable by two to five years in prison. These provisions violate the right to privacy. Because the MİT's requests are not subject to judicial scrutiny and cannot be contested, individuals and organisations whose data is sought have no means of ensuring that the requests are proportionate and necessary.
56. Article 7 establishes severe punishments for obtaining or publishing information about the MİT. As the law states, 'any unauthorised person receiving, obtaining, stealing, falsely using, forging, or destroying information or documents related to MİT functions or activities will be punished by four to ten years in prison.' The article makes distribution of information or documents related to the MİT 'by radio, television, social media, magazine, book, or any other form of media' punishable by three to nine years in prison. These provisions are a clear threat to journalists as well as social media users who might obtain and publish information about MİT activities. They erode the right to freedom of expression and the right to access information.
57. The law also places the MİT and its employees outside of normal structures of accountability. Article 8 of the law says that any requests coming from the MİT will be considered superior to all other legal obligations, and that any person complying with these requests will be relieved of legal liability for violations of the law created by compliance. The article explicitly states that this law is superior to any other laws on this subject. If prosecutors receive complaints regarding the activities of MİT, Article 6 obliges them to notify the director of MİT. The director can then choose to block the investigation, meaning MİT is given discretion over whether its own employees can be prosecuted for crimes.
58. The separation of powers is also weakened through reduction in parliamentary oversight. Under Article 12, the intelligence agency directorate and the institutions it controls will make annual reports directly to the prime minister's office. The PM's office will prepare its own

report, which will then be shared with the Parliament's Security and Intelligence Commission. All information and documents contained in these reports will be considered state secrets and will therefore not be included in the reports of the parliamentary commission.

59. Turkey has a long history of intelligence agency abuses, including against journalists. In addition to the imprisonment of journalists on 'anti-state' charges under the TMK as described above, journalists have been subject to surveillance and legal harassment.
60. In 2011, Ahmet Altan and Yasemin Çongar, the former editor-in-chief and deputy editor of *Taraf* newspaper, three other columnists for the paper, and the then-chief columnist for *Star* newspaper, Mehmet Altan, discovered through court documents their mobile phones had been tapped between 2008-2009 at the request of MİT. The application for the wiretaps had been done with false names in a deliberate attempt to mislead the courts. Under the special powers it enjoys, MİT was able to veto the prosecution of a criminal case for illegal wiretapping. Altan, Çongar, Baransu and Esayan were able to win a case, for civil damages on the grounds that their right to freedom of information and personal privacy had been violated. That case is currently being appealed.

Increasing restrictions on freedom of expression online

61. Restrictive Internet laws introduced in Turkey have led to an increase in broad measures to censor online content. The government does not publish full statistics on blocking, but according to Engelliweb.com, an independent tracking site, from 2007 to 11 June 2014, an estimated 48,537 websites have been blocked to date since the introduction of Law No. 5651 on 'Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts'. Thousands of news sites and social platforms, such as YouTube, Vimeo, Dailymotion and Twitter have been blocked at different stages in the period under review. According to Engelliweb.com, the number of sites officially blocked by the Directorate of Telecommunications (TIB) in 2013 was 15,405, compared to 7,824 in 2012, and 6,506 in 2011.
62. At the height of the Gezi park protests last summer, Prime Minister Erdoğan called social media 'the worst menace to society'; in March 2014, he vowed 'not to leave this nation at the mercy of YouTube and Facebook.' The rhetoric became reality the same month when the popular microblogging platform Twitter was blocked just hours after Erdoğan promised to 'wipe it out.' Despite domestic and international outcry, Turkey also blocked the video-sharing platform YouTube in late March 2014.
63. Access to both Twitter and YouTube was restored after Turkey's Supreme Court ruled that the blockings constituted illegal restrictions of the public's right to obtain information: Twitter access was restored on 3 April, after two weeks of blocking, while access to YouTube was restored on 3 June, after 67 days of blocking. The bans were apparently imposed in an attempt to suspend anti-government leaks in the run-up to local elections on 30 March. Twitter and YouTube had been used as platforms for leaking information implicating the ruling AK Party in corruption. The bans validate concerns over the state of press freedom and freedom of information and cast further doubts on whether Ankara will keep to its international obligations on the issue.

The amended Law 5651

64. Those doubts are further deepened by the 2014 passage of amendments to Law 5651, commonly known as the Internet law. Like the spring 2014 social media bans, the amendments were passed as the government sought to beat back online leaks about high-level corruption. The amendments were passed by the Turkish Parliament on February 5, 2014, and signed into law by President Abdullah Gül on February 18. They came into effect on March 1, 2014. Although President Gül was able to secure several modest reforms to the amendments, they negatively affected privacy and freedom of speech.

65. Articles 100 and 101 of Law 5651 allow the government to block URLs. While more targeted in scope than website blocking, URL blocking is much less transparent. One effect of this is that individual social media accounts (or even individual posts) can be blocked while the websites carrying those individual accounts remain accessible. The damage to other users, therefore, becomes less obvious, allowing the government to engage in covert censorship with impunity. This is especially true if the blocking is done by a means other than court order, in which case it is unclear what public record would exist that censorship had occurred. Moreover, URL blocking requires deeper surveillance than website blocking to be achieved technically, so the bill could provide a backdoor to more robust surveillance infrastructure and practices.
66. Articles 95 and 98 of Law 5651 mandate retention of network data for a period of one to two years, to be determined by subsequent regulation. Combined with the new MİT law, mandatory retention creates ample opportunity for violations of internet users' right to privacy.
67. The amendments to 5651 require that all ISPs operating in Turkey join a 'Union of Access Providers', and provide that any ISP refusing to join cannot operate in Turkey. In addition to compelling participation in the Union, the law also states that the Union will not be able to draft its own bylaws. The provision thus greatly consolidates the government's power over ISPs.
68. In signing the amendments, President Gül supported further modest amendments to it in order to address some of the most blatantly lawless provisions. These changes imposed a requirement for court approval for accessing retained data (although MİT will still have access without a court order), as well as after-the-fact judicial review of orders to block Internet sites. They also established a specialized court to decide whether or not to block content. The president's amendments-to-the-amendments do not remove the danger to free expression posed by having this draconian law on the books.
69. In December 2012, the ECtHR ruled that Law No. 5651 was incompatible with the right to freedom of expression (*Ahmet Yildirim v. Turkey* 2012 no.3111/10). The ECtHR held the law lacked sufficient clarity, failed to specify the circumstances in which content could be blocked, and made no provision for those affected by a ban to respond prior to the blocking of content. The 2014 amendments to law 5651 have exacerbated these problems. Law 5651 remains in violation of the European Convention on Human Rights, which is legally binding upon Turkey.
70. Those who use the Internet to express critical opinions or call for protest have become particular targets of repressive actions by the Turkish government. Throughout the Gezi protests, the government monitored social media and issued arrest warrants for those who organised or supported the protests via their Twitter and Facebook accounts.
71. On June 4 2013, 38 Twitter users in the province of Izmir were detained for 'inciting the public to disobey the law'. The tweets in question indicated areas where police were intervening against protesters and safe areas where medical help could be sought. After 7 months of investigations, 29 of the individuals arrested during the protests were charged, and face potential prison sentences of up to 3 years. The trial is ongoing.

Recommendations

72. 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:

Anti-terror legislation

- 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;
- 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', and to ensure that the genuine purpose and demonstrable effect of

any restriction on freedom of expression is necessary and proportionate to protect a legitimate national security interest;

Defamation, insult to the state and blasphemy

- Decriminalise defamation by repealing Article 125 of the Penal Code;
- 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;
- Repeal Article 301 of the Penal Code on ‘Insulting the Turkish nation’;
- 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 and the Rabat Plan of Action, repealing provisions that allow prosecution for ‘insulting religious values’ or for ‘blasphemy’;

Freedom of press

- 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;
- Take appropriate action, consistent with relevant human rights standards, to promote media diversity and prevent undue media dominance or concentration;
- Promote transparency of media ownership making public the identity of their owners, and how it might reflect their persuasions or biases;
- Guarantee the safety of journalists and media workers. Legislative and policy measures must be adopted to prevent all attacks against journalists and eradicate impunity in episodes of violence and intimidation;

Pre-trial detention

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

Surveillance and Freedom of Expression

- Repeal National Intelligence Agency Law (No. 6532), and ensure adequate judicial and political oversight for the security services;
- Restore judicial, prosecutorial, and parliamentary oversight of the National Intelligence Agency (MİT) in order to ensure that MİT actions affecting freedom of expression are proportionate and necessary in a democratic society;

Freedom of expression online

- 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.