REFORM AND REGRESSION: FREEDOM OF THE MEDIA IN TURKEY

FACT-FINDING MISSION REPORT

October 2007

Kurdish Human Rights Project
KHRP
Established 1992
Bar Human Rights Committee
OF ENGLAND AND WALES
INDEX ON CENSORSHIP
ARTICLE 19
GLOBAL CAMPAIGN FOR FREE EXPRESSION
CENTRE FOR EUROPEAN STUDIES
A Jean Monnet Centre of Excellence

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.

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INDEX
ON CENSORSHIP

Index on Censorship
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Index on Censorship was founded in 1972 by a dedicated team of writers, journalists and artists inspired by the British poet Stephen Spender to take to the page in defence of the basic human right of free expression. Today it is one of the world's leading repositories of original, challenging, controversial and intelligent writing on free expression issues and continues to log free expression abuses in scores of countries world wide.

Article 19
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ARTICLE 19 is an international human rights organisation which defends and promotes freedom of expression and freedom of information all over the world.

Founded in 1987, it was the brainchild of Roderick MacArthur, a US philanthropist and journalist. Its International Board and Board of Trustees consist of eminent journalists, academics, lawyers and campaigners from all regions of the world.

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The Centre for European Studies is long noted in Ireland and internationally as a centre for excellence in teaching and research in the area. The Centre provides the framework within which University of Limerick faculty with European interests come together to work on the development of European Studies in Ireland and abroad.

Contents

List of Abbreviations

BİA	Independent Communication Network
DİHA	Dicle News Agency
DTP	Demokratik Toplum Partisi (Democratic Society Party)
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FFM	Fact-Finding Mission
ICCPR	International Covenant on Civil and Political Rights
İHD	İnsan Hakları Derneği (Human Rights Association of Turkey)
KTV	Kurdistan TV
MKLP	Marxist Leninist Communist Party
NGO	Non-Governmental Organisation
OHAL	Olaganüstü Hal (State of Emergency Legislation)
OSCE	Organisation for Security and Cooperation in Europe
PKK	Partiya Karkeren Kurdistan (Kurdistan Workers' Party)
PVSK	The Law on Police Duties and Authorities
RTÜK	Higher Turkish Radio and Television Supreme Council
TCK	Türk Ceza Kanunu (Turkish Penal Code)
TİHV	Türkiye İnsan Hakları Vakfı (Human Rights Foundation of Turkey)
TİT	Turkish Revenge Brigade
TO	Trial Observation
UDHR	Universal Declaration of Human Rights
UN	General Assembly of the United Nations

Foreword

The Kurdish Human Rights Project (KHRP) co-organised a joint fact-finding mission to Turkey with Article 19, Index on Censorship, the Bar Human Rights Committee of England and Wales (BHRC) and the Centre for European Studies, Limerick, Ireland from 4 to 10 July 2007. The mission visited İstanbul, and the Kurdish cities of Diyarbakır and Batman in the south-east, and sought to investigate the current situation of freedom of the media in Turkey. It was undertaken in response to reports from local journalists, human rights defenders and other civil society groups, of rapidly increasing violations of the right to freedom of expression.

The mission focused on Kurdish, Socialist and Islamist oriented media—reportedly the main targets of the new Turkish Anti-Terror, Press and Police Power Laws—and examined the impact of the harmonisation package within the EU-Turkey accession negotiations. Its main findings were that while there had undoubtedly been an improvement as part of the reforms during 2003 to 2004, there has since been a substantial and rapid regression in freedom of the media. This was mainly attributed to the slow-down in the European Union (EU) reform process, the passing of new legislation and, crucially, the manner in which this legislation is being interpreted and applied by the state apparatus.

The mission was interested to hear that while the use of Article 301 of the new Turkish Penal Code against Turkish intellectuals has been much publicised, there has been little to no discussion on the everyday common application of other equally controversial Articles, such as 220 (8) or 216 against Kurds. In particular, delegates were disturbed to hear of the growing numbers of journalists being prosecuted or imprisoned, sometimes facing extended periods of pre-trial detention, and due to the confidentiality clause in the new Anti-Terror Law, being kept uninformed of the charges being made against them.

The mission was also concerned to hear consistent reports of Kurdish newspapers being closed or threatened with closure, with some being subject to ongoing office raids, and though less frequent, the seizure of equipment in the interim. Further, though recent reforms have replaced prison sentences with fines, the disproportionate penalties often levied against small independent media are considered to be far worse since the risk of debt and bankruptcy threatens permanent closure. Meanwhile, though the lifting of Kurdish language restrictions in 2003 and 2004 was lauded

as one of the major achievements of the accession process, the still tiny number of Kurdish language broadcasters is indicative of the substantial prohibitions that remain.

Though the mission concluded that the situation was comparatively much better than in the 1980s and 1990s, there was widespread acknowledgment that the rapidly worsening climate was being perceived by many as disturbingly reminiscent of, and thus propelling a fear of a return to, the 'dark years'. Amendments to the Police Powers Law in May 2007, were cited as the most recent example of retrogressive steps being introduced that undermine the positive reforms made thus far. It is feared that too much power is being given to the police and that this may give rise to mistreatment of suspects in police custody, with growing reports of the pre-trial detention of journalists. Journalists and reporters, with whom the mission met, conceded that while they personally would continue to fight injustice, many others likely practice self-censorship in the face of increasing repression.

Although the mission welcomes the Turkish government's recent steps to draft a new civilian constitution— with much focus placed on Article 301— it does not believe that this will go far, nor be enacted quickly enough. Therefore, the mission still calls on the Turkish authorities to urgently lift its prohibitive restrictions on Kurdish language broadcasting and to repeal all aspects of the new Penal Code, new Anti-Terror Law and Police Powers law that are incompatible with international human rights norms. Without so doing, free speech in Turkey, and thus its ability to fully function as a democratic state, cannot be assured. The mission further urges the EU to uphold its commitment to the reform process, by providing practical support to Turkey's accession bid and by continuing to closely monitor its performance, particularly with regard to freedom of expression.

The mission members were Solicitor Louise Christian (KHRP legal team and Advisory Board member and Trustee to Article 19), Edel Hughes (KHRP legal team member and Junior Lecturer in Law at University of Limerick, Ireland) and Pranjali Acharya of KHRP. The mission met with a cross-section of representatives from broadcasting, print and online media, as well as with state officials, local lawyers, Bar Associations and civil society groups. The delegation is grateful to all of those who agreed to speak to and facilitate the mission.

1. FREEDOM OF THE MEDIA IN TURKEY: A BACKGROUND

Before examining the current situation, it is helpful to provide a contextual background to freedom of the media in Turkey. This includes providing an overview of Turkey's legal provisions and obligations at the domestic as well as international level in terms of respect for and protection of free speech.

a) Introduction

Article 28 of the Constitution of the Republic of Turkey protects the right to freedom of the media by providing that;

> The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.
>
> The state shall take the necessary measures to ensure freedom of the press and freedom of information …[1]

It would thus appear that in Turkey, as in most modern democratic states, freedom of expression rests at the apex of those civil and political rights that are protected both constitutionally and by legislation. Nonetheless, in Turkey freedom of expression and of the media has traditionally experienced restrictions and related problems not typically associated with a modern Western democratic state. As KHRP has documented, '[l]egislative restrictions on freedom of expression, including publishing and the media, designed to prevent dissenting opinion, discussion of politically 'taboo' subjects, and criticism of state institutions, have frequently been utilised in an effort to preserve *status quo*.'[2] This sentiment is one that was echoed in conversations with various journalists, lawyers and human rights defenders during the mission's fact-finding visit to Turkey in July 2007.

1 Article 28 of the Constitution of the Republic of Turkey, as amended on 17 October 2001.

2 KHRP TO Report, Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession, (KHRP, London, 2007), 13.

b) The Situation during the 1980s and 1990s

KHRP was amongst those non-governmental organisations (NGOs) that documented the severe restrictions placed on journalists working in Turkey during the 1980s and 1990s.[3] The military coup of 1980 and subsequent military rule, which lasted until 1984, oversaw the banning of political parties and trade unions and the imprisonment of countless people for the expression of non-violent opinion. Articles 141, 142 and 163 of the Turkish Penal Code provided for lengthy terms of imprisonment for offences such as advocating communism, Kurdish separatism, or fundamentalism. Article 142 in particular formed the basis of a large number of prosecutions for 'separatist propaganda,' which were subsequently challenged before the European Court of Human Rights ((ECtHR) discussed *infra* s. b (iii)). It stated in part;

> …
> 3. A person who, prompted by racial considerations, by any means whatsoever spreads propaganda aimed at abolishing in whole or in part public-law rights guaranteed by the Constitution or undermining or destroying patriotic sentiment shall, on conviction, be liable to a term of imprisonment of from five to ten years.
> …
>
> 6. Where the offences contemplated in the above paragraphs are committed through publication, the penalty to be imposed shall be increased by half.
> …

In addition to the offences proscribed under the Penal Code, during this period further restrictions were also placed on the Kurdish language, which contributed to the constraints on freedom of expression generally and freedom of the media in particular. Law 2934 promulgated in 1983, for example, provided for a term of imprisonment for those who conveyed ideas in any language which was not an official language of the Turkish state or of another state.

In 1991, some seven years after the return to parliamentary democracy, and following pressure both from within Turkish civil society and international onlookers, a number of legislative changes were instituted. Articles 141, 142 and 163 of the Penal Code were repealed by virtue of the Anti-Terror Law (Law 3713 of 12 April 1991, as amended by Law no 4126 of 27 October 1995), and Law 2923 which had

3 See for example, L Whitman and T Froncek, Paying the Price: Freedom of Expression in Turkey (Helsinki Rights Watch, New York, 1989); 'Silencing Dissent' in Turkey: No Security Without Human Rights (Amnesty International, London, 1996); State Before Freedom: Media Repression in Turkey (KHRP, London, 1998).

implicitly criminalised any publication in Kurdish, was also amended. The then Prime Minister, Turgut Özal even heralded the advent of a 'talking Turkey'.[4]

Despite the changes to legislation, however, little progress was made in terms of free speech. The new Anti-Terror Law of 1991, which had repealed Article 142 of the Penal Code, provided for a similar offence in Article 8, which punished propaganda and any expression of separatism. Article 8 (1) provided;

> Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited, irrespective of the methods used and the intention. Any person who engages in such an activity shall be sentenced to not less than two and not more than five years' imprisonment and a fine of from fifty million to one hundred million Turkish liras.

Those who fell foul of the provision in Article 8 included lawyers, political activists, trade unionists, writers, publishers, journalists as well as academics and intellectuals. The amendment to Article 8 (1) in 1995 retained the crime of 'separatist propaganda' as an offence punishable by imprisonment and a fine but removed the phrase 'irrespective of the methods used and the intention'. The new Article 8 (1) stated;

> Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited. Any person who engages in such an activity shall be sentenced to not less than one and not more than three years' imprisonment and a fine of from one hundred million to three hundred million Turkish liras. The penalty imposed on a reoffender may not be commuted to a fine.

Perhaps unsurprisingly, the amendment to Article 8 had little effect on the right to freedom of expression on the ground. An illustrative case is that of Mehdi Zana, a former Mayor of Diyarbakır, who in 1994 was sentenced to two years imprisonment under Article 8. This followed his testimony before the Human Rights Sub-Committee of the European Parliament, in which he stated that he continued to campaign peacefully for the recognition of the rights of the 15 million Kurds living in Turkey. In November 1995 the Ankara State Security Court retried Zana under the amended Article 8, yet he was again sentenced to two years imprisonment.

4 See J Sugden, 'It's Time for Turkey's New President to Deliver on Free Speech', International Herald Tribune, 22 May 2000, noting that then President elect Sezer needed to 'put some momentum into the stalled reform process' in order for Özal's promise to provide a 'talking Turkey' to come to pass.

While the Anti-Terror Law had a profoundly negative effect on freedom of expression, numerous other laws contributed to the limitations on free speech. Article 312 of the Penal Code imposed up to three years imprisonment for the crime of incitement to commit an offence and incitement to religious or racial hatred. A prominent case taken under this Article was that against the current Prime Minister but then Mayor of İstanbul, Recep Tayyip Erdoğan. In 1999, Erdoğan was sentenced to ten months imprisonment for reciting a poem at a rally in 1998 which allegedly incited religious hatred. In addition to Article 312, Article 159 of the Penal Code provided for prison sentences of up to three years for the crime of insulting 'Turkishness, the Republic, the Grand National Assembly, the spiritual personality of the government, ministries, the military, security forces or judiciary of the state'.

As demonstrated by the many decisions involving Turkey's contravention of Article 10 of the European Convention on Human Rights (ECHR), the application of this legislation undermined its commitments to guarantee freedom of expression under international law.

c) Applicable International Legal Standards

Turkey is State Party to almost all of the applicable international human rights instruments.[5] In committing itself to the international treaty system, Turkey is obliged to provide for freedom of expression as detailed in the International Covenant on Civil and Political Rights (ICCPR) and the ECHR. These provisions are outlined in the following sections.

i. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations (UN) in 1948. Turkey was one of the first UN member states to ratify the declaration, on 6 April 1949.[6]

Although technically non-binding as a source of international law, the Declaration was, as stated in the preamble, intended to represent 'a common standard of achievement for all peoples and all nations' to 'strive by progressive measures,

5 Of the main international human rights agreements Turkey ratified the International Covenant on Economic, Social and Cultural Rights on 23 September 2003; the ICCPR on 23 December 2003; the First Optional Protocol to the ICCPR on 24 November 2006; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) on 16 September 2002; the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 20 December 1985 (acceded); and the Convention Against Torture (CAT) on 2 August 1988. Turkey also ratified the European Convention on Human Rights (ECHR) on 18 May 1954.

6 See 'Core Document forming part of the Reports of States Parties: Republic of Turkey', UN Doc HRI/CORE/1/Add.116, 1 October 2001, para. 84.

national and international, to secure their universal and effective recognition and observance'.[7]

Article 19 of the Declaration, subsequently expanded on in Article 19 of the Covenant on Civil and Political Rights, refers to the protection of freedom of expression and states;

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The Declaration is now considered to form part of customary international law, binding on all nations.[8]

ii. The International Covenant on Civil and Political Rights

Turkey is relatively new to the ICCPR, having ratified the Covenant in 2003. Turkey is therefore compelled to respect Article 19 of the Covenant, which provides;

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
>
> 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

7 United Nations Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 (III) A of 10 December 1948, Preamble.

8 See, for example, LB Sohn 'The Universal Declaration of Human Rights' (1967) 8 J. Int'l Comm'n Jurists 17, 26 asserting that the UDHR has 'become a part of the common law of the world community and, together with the Charter of the United Nations, it has achieved the character of the world law superior to all other international instruments and to domestic laws.'

iii. The European Convention on Human Rights

More relevant in a discussion of Turkey's obligations to uphold freedom of expression is the protection afforded by Article 10 of the ECHR. As with Article 19 of the ICCPR, Article 10 provides for the right to freedom of expression and the permitted restrictions thereto. It states;

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The ECtHR has repeatedly attested to the importance of the rights protected under Article 10 in a modern democratic society. In a frequently cited passage from the seminal case of *Handyside v United Kingdom*,[9] the Court noted that freedom of expression constitutes one of the essential foundations of society and is;

> […] one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.

iv. Indicative Cases before the European Court

The nature and number of cases that have come before the Court concerning Turkey's implementation of Article 10 of the ECHR, is clearly demonstrative of

9 Handyside v United Kingdom, 5493/72, Judgment of 7 December 1976.

the extent to which freedom of expression in Turkey is problematic. Between 1999 and 2006, the ECtHR found that Turkey had violated its obligations under the Convention in a total of 1076 cases, 123 of which related to the right to freedom of expression.[10]

To a large extent, the Court's jurisprudence on Turkey and Article 10 of the Convention, concerns individuals' complaints against convictions for 'separatist propaganda', under the previous Anti-Terror legislation. On 8 July 1999, the Court delivered judgments in several cases related to prosecutions for the dissemination of 'separatist propaganda'.[11] The Court, however, has also examined numerous cases concerning harassment of Turkey's media. In the pivotal case of *Özgür Gündem v. Turkey,*[12] the European Court unanimously held that there had been a violation of Article 10 of the Convention noting;

> the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals […][13]

d) EU Accession and Freedom of the Media

Attempts by successive administrations to secure Turkey's place within the EU arguably reaffirm the contention that Turkey has, since the early twentieth century, been more western than eastern in its domestic and international political outlook. However, the accession process has been a complicated and lengthy affair. While Turkey signalled its intention to become part of the EU when it applied for associate membership of the then European Economic Community in 1959, it did not achieve status of 'candidate country' until December 1999.[14]

10 KHRP TO Report, Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession, (KHRP, London, 2007), 43.

11 See Arslan v Turkey, 23462/94; Baskaya and another v Turkey, 23536/94; Erdogdu and another v Turkey, 25067/94; Karataş v Turkey, 23168/94; Gerger v. Turkey, 24919/94; Okçuoglu v Turkey, 24246/94; Sürek v. Turkey (No. 1), 26682/95, judgments of 8 July 1999.

12 *Özgür Gündem v. Turkey*, 23144/93, judgment of 16 March 2000.

13 *Özgür Gündem v. Turkey*, 23144/93, judgment of 16 March 2000, para. 43.

14 See Conclusions of the Presidency, Helsinki European Council December 1999, EU Bulletin no. 12.99, para 12, declaring that Turkey was 'a candidate State destined to join the Union on the basis of the same criteria as applied to the other candidate States'.

Throughout the process Turkey, as a candidate country, has had its compliance with the 'Copenhagen criteria' strictly monitored.[15] The Copenhagen political criterion requires EU applicant states to provide for stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. At the Cardiff European Council in June 1998, the European Commission (EC) confirmed that it would submit a report on each candidate country's progress towards accession at the end of the year. It has since issued nine annual reports on Turkey's progress towards accession. In the compilation of the Commission reports, regard is had to several sources of information. The Commission assesses contributions from the Turkish authorities, the evaluations of international organisations, in particular the Council of Europe, and reports from NGOs, the European Parliament and member states.[16] In terms of the Commission's assessment of Turkey's progress in implementing political reform, the analysis 'consists of a systematic examination of the organisation and functioning of the public authorities and of the systems for protecting fundamental rights'.[17]

The Commission's reports have continually highlighted problems with regard to freedom of expression in Turkey. In its initial report, the Commission noted;

> […] freedom of expression is not fully assured in Turkey. An excessively narrow interpretation of the Constitution and other legal provisions (Articles 7 and 8 of the Anti-Terror Law, Articles 158, 159, 311 and 312 of the Criminal Code) concerning the unity of the state, territorial integrity, secularism and respect for formal institutions of the state is regularly used to charge and sentence elected politicians, journalists, writers, trade unionists or NGO workers for statements, public speeches, published articles or books that would be acceptable in EU Member States.[18]

In the years since the first report of the Commission, a number of reforms have been implemented in Turkey with a view to satisfying EU requirements regarding the provision of fundamental rights guarantees. While a total of nine 'Harmonisation Packages' have now been instituted, the most significant reforms in terms of freedom of expression have been;

15 The Copenhagen Criteria were formulated at a meeting of the European Council on 21-22 June 1993 and provide that: 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.' European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency, SN180/1/93 Rev 1, 13.

16 European Commission Regular Report on Turkey's Progress Towards EU Accession 1998, B 1.

17 European Commission Regular Report on Turkey's Progress Towards EU Accession 1998, B 1.

18 European Commission Regular Report on Turkey's Progress Towards EU Accession 1998, 15.

- amendments to Articles 28-31 of the Constitution;
- the adoption of the Sixth Harmonisation Package, which relaxed restrictions on broadcasting in the Kurdish language by amending Article 4 of the Act on the Establishment and Broadcasts of Radio and Television Stations, sanctioning the broadcasting, on both private and public radio and television stations, in languages and dialects used by Turkish citizens traditionally in their daily lives;
- the enactment of a new Press Law in June 2004;[19]
- the entry into force of the new Penal Code in June 2005.

The EU process has undoubtedly provided the impetus for many of the positive reforms on freedom of expression. Nonetheless, it has been suggested that efforts to satisfy EU demands were partly responsible for the hastily promulgated new Penal Code in 2005, which was rushed through without proper consultation and effectively reverses previous improvements made to freedom of expression guarantees.[20]

19 Law No. 5178, Published in the Official Gazette on 26 June 2004.

20 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

2. RECENT DOMESTIC LEGAL PROVISIONS

Having briefly examined the background to freedom of expression in Turkey, including Turkey's responsibilities with respect to the international human rights instruments it is party to, it is useful to outline in its current guise, Turkey's domestic legal provisions with regard to freedom of expression.

a) Article 301 of the Penal Code

When the new Penal Code entered into force on 1 June 2005, its new Article 301 in similar wording to the former Article 159 provided;

> (1) A person who explicitly insults being a Turk, the Republic or Turkish Grand National Assembly, shall be imposed a penalty of imprisonment for a term of six months to three years.
> (2) A person who explicitly insults the Government of the Republic of Turkey, the judicial bodies of the State, the military or security organisation shall be imposed a penalty of imprisonment for a term of six months to two years.
> (3) Where insulting being a Turk is committed by a Turkish citizen in a foreign country, the penalty to be imposed shall be increased by one third.
> (4) Expression of opinions with the purpose of criticism does not require penalties.

The provision has attracted much criticism,[21] not least due to the high profile nature of some of the prosecutions taken since its adoption. Nobel prize-winning author Orhan Pamuk was charged (and ultimately acquitted) with insulting Turkishness under the Article. This followed his remarks during an interview in February 2005, in which he referred to the 1915 massacres of Armenians and the killing of Kurds in south-east Turkey. Another well-publicised case was that taken against Hrant Dink, editor of the bilingual Armenian Turkish newspaper, Agos. Dink was convicted of insulting Turkey's national identity and given a six month suspended sentence for publishing a series of articles in which he called on Diaspora Armenians to

21 See, for example, Amnesty International 'Article 301 is a threat to freedom of expression and must be repealed now!' AI Index: EUR 44/035/2005 1 December 2005.

stop focusing on the Turks and focus instead on the welfare of Armenia.[22] He was subsequently murdered on 19 January 2007, following ongoing death threats, allegedly from nationalists.[23]

b) Articles 216, 217 and 220 of the Penal Code

Article 301 of the Penal Code has attracted international criticism and prompted calls for its abolition from the European Parliament.[24] However, other lesser-known Articles of the revised Penal Code are also having a deleterious effect on freedom of expression, particularly in the mainly Kurdish south-east region of the country.

Under Article 216, for example, a person who 'incites groups of the population to breed enmity or hatred towards one another', can be sentenced for a period of one to three years. Similarly, under Article 217, a person who commits the crime of 'inciting people to disobey laws' can be imprisoned for nine months to three years. Furthermore, 'if such an offence is committed through media and press, the penalty to be imposed shall be increased by half' under both. Curiously, the prominent case of Professors Baskın Oran and İbrahim Özden Kaboğlu who on 10 May 2007 had been acquitted for 'inciting to hatred and hostility', was overturned by the Court of Appeal on 17 September 2007.[25] The two professors have been on trial under Article 216 (1) since November 2005. This follows their government-commissioned Minority and Cultural Rights Working Group report, which discussed the term 'citizenship of Turkey' and urged the recognition of Kurds as a distinct minority.[26]

More worryingly, under Article 220, a person who 'makes propaganda – through the medium of press and media - about the goals of an organisation which has been established in order to commit crimes', can be imprisoned for three to nine years.

22 'Dink Convicted of Insulting Turkish Identity' Turkish Daily News 8 October 2005.

23 Indeed, even as the government prosecuted Dink's murderers, it continued to bring charges against his son and publisher in relation to comments he had made before his death. Only a few short months after the killing, Serkis Seropyan and Arat Dink were charged under Article 301 in relation to Hrant Dink's statement that an Armenian genocide had taken place. On 16 October 2007 they were each given a one year suspended sentence under Article 301.

24 See 'European Parliament Critical of Slowdown in Turkey's Reform Process' European Parliament Press Service, 27 September 2006.

25 The decision comes at a time when a similar concept of 'Turkish Republic Citizenship', is also being discussed by officials in preparation of the new 'civil' constitution. See 'As acquittal overturned, two academics face possible imprisonment for "inciting hatred" over report on minorities', IPS Communication Foundation (BİANET), 17 September 2007, available at http://www.ifex.org/en/content/view/full/86329/ (last accessed 18 September 2007).

26 Having agreed to be part of the Prime Minister's Human Rights Advisory Council, the two academics were charged with a criminal offence for writing a report as part of their duties under the relevant regulation.

This very vaguely worded provision is effectively Article 8 (1) of the old Anti-Terror legislation in a new guise.

c) Anti-Terror Law

The mission learned from the journalists and lawyers spoken to that amendments to the Anti-Terror Law passed in September 2006 impose further restrictions on freedom of expression. The amendments established aggravated penalties for 'propaganda' and 'praise' of terrorism. The EC noted in its 2006 progress report that the definition of these crimes is not in line with the Council of Europe Convention for the Prevention of Terrorism. Further, that '[f]reedom of the press and media could be undermined by provisions allowing the suspension of periodicals and introducing the liability of chief editors and of press and media owners for publishing terrorist propaganda or praise in press or media organs.'[27]

d) Press Law

The new Press Law, which entered into force in June 2004, made some substantive improvements to freedom of the media. In particular it;

- reinforced the right to reply and correction;
- largely replaced penalties of prison sentences with fines;
- removed sanctions such as the closure of publications, halting distribution and confiscating printing machines;
- reduced the possibility to confiscate printed materials, such as books and periodicals.

Unfortunately, as documented below, changes to legislation subsequent to the promulgation of the Press Law have meant that it has made little or no impact on improving freedom of the media.

e) Police Powers Law

The Law on Police Duties and Authorities (PVSK) was amended in May 2007 to expand powers granted to the police to detain, question or physically restrain individuals being investigated by the government. According to the Turkish Human Rights Foundation (TİHV), the law allows the police to:

- Arbitrarily stop vehicles and ask for ID to 'prevent crimes';
- Fingerprint and photograph those stopped and also the power to retain this information;

27 Turkey 2006 Progress Report EN{COM (2006) 649 final}, 6.

- Search cars, documents and private property and perform full body searches;
- Use truncheons, handcuffs, pressurised water, teargas or powder and use force against 'physical barricades' such as cars;
- Force people to identify others;
- Use deadly force against an attack of non-deadly force, which amounts the disproportionate use of force in self-defence.

This new law grants the police wide ranging stop and search powers, as well as unprecedented discretion in the use of force. As the Trade Union Confederation of Public Workers (KESK) has noted, the new legislation;

> which foresees questioning in the streets, arrests without establishing identities, taking everyone's fingerprints and preparing files on them, unlimited authorisation to search, random pressure put on syndicates and mass organisations, and using violence without warning, includes many practices that are incongruous with democracy.[28]

It is undoubtedly the case that implementation of the law in its current guise would have far-reaching consequences for the enjoyment of such fundamental human rights as freedom of expression and the right to life.

28 See 'Police Regaining Vast Powers', BİA News Centre, 30 May 2007, available at http://www.bianet.org/bianet/kategori/english/96821/police-regaining-vast-powers (last accessed 6 September 2007).

3. 'TWO STEPS BACKWARDS': THE CURRENT CONTEXT

One of the mission's most consistent findings was that while the situation regarding freedom of the media has improved since the disturbing days of the 1980s and 1990s, it has substantially deteriorated in the past two years. All of the different groups interviewed in July 2007 attributed this mainly to the slow-down in the EU reform process, the passing of new legislation and crucially, the manner in which this legislation is being interpreted and applied by the state apparatus.

The mission believes that changing laws on paper is meaningless without an overhaul of the overall legislative structure, and a change in the attitudes and mindset of those across all sections of Turkish society. Without so doing, the reform process will continue to falter and legislative change will carry on being dismissed internally and externally as a tactic employed by the Turkish government to merely appease EU demands. Moreover, the EU and wider international community must also continue to engage in dialogue with and provide support to Turkey to ensure that progressive reforms are introduced and implemented effectively, especially with regard to protecting the right to freedom of expression, which the mission observed was of ever growing concern.

Before examining specific incidents as conveyed to the mission with regard to broadcasting, print and online media, it is important to first outline the general geo-political backdrop and key findings of the overall situation for freedom of the media in Turkey.

a) Geopolitical Overview

i. Democratisation and EU-Turkey Accession

The mission observed the widespread belief of many both within and outside of Turkey that its accession to the EU will ultimately help benefit the country's democratisation process. Yet last year the Turkish government's record on freedom of expression abuses was among the worst in Europe, and the situation in 2007 has worsened. Despite overwhelming criticism from the UN, the EC and countless NGOs, Turkey has neither repealed or amended its restrictive Anti-Terror Laws, nor the widely-denounced Article 301, which criminalises 'insulting Turkishness'. Though consideration was due to be given to repealing Article 301 of the Turkish Penal Code prior to the Parliamentary elections in July 2007, the new Turkish

Foreign Minister Ali Babacan has expressed that there are no early plans to amend or abolish clauses of the Penal Code, nor is there any need to talk about specific articles of specific laws since such issues will be addressed in a planned new constitution. It is claimed that the new constitution will allow the Constitutional Court to annul laws that contradict international agreements to which Turkey is a signatory.[29] However, in the context of an increasingly repressive climate the mission found growing scepticism among journalists, lawyers and human rights defenders of both the Turkish government's and the EU's true commitment to reform.

The general sentiments of those with whom the mission met were that external pressure, rather than a genuine internal momentum for change, had resulted in mostly cosmetic reforms.[30] Conversely, the mission learnt of growing disillusionment with the EU due to its perceived delay tactics and waning dialogue with Turkey, but also due to what some see as its disproportionate condemnation of the actions of armed groups in comparison to the actions of the Turkish military.[31] This was seen to play into the hands of the military and nationalist groups, by creating 'trouble for the democratisation process.'[32] According to the Turkish Journalist Association, the population's support of Turkey's EU membership has now fallen from 70 per cent in 2002, to just 30 per cent.[33] This decline appears to be symptomatic of a real anxiety that following recent reforms, progressive gains stand to be lost due to poorly drafted, ill interpreted and inadequately implemented legislation.

ii. Parliamentary Elections, the Military and Cross-border Operations

The mission took place at a time of high political tensions amid rising nationalist and anti-EU sentiment, especially due to the build-up to the parliamentary elections[34] and the military's threats of cross-border operations in northern Iraq.[35] The mission heard recurrent reports that this tension was visibly undermining freedom of expression and of the media. Furthermore the mission heard that while the editorial policies of media establishments remain unchanged, they are subject

29 See Reuters; 'EU Presses Turkey for Quick Progress on Reform'; 09 September 2007.

30 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

31 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

32 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Mr. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

33 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Mr. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

34 The mission was carried out just three weeks prior to the parliamentary elections in Turkey on 23 July 2007.

35 FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul.

to an increased number of closures, confiscations notices and greater harassment during periods of heightened political pressure, thus hampering their ability to report effectively on the situation.[36]

The election of 21 independent Kurdish candidates on 23 July 2007— which has allowed the *Demokratik Toplum Partisi* (Democratic Society Party, DTP) to form a group in parliament— can be seen as a positive step for democratic representation in the Kurdish regions. Nonetheless, the situation in Turkey remains volatile. The military's response to the re-election of the AK Party (*Adalet ve Kalkınma Partisi*/ Justice and Development Party), and the subsequent appointment of practising Muslim and former Islamist Abdullah Gül as Turkey's new President on 28 September 2007, remains to be seen. Furthermore, there have been ongoing clashes, both prior and subsequent to the mission, between the authorities and the PKK.[37] These threaten to escalate following the Turkish Parliament's resolution on 18 October 2007, authorising the military's demands to attack PKK bases via a Turkish incursion into northern Iraq.[38] This has already led to dozens of fatalities following clashes between the authorities and the PKK on the Turkey-Iraq border on 21 October 2007. The impact of the potential cross-border operations is thus not only heightening existing tensions inside Turkey, but also between Turkey, Iraq and the United States. Further, it threatens to destabilise the situation in Iraq, and reverberate across the Kurdish regions and the wider Middle East.

b) A Return to the 'Dark Years'?

The mission found widespread consensus that, though the situation for freedom of the media was relatively better than in the 1980s and 1990s, the post-reform situation was far from perfect, and had worsened dramatically in the past two years. It was also clear to the mission that today's retrogressive legislation, increasing reports of harassment on the ground and increased police powers have become reminiscent of the 'dark years', particularly when new legislation appears to reintroduce former restrictions.

36 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

37 As a result of their historical persecution and forced assimilation, several Kurdish tribes and political organisations have rebelled against their governments. In Turkey, the most notable is the uprising instigated in 1984 by Abdullah Öcalan, the then leader of the PKK. Although these rebellions have been somewhat successful in drawing international attention to the Kurdish situation, the Kurds continue in their struggle to have their basic human and cultural rights recognised, as gross human rights violations at the hands of their entrusted governments persist.

38 This is contrary to Prime Minister Recep Tayyip Erdoğan's earlier rebuttal of requests by the military's Chief of General Staff to permit cross-border operations. In June 2007, Erdoğan had underlined that the army's priority should be fighting the thousands of PKK militants within Turkey, suggesting that it made no strategic sense to cross the border when a larger percentage of the PKK membership was within its own borders.

i. Impetus for Regression

Although the mission learned of heightened tensions due to the then pending Parliamentary elections, reports confirmed that the situation of media freedom in Turkey started to deteriorate in early 2005, prior to the commencement of formal EU-Turkey negotiations.

While the exact beginning and reasons given for this varied, the most common reports centred on the impact of the new Turkish Penal Code (TCK) introduced in June 2005, suspicions of deep state activity following the Şemdinli incident in November 2005,[39] and most significantly, the introduction of the new Anti-Terror Law in September 2006.

Certainly, some of the problems increasingly visible with the new Penal Code were foreseen when the draft was adopted in 2004, prior to its entry into force the following year.[40] At the time, Turkish press and international commentators had warned against the dangers of numerous articles[41] being open to interpretation, and posing heavy penalties for those exercising their right to freedom of expression, the press in particular.[42] Yet the mission heard that this was not sufficiently taken into account by the EU, EC or Turkey. Rather, it would seem that only 13 of the 26 articles opposed by the Turkish Journalist Association were dropped due to sensitivities concerning the right to freedom of expression and of the media.[43] Furthermore, to the surprise of critics, the EC were seen to openly welcome its 'progressive adaptation'.[44] The mission learned however, that for many it was the

39 In November 2005, the Umut Kıtapevi (Hope Book House) in the Şemdinli district of Van bombing was bombed, leaving one dead and five injured. The accused were two non-commissioned military officers Ali Kaya and Özcan İldeniz, and Veysel Ateş a former PKK member now State informant. Over the following days, demonstrators clashed with police in a number of violent protests against the alleged Gendarmerie role in the bombing; five protestors were killed and dozens injured in the disturbances. See KHRP Trial Observation Reports, Promoting Conflict – the Şemdinli Bombing, (KHRP, London, 2006) and State Accountability? The Şemdinli Trial Re-hearing (KHRP, London, 2007).

40 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

41 Article 301(1) of the new TCK came into force on 1 June 2005. Many of the old provisions that run contrary to freedom of expression not only still exist, but impose imprisonment instead of fines. See KHRP FFM Report; Recognition of Linguistic Rights? The Impact of Pro-EU Reforms in Turkey, (KHRP, London, 2005).

42 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

43 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

44 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

new Anti-Terror Law that most manifestly underlined that new legislation was merely cosmetic, and was in fact undoing the progress of 2003-4.[45]

ii. Legislation as a Tool of Harassment

The mission heard that whereas in the 1990s, journalists and human rights defenders were disappeared and subject to extra-judicial killings, they are now increasingly criminalised under articles of both the new Turkish Penal Code and the new Anti-Terror Law (see part 2: Recent Domestic Legal Provisions). Instances of prosecution under these laws have been increased, with the pro-Kurdish Independent Communication Network (BİA), reporting that cases against journalists, publishers and activists for offences relating to words they have said or written rose from 157 in 2005 to reach 293 in 2006.[46] Seventy-two of those prosecuted were charged under the infamous Article 301, which is a dramatic rise from the 29 prosecuted in 2005. Others were charged under a variety of Anti-Terror Laws, ranging from Article 216's 'inflaming hatred and hostility among the peoples' to law 5816, which criminalises 'insulting the memory of Atatürk'. More recently BİA reported that during July, August and September 2007 Article 301 was responsible for the trials of 22 people, mostly journalists, in 15 different cases.[47] Twelve people were reported to have been sentenced under Article 216 of the Penal Code. Furthermore, 22 journalists and six media agencies received fines amounting to 10,246,000 New Turkish Lira (YTL) and were sentenced to 23 years, 10 months and 20 days imprisonment for 'defamation' and 'insults'. Therefore, as was conveyed persistently to the mission, it would seem that new legislation has itself become a tool of harassment, used to launch baseless investigations to silence dissent.

The fact that journalists and human rights defenders face fewer extra-judicial killings and direct violations of the right to life demonstrates some improvement compared with the situation in the 80s and 90s. Nonetheless, as expressed by the İHD Batman Branch, there is great anxiety about the remarkable escalation of criminal investigations against journalists, intellectuals and human rights defenders.[48]

45 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

46 See 'BİA 2006 Report Monitoring Freedoms and Rights in Turkey', IPS Communication Foundation, 16 February 2007.

47 See 'Third Quarterly Media Monitoring Report', IPS Communication Foundation (BIANET), 30 October 2007, available at http://www.bianet.org/english/kategori/english/102579/third-quarterly-media-monitoring-report-full-text (last accessed 30 October 2007).

48 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

Article 301 - Rojda Kızgın

There are countless examples of cases brought against journalists and news agencies under Article 301. That of Rojda Kızgın, a reporter for pro-Kurdish News Agency Dicle (DİHA), is illustrative of the extent to which criticism of the state apparatus would appear not to be permitted. As relayed to the mission, she had travelled to Bingöl to make a report about the village guard system.[1] In her news report on 4 January 2005 she claimed that soldiers were using government grenades for fishing, underlining how this method was damaging to the ecology and that it was being supported by public funds from the tax payers. She and Rıdvan Kızgın, former branch president of İHD Bingöl Branch and Dogan Adibelli are currently being tried under Article 301 (2) for 'degrading the state's military and security forces'. The case, which was launched in January 2007, continues.[2]

1 FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.

2 'Third Quarterly Media Monitoring Report', IPS Communication Foundation (BIANET), 30 October 2007, available at http://www.bianet.org/english/kategori/english/102579/third-quarterly-media-monitoring-report-full-text (last accessed 30 October 2007).

At the time of the mission, there were reportedly 27 journalists and writers in prison, 23 of whom had been arrested after the new Anti-Terror Law came into force in September 2006.[49] More recently, BİA has reported that between July and September 2007, 125 persons, most of them journalists, and six media agencies have been tried for activities that could be interpreted as being within the bounds of their right to freedom of expression.

The mission heard that journalists who refer to PKK members as 'guerrillas' and not 'terrorists', and who address the former leader of the PKK as 'Mr' Öcalan or 'Esteemed', are seen as traitors.[50] This has lead to their frequent criminalisation for propaganda and for 'praising crime and criminals', under Article 215 of the new Turkish Penal Code,[51] which carries up to ten years imprisonment.[52] It seems that this even extends to members of political parties. İHD Diyarbakır Branch stated that almost 2000 investigations, cases and punishments were brought between January and June 2007 against those who used the word 'Mr' Öcalan in press releases aimed

49 FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul.

50 FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.

51 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

52 FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.

at stopping clashes between the PKK and security forces.[53] Many of these, in fact, were cited for simply using the word 'Kurdish' in the context of the clashes.

Paradoxically, the mission heard that while closure and confiscation notices against newspapers and broadcasters in the 1990s did follow a visible legal process, this is now being overridden by the new Anti-Terror Law.[54] Though notices are still issued in writing, under Article 6, it is possible for the prosecutor to stop a publication and issue confiscation notices without needing a Court decision.[55] Further, under the new Anti-Terror Law newspapers are reportedly no longer given the right to reply and their appeals against such decisions are commonly rejected, contrary to the new Press Law of 2004.[56]

Of particular concern, however, is the arbitrary and pre-trial detention of journalists. While those arrested are likely to be acquitted due to the spurious nature of the cases against them, the mission was disturbed to hear of the frequent and often lengthy periods for which they are detained in prison awaiting trial.[57] This in effect renders punishment before guilt or innocence has been established. Furthermore, for reasons of confidentiality under the new Anti-Terror Law, the mission heard numerous accounts of detainees being denied access to a lawyer and family members, as well as remaining uninformed of the accusation and legal basis of their detention for periods of up to nine months.[58]

Anti-Terror Law and the trial of 23 journalists

The mission was informed of the arrest and detention of Füsun Erdoğan of Özgür Radyo and 22 other journalists under the new Anti-Terror Law in September 2006.[1] This included:

1 from Özgür Radyo
5 journalists from Atılım newspaper
5 from Özgür Halk and Genç Bakış magazines
2 from Odak magazine

1 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

53 FFM interview with Mihti Perinçek, Director and Bülent Temel, Manager, İHD Diyarbakır Branch, 6 July 2007, Diyarbakır.

54 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

55 FFM interview with İhsan Çaralan, Editor, and Şahin Bayar, Günlük Evrensel Newspaper, 5 July 2007, İstanbul.

56 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

57 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

58 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

1 from Ekmek ve Adalet magazine
1 from İşçi Köylü newspaper
3 from Dicle news agency
2 from Gündem newspaper
1 from Alınteri newspaper
1 journalist from Güney magazine
1 journalist from Çoban Ateşi newspaper

Due to the confidentiality clause within Article 6 of the new Anti-Terror Law, for nine months Füsun Erdoğan and her lawyer were uniformed about the basis for her detention at Gebze M-Type Prison, and were only informed in June 2007. She, along with 22 others, was accused of being a member of the outlawed Marxist Leninist Communist Party (MKLP).

This includes Özgür Radyo's News Coordinator, Halil Dinç, and employee Sinan Gerçek, who were also arrested in September 2006 and imprisoned in the Tekirdağ No.2 F-Type Prison for seven months; six months of which they reportedly remained unaware of the basis of their arrest. They were two of ten people released on 13 April 2007. Their release was seen to be indicative of the baseless nature of the indictment against them and many others.

All but three have now been released pending their trial on 26 October 2007. By the time of the trial hearing, Füsun Erdoğan, along with Ibrahim Çiçek and Sedat Şenoğlu, the Atılım newspaper's Editor-in-Chief and Publication Coordinator respectively, will have spent 14 months in pre-trial detention following their arrest. (Also see Part 4: Heavy Penalties, Forced Closures, Investigations and Threats)

This when coupled with the amended PVSK law has perhaps understandably led to the widespread belief that the police are being given far too much power, 'enabling them to stop people in the street, take fingerprints, arrest them and subject them to violence.'[59] Therefore, a primary concern was that the introduction of new legislation and growing reports of the pre-trial detention of journalists may give rise to their torture and ill treatment in police custody. In its August 2007 human rights report, the Diyarbakır branch of the Association for Rights and Freedom of Thought and Education (Özgür-Der), highlighted that since the government's amended PVSK law, right to life violations and incidents of torture and maltreatment are once again increasing.[60]

59 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

60 'ÖZGÜR-DER says new law triggered human rights abuses'; New Anatolian, Ankara; 12 September 2007.

Mission interviews uncovered the wide perception that there is great similarity between new legislation and that which prevailed during the 1980s and 1990s.[61] For instance, the new anti-terror legislation, was regarded as similar to the 1991 Circular on Censorship, which sent many people into exile and led to the arrest of many journalists. Meanwhile, the Police Power Law was likened to that of Martial Law in the 1980s; an example of 'police asking for increased power to kill'.[62]

iii. Police

The mission observed an increasing police presence as it reached the Kurdish cities of Diyarbakır and Batman in south-east Turkey. In Diyarbakır, plain clothed security officials followed the mission to several of its meetings. Furthermore, in Batman security officials were conducting advance questioning of groups with whom the mission was scheduled to meet. This gives some indication as to the tense climate in which ordinary journalists and human rights defenders continue to operate, under the watchful eyes of the authorities. It was made clear that while the police and security forces no longer insisted on remaining present for the meetings themselves as in the 1980s and 1990s, this scrutiny was part of the ongoing daily harassment that they continue to face.[63]

The mission also heard common reports of journalists being subject to harassment, beatings, and being arrested and detained when attempting to travel to and from press conferences, trials and public demonstrations or rallies. Police accusations of having fake identity cards were reportedly used to delay and keep journalists waiting at checkpoints.[64] The mission further heard several reports of journalists being arrested and arbitrarily detained, with some subject to mistreatment, and others having their fingerprints and photographs taken, although they were not officially held in custody.[65]

It was also expressed that while not legally obliged to divulge their sources, journalists are often pressured to hand over videos, cassettes and films to the police on demand. Further, those refusing to do so can become the targets of police harassment.[66]

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61 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

62 FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul.

63 FFM interview with Arif Aslan and colleagues, Journalists' Union, 9 July 2007, Batman.

64 FFM interview with Mehmet Eren, Director, Kurdistan TV Regional Office, 6 July 2007, Diyarbakır.

65 FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

66 FFM interview with Faruk Balıkçı, Head of South-east Journalist Society, 6 July 2007, Diyarbakır.

In brief, the following are some examples of the incidents of police harassment relayed to the mission:

a. In March 2006, several correspondents from Petrol Newspaper showed their identity cards, but were allegedly beaten up by the police for filming demonstrators.[67]

b. In July 2006, Ibrahim Açıkyer was reportedly surrounded by heavy handed police officers in İzmir and questioned about the news agency he was representing. He alleges that they looked at and confiscated his identity card, and attempted to damage his equipment before arresting and keeping him in overnight custody.[68]

c. In April 2007, staff at Özgür Radyo went to show their solidarity at the trial of their colleagues, Halil Dinç, and Sinan Gerçek. They were reportedly accused of being terrorists and exposed to tear gas to keep them outside the court room. They were subsequently arrested.[69]

d. In May 2007, Emin Bal, a reporter with Doğan News Agency was said to have visited the local governor's office in Şırnak. The individual, who is apparently known for refusing to give materials and cassettes to the police, was charged for resisting and beating police officers, whom he claims beat him. He claims that he was also beaten up by the police in October 2006, and has reportedly since been to court eight times. Despite a medical report confirming that he was unfit to work for six days, he was put on trial for beating three officers; no investigation was launched into the conduct of the police.[70]

e. In June 2007, a colleague of Ibrahim Açıkyer was said to have been unofficially arrested by the police in Siirt, badly beaten, and then taken to the police station where he was threatened against working for DİHA. He was allegedly later thrown from a car and left unable to work for one week.[71]

67 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

68 FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

69 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

70 'Third Quarterly Media Monitoring Report', IPS Communication Foundation (BİANET), 30 October 2007, available at http://www.bianet.org/english/kategori/english/102579/third-quarterly-media-monitoring-report-full-text (last accessed 30 October 2007).

71 FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

This highlights the severity of the harassment the mission believes is levelled against opposition journalists, particularly those who are denied official accreditation. Without formal recognition as journalists, and with the general de-unionisation of trade union bodies in Turkey, the Union of Journalists is said to be powerless to help, leaving already vulnerable journalists with very few channels available for recourse.[72]

iv. Turkish Military

It was frequently related to the mission that there were numerous nationalist groups in Turkey who support and incite political tensions and violence.[73] The groups were often described as determined to thwart Turkey's accession to the EU, in order to maintain the status quo and existing balance of power.

In particular, the role and influence of the Turkish military in laying the parameters for freedom of expression and media, and thus interfering with the democratic process, was underlined repeatedly. Some thought that the EU-Turkey accession reforms aimed at ensuring increased civilian control over the military 'shook the balance'[74] and have led to a growing power struggle between the military and the government.[75] The mission heard numerous reports alleging that the military has since attempted to undermine the progress made through its increasing repression of the media.

The mission noted that through inflammatory public statements and memorandums during press conferences and published on its website, the military frequently stirs nationalist sentiment and makes particular journalists, writers and opposition media the targets of the 'Turkish nation'.[76] This includes targeted statements by the Turkish Chief of General Staff, Yaşar Büyükanıt suggesting that Azadiya Welat, a weekly Kurdish newspaper, and Gündem, a daily pro-Kurdish newspaper, are terrorist newspapers.

Gündem believes that it is pursued in part because of its coverage of state complicity in the founding of many illegal organisations to move against opposition, especially Kurdish movements during the 1990s, which it believes have now spiralled out of

72 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

73 FFM interview with Ferzende Kaya and Latif Epözdemir, Esmer Magazine; 4 July 2007, İstanbul.

74 FFM interview with Ferzende Kaya and Latif Epözdemir, Esmer Magazine; 4 July 2007, İstanbul.

75 FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

76 See 'The existential crisis of the Turkish Military', Turkish Daily News, 15 June 2007; available at http://www.turkishdailynews.com.tr/article.php?enewsid=75728 (last accessed 1 September 2007).

control.[77] The mission was informed that if a writer reports on or even mentions the names of any of these illegal state organisations, it is seen as propaganda and the newspaper could face closure.

Gündem's editor, Yüksel Genç, noted that the newspaper was first targeted by one of Büyükanıt's statements on 1 November 2006 (it was then closed six days later, see part 4: Closures, Suspensions and Confiscation Notices), and has thereafter been singled out on 2 February 2007 and on 3 April 2007. Those considered by the state apparatus to have dissenting opinions, especially those critical of the military and voicing suspicion of deep state activity such as with the Şemdinli incident, are at risk of being branded as terrorists and being treated as enemies of the state.[78] Consequently, it was perhaps not surprising to hear that some writers, journalists and media establishments are tempted to err on the side of caution so as to not 'push the military', in fear of recrimination from nationalists, as well as subsequent investigations and legal action by the police, prosecutors and the wider judiciary.[79]

The mission also learned that reporting from the Kurdish provinces of Şırnak, Siirt, and Hakkari in south-east Turkey, declared temporary military zones in June 2007, is not permitted.[80] Thus the ability of journalists to accurately report on the ongoing clashes and the current situation is compromised. The military serves as the only source of information and sends briefing reports to the press as to what they can and cannot write.[81] The mission believes that this acts as a further impediment to Kurdish and other opposition media in reporting about the very incidents which are likely to be most pertinent to their readership.

77 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul

78 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul. Genç drew attention to the nature of one memo published by General Büyükanıt on 27 April 2007, which proclaimed that anyone who says they are not happy as a Turk is an enemy of the state. Similarly, on 8 June 2007, the Turkish Military issued a memorandum declaring and making targets of those who criticise the nation state and who 'use humanity's esteemed values of peace, freedom, and democracy as a cover for terrorist organisations', urging the 'Turkish nation' to show 'their reflex action'. See 'The existential crisis of the Turkish Military', Turkish Daily News, 15 June 2007; available at http://www.turkishdailynews.com.tr/article.php?enewsid=75728 (last accessed 1 September 2007).

79 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

80 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

81 FFM interview with Ertuğrul Mavioğlu, Deputy News Editor of Radikal Newspaper, 4 July 2007, İstanbul.

v. Judiciary

While investigations and violations of the right to freedom of expression are increasing, the mission discovered that the arbitrary application of legislation has also led to widespread distrust in the judicial system.[82]

In January 2006, the Ministry of Justice issued a circular regarding cases of freedom of expression in written and visual media, instructing prosecutors to take into consideration both Turkish legislation and the ECHR.[83] Yet time and time again the politicised nature and lack of independence of the Turkish judicial system, and the attendant problem of how prosecutors and judges choose to interpret and implement legislation, was reported.[84] This was said to be contingent on 'politics and the approach of the state', with the atmosphere in the country determining whether and how to criminalise something not previously so-interpreted.[85] In this vein it was suggested that in Turkey's increasingly repressive political climate, unlawful punishments are not only being approved by the higher appeal courts, but are being sent back to the lower courts in order to increase sentences regarded as too lenient.[86]

Although it is less problematic among the seemingly more open-minded new generation of judges and prosecutors,[87] their older counterparts' arbitrary treatment of local reporters was frequently emphasised.[88] This was said to have extended to some members of the judiciary consciously scanning press articles and reports to 'single out sentences that they can connect with terrorism'.[89] Indeed the EU's own progress report on Turkey in 2005 highlighted;

82 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

83 Turkey 2006 Progress Report EN{COM (2006) 649 final}.

84 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

85 FFM interview with İhsan Çaralan, Editor, and Şahin Bayar, Günlük Evrensel Newspaper, 5 July 2007, İstanbul.

86 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

87 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

88 FFM interview with Arif Aslan and colleagues, Journalists' Union, 9 July 2007, Batman.

89 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

> serious concerns about the capacity of certain judges and prosecutors to make decisions in accordance with Article 10 ECHR and the relevant case law of the ECHR.[90]

The report noted the 'restrictive manner' in which vaguely worded provisions within the new Penal Code, most notably Article 301, are interpreted to the detriment of freedom of expression protections in Turkey.

In particular, the mission was concerned to hear about how these continued disparities of interpretation were contingent on the personality or identity of the individual under investigation. Kurds were said to often be distinguished as 'the other' which thus made it easier for them to be made targets.[91] For instance, it was suggested that if a Kurd makes a statement championing democracy and human rights, which bear similarities to the aims and goals of an illegal organisation, they risk prosecution for terrorism and propaganda under Article 220 (8). At the time of the mission, the Diyarbakır Bar Association further reported that there were six times more people on trial under Article 220 in the Diyarbakır region alone, than those under Article 301 in the whole of Turkey.[92] Further, the mission was informed that Article 301 was being used to prosecute Turks, whereas Article 220 was being used against the Kurds.[93] Similarly, Islamist Kurdish magazine, Mizgin, discerned that for those living in the south-east, cases that could in fact be dealt with within the scope of 301, are instead being brought under others articles such as 216. This is especially interesting given the publicity and debate centred on the use of Article 301 against Turkish intellectuals, with very little discussion or knowledge of the everyday application of Article 220 (8) or other lesser known articles of the Penal Code, against Kurds. When you consider the number of cases under Article 220 (8) it is more than five or six times than those under 301 but no-one is talking about this 220 article.[94]

90 Turkey 2005 Progress Report EN{COM (2005) 561 final}, 26.

91 FFM interview with Mihdi Perinçek, Director and Bülent Temel, Manager, İHD Diyarbakır Branch, 6 July 2007, Diyarbakır.

92 According to a survey by the Diyarbakır Bar Association, of the 150 persons brought before the Heavy Penal Court last year, 38 were sentenced under Article 220 (8) after making statements calling for an Amnesty and end to the village guard system in Turkey. FFM interview with with Sezgin Tanrıkulu, Chairman of the Diyarbakır Bar Association, 6 July 2007, Diyarbakır.

93 FFM interview with with Sezgin Tanrıkulu, Chairman of the Diyarbakır Bar Association, 6 July 2007, Diyarbakır.

94 FFM interview with with Sezgin Tanrıkulu, Chairman of the Diyarbakır Bar Association, 6 July 2007, Diyarbakır.

Mizgin magazine
Mizgin magazine was established in 2004 and has so far published 35 issues. It is a bilingual (available in Turkish and Kurmanji) Islamist-orientated magazine which focuses on the Kurdish question. Although it covers politics and issues facing Turkey, it is mainly concerned with art and culture. The mission heard of the numerous difficulties that the magazine has faced, which it believes is less to do with the content of its work, and more to do with the Kurdish but also Islamist identity of the magazine.

To date it has faced 20 legal investigations against its writers. Since 2006 every one of its issues has been investigated, as opposed to every third or fourth issue previously. While some of these have led to acquittals—and are seen to be indicative of the baseless nature of the allegations—other cases are still ongoing.

Article 216 was cited as the article of the Penal Code most commonly applied, which they regarded as being used tactically to target local journalists without being overtly seen to violate Article 10 of the ECHR. Mizgin explained that under Article 216, the magazine's discussion of Kurds and the Kurdish regions was being interpreted as ethnically discriminating and therefore 'inciting groups of the population to breed enmity or hatred towards one another' on the basis of ethnicity. Examples given of articles under investigation include one criticising the policy towards Kurds across Iraq, Iran and Syria and how the language of Islam has been used against the Kurds. On another occasion writer Hamza Aksal was said to have been prosecuted for using the word 'Amad', the old name for Diyarbakır, in an article. Meanwhile, another case was reportedly brought after one of Mizgin's articles discussed the history of the Kurds, and their division and subsequent persecution within the newly formed nation-states following the Treaty of Lausanne.

The mission was further informed about how the names of certain individuals can alone be the basis for launching investigations, irrespective of what they have actually written. This was held to be illustrative of the mentality of the judiciary.[95] Esmer magazine considered the treatment of sociologist and writer İsmail Beşikçi to be obsessive in that ever since he wrote a critique of the Turkish state and Kurdish tribes the 'police launch a case anytime he writes or publishes anything'.[96] Meanwhile, the Turkish Journalist Association warned that as in the case of Ragıp

95 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

96 FFM interview with Ferzende Kaya and Latif Epözdemir, Esmer Magazine; 4 July 2007, İstanbul.

Zarakolu, the same investigation may be brought twice simply because prosecutors may have forgotten to delete the usual suspects from their list.[97]

vi. Self-censorship

The mission believes that self-censorship within the media is of clear concern given the reportedly repressive climate, and problems in the interpretation and application of recent legislation.

It heard mixed reports as to its current practice. On one hand, it was informed that there is now much greater discussion of issues considered taboo in the past, suggestive of the expanding boundaries for freedom of expression. Through the impact of the high profile freedom of expression cases against intellectuals and writers from 2005 to 2006 (see also part 2: Recent Domestic Legal Provisions), Turkey was regarded by some to have reached a point where there is now at least dialogue on democracy.[98] Others too suggested that the current discussion about the problems of the new Turkish Penal Code is indicative of the progress that has been made, with new media and the internet further creating opportunities for broader debate.[99]

Nevertheless, the mission found that the discussion of the Penal Code is itself largely limited to Article 301, and its use against prominent Turkish intellectuals and writers. Indeed the media, especially mainstream press, was viewed as acting unethically through its practice of self-censorship in this regard. The mission heard that the media's continued focus on these prominent cases, and not on the wider problem facing minority and opposition journalists, contributes to the bias which exists. This leads to a lack of public knowledge and awareness of equally controversial articles of the Penal Code which are used to criminalise ordinary individuals, most notably Kurds.[100]

The mission also believes that it is necessary to look at who exactly is permitted to contribute to widening discourse. While there is greater debate with the international community, and within mainstream Turkish society, the mission found that critical opposition reporting, particularly through Kurdish media, is much less acceptable. The mission heard that though Kurdish and other opposition

97 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

98 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

99 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

100 FFM interview with Mihdi Perinçek, Director and Bülent Temel, Manager, İHD Diyarbakır Branch, 6 July 2007, Diyarbakir.

media may paraphrase or reproduce word for word extracts of news published or broadcast by mainstream agencies, they and not the news source are most likely to be prosecuted. For instance, Kurdish station 'Özgür Radyo is understood to be targeted over small issues', with their broadcasts suspended for playing Kurdish music or for reading newspaper articles published by the national press. Meanwhile nothing is seen to happen to the more mainstream national news television channel NTV when it engages in critical reporting.[101] As stated by Ertuğrul Mavioğlu,

> the greater discussion around issues considered taboo in the past, does not really change the reality of the still many taboo subjects, principally the Kurdish issue.[102]

Rather, the limitations on freedom of expression and of the media now 'appear in different shapes' through the practice of self-censorship, as people 'tell themselves what they can and cannot speak about'.[103] It would seem that there is an implicit understanding of the boundaries permitted, and journalists are 'free' in so far as they comply and work within the approved system.[104] This includes the press obliging in submitting copies of each issue of their newspaper or magazine to the Prosecutor's office after it has been published.[105] Mizgin reported that since 2006 they have been called to testify at the local Prosecutor's office within ten days of publishing each issue.[106] The mission learned that failure to do so can not only lead to fines or closure notices, but it believes that investigations brought as a result of what has been published can likely influence future editorial policy. As İHD Batman Branch points out, due to frequent investigations, journalists are more likely to labour over each sentence when writing press releases and reports, for 'fear of what prosecutors might pick up'.[107] They continued:

> Regardless of whether Kurdish, Socialist, Islamist or Kemalist, we all face trouble. Anything not considered good for security of the state might be

101 FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul

102 FFM interview with Ertuğrul Mavioğlu, Deputy News Editor of Radikal Newspaper, 4 July 2007, İstanbul.

103 FFM interview with Ertuğrul Mavioğlu, Deputy News Editor of Radikal Newspaper, 4 July 2007, İstanbul.

104 FFM interview with İhsan Çaralan, Editor, and Şahin Bayar, Günlük Evrensel Newspaper, 5 July 2007, İstanbul.

105 FFM interview with Journalists' Union, 9 July 2007, Batman.

106 FFM interview with Abdullah Yetik, Hamza Aksal, Mahmut Sezu, and Bayram Kılıç Mizgin Magazine, 7 July 2007, Diyarbakır.

107 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

> subject to an investigation…Anything that is said that is not compatible with what the state does, leads to trouble.[108]

The mission believes that the practice of self-censorship has certainly been reinforced through the introduction of the new Penal Code. The new Penal Code added to growing anxiety among journalists about what they could write and talk about in order to conform to Article 301 and avoid undue interest from the authorities.[109] Although the journalists with whom the mission met were adamant that they would not be deterred personally, they too conceded that others may likely tire and be discouraged from speaking freely if subject to constant investigations and harassment. Turkish writer and journalist Perihan Mağden was cited as an example of someone who was especially critical of Turkey's F-Type prisons, but following persistent legal investigations has stopped writing about them.[110]

This contention is supported with regard to discussion of the Kurdish question, with some journalists in Batman said to be consulting lawyers to approve articles so that contentious sentences and or words can be removed prior to their publication.[111] Therefore, the greater degree of self censorship which appears to occur among some sections of the media in Batman could perhaps explain the fewer reports of recent prosecutions against journalists there, unlike in İstanbul and Diyarbakır.

vii. Classification of Journalists

The mission was informed about confusion regarding the statistics of who is and is not considered a journalist.[112] The Turkish Journalist Association for instance refuted claims of the numbers of journalists currently in prison in Turkey. It asserted that many of those calling themselves journalists do not fit the 'legal definition', since they have not been issued a Yellow Press Card from the Prime Minister's Office. It asserted further that these prosecutions were therefore not violations of the right to freedom of expression.

Yet it was evident to the mission that the Prime Minister's office is likely to be reluctant to give Press Cards to known opposition voices in Turkey.[113] Therefore, as

108 FFM interview with Ferhat Bayındır, Abdullah Baytar and Reşat Alunci, of İHD Batman Branch, 9 July 2007, Batman.

109 FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

110 FFM interview with Ertuğrul Mavioğlu, Deputy News Editor of Radikal Newspaper, 4 July 2007, İstanbul.

111 FFM interview with Journalists' Union, 9 July 2007, Batman.

112 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

113 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

detailed by DİHA, those not given accreditation and known as opposition figures to the governor's office can be denied entry into official meetings either as journalists or as ordinary citizens.[114]

The mission was informed about the limitations and arbitrary nature of the press card system in practice. Regardless of whether or not one is in possession of a press card, access to press conferences are often granted or denied as a matter of luck.[115] For instance, Kurdish newspaper Azadiya Welat reported that because they have been denied press card accreditation, they are technically banned from reporting. Yet, the 'W' in Welat, which does not exist in the Turkish alphabet, is not always recognised by Turkish officials, who therefore assume them to be foreigners as opposed to pro-Kurdish press, and let them in.[116] Alternatively, the local regional office of satellite television station Kurdistan TV (KTV), based in northern Iraq, highlighted that because of the word 'Kurdistan' in their name, they are not allowed to attend and report on any official celebrations, such as a rally held for visiting politicians in March 2007.[117]

The mission also heard consistent reports about the military's influence in classifying those with press cards into two groups: 'pro' and 'contra' military; effectively those considered 'trustworthy' and 'untrustworthy'.[118] Therefore, those deemed critical of the military, irrespective of their technical accreditation as journalists, are still reportedly subject to exclusion from press conferences and risk being discredited and labelled as 'dangerous' in statements by the military.[119] This was said to extend to non-Kurdish media in Turkey supporting the rights of Kurds, who consequently risk having their accreditation cancelled.[120]

Finally, the 'thick red line dividing the media' it would seem is further determined by the larger media groups, who themselves do not apparently consider smaller newspapers, be they pro-Kurdish or not, as proper journalists.[121]

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114 FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

115 FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

116 FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

117 FFM interview with Mehmet Eren, Director, Kurdistan TV Regional Office, 6 July 2007, Diyarbakır.

118 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

119 FFM interview with Songül Özbakır, Executive of Özgür Radyo, 5 July 2007, İstanbul.

120 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

121 FFM interview with Fikret İlkiz, Legal Advisor, Nadire Mater, Project Advisor, and Ertuğrul Kürkçü, Project Co-ordinator, Bianet, 4 July 2007, İstanbul.

The mission accepts the legitimacy of challenging the basis on which individuals claim to be journalists. It also believes that a small proportion of those claiming to be prosecuted for freedom of right violations as journalists, may have been subject to investigations as a result of their suspected involvement in illegal, mostly communist organisations in Turkey. Nonetheless, it is under no doubt that many with whom it met were in fact journalists working for legitimate newspapers and broadcasters, and were merely reporting on news of interest to their demographic. The mission therefore found questionable the claim that those currently in prison or under investigation are not 'real journalists' or that they are working for 'terrorist newspapers'. The mission believes that more often than not, the motivation to prosecute many of the journalists in the south-east under Article 220 (8) and 216, is to curb freedom of expression, without being explicitly seen to do so by the international community.

viii. Media Monopolies and Ownership

Media monopolies were also noted as a contributory factor hindering freedom of the media in Turkey.[122] The mission was informed how the profile of media ownership and control has changed since the 1960s and 1970s. Whereas owners then often started their careers as columnists, a number of interviewees noted that today they are predominately businessmen.[123]

In Turkey, as elsewhere in the world, media ownership has become increasingly concentrated. This followed economic problems in the 1980s when bankruptcy led many formerly independent television stations and newspapers to become state owned. Although many have since been sold on, it was suggested that buyers have largely been pro-government friends and supporters who will thus be favourable towards the government. It was further suggested that there remains ongoing controversy as to whom existing state-owned media will next be sold. Therefore, the impression conveyed to the mission was that there is increasingly no opposition media in Turkey, and that the editorial policies among the mainstream actors are often largely motivated by investment interests and towing the party line.[124]

122 FFM interview with Ertuğrul Mavioğlu, Deputy News Editor of Radikal Newspaper, 4 July 2007, İstanbul.

123 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

124 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

4. BROADCASTING, PRINT AND ONLINE MEDIA: RECENT ACCOUNTS

As outlined above, there has been a rapid escalation in reports of harassment, arbitrary and pre-trial detention and criminalisation of journalists, publishers, political activists, and human rights defenders, who have tried to exercise their basic right to freedom of expression. In view of the sheer volume of recent cases brought against individuals and institutions in the media in Turkey, this section simply highlights some of the most notable accounts relayed to the mission of the ongoing restrictions faced and the arrests, prosecutions, and incidents of intimidation.

a) Broadcasting Media

Despite the lifting of restrictions on Kurdish language broadcasting having been lauded as one of the major achievements of the harmonisation packages, the mission discovered that the efficacy of procedures established for its implementation were questionable. It was also informed that after a period of relative calm between 2005 and 2006, pro-Kurdish and socialist orientated broadcasters have once again increasingly come under fire from the authorities and regulators.

i. Restrictions on Kurdish Language Broadcasting

In recognition of the inadequacies of earlier reforms to minority language legislation, the sixth Harmonisation Package in June 2003 amended Articles 4 and 32 of the Act on the Establishment and Broadcasts of Radio and Television Stations.[125] This allowed private as well as public radio and television stations, to undertake broadcasts in languages and dialects used by Turkish citizens traditionally in their daily lives, including Kurdish. However, it did not permit local language broadcasting aimed at children or providing Kurdish language education.

The mission learned that today a number of prohibitive restrictions remain in practice, which in effect have either greatly obstructed or forced the closure of Kurdish language broadcasters. Interviews confirmed that the state Public Turkish Radio and Television Corporation (TRT), only provides limited Kurdish language broadcasting, and as identified by the EU, no applications for broadcasting in

125 Reforms in 2002 had only permitted Kurdish broadcasting by state-owned media.

languages other than Turkish have been made by private broadcasters at the national level.[126] Many thus appeared sceptical, viewing recent reforms as merely a tactic to give the impression to the EU that people in Turkey, as elsewhere in Europe, are allowed to enjoy their cultural and language rights.[127] Meanwhile the perceived reality is that the ongoing restrictions, detailed below, underscore the unchanged mentality of bureaucracy and state officials, despite legislative changes.[128]

ii. Time Limits

The state has retained a firm control over the nature and scope of Kurdish language broadcasting in the private media. The mission was informed that by law, Kurdish language broadcasting is still not permitted during the weekends and that a strict threshold remains as to the maximum number of hours that is allowed during the weekdays.[129] On television, Kurdish language broadcasting must still be limited to just forty-five minutes per day and a maximum of four hours per week.[130] On the radio, it is limited to just one hour per day, with a maximum limit of five hours per week. While limits exist as to the maximum numbers of hours per week permitted, since the lifting of restrictions by the higher Turkish Radio and Television Supreme Council (RTÜK) in May 2006, it is possible to use this up in one day such as in the case of music and film programmes.[131] However, it was clear that this was not widely understood or known among the broadcasters the mission met. Five years on, the ongoing enforcement of such limitations—which have scarcely changed since being identified as problematic in 2002—undermines the supposed 'freedom' that Kurdish language broadcasters were said to have been granted.

iii. Kurdish to Turkish Translation

As set out in the reforms of 2002, with exception to music, Kurdish language broadcasters remain under the obligation to provide simultaneous Turkish subtitles, or have an equivalent Turkish broadcast immediately following a Kurdish programme. The costs and infrastructure necessary to comply with this render live broadcasts in Kurdish practicably impossible. The mission was also informed about linguistic problems in the technical ability of Kurds to translate from Kurdish

126 Turkey 2006 Progress Report EN{COM (2006) 649 final}, 21.

127 FFM interview with Ahmet Birsen, Gün TV and Radio, 7 July 2007, Diyarbakır.

128 FFM interview with Ahmet Birsen, Gün TV and Radio, 7 July 2007, Diyarbakır.

129 As per the strict time limits set by the 2004 Act on the Establishment and Broadcasts of Radio and Television Stations. See Turkey 2004 Progress Report EN{COM (2004) 656 final}

130 FFM interview with Söz Newspaper and TV, 7 July 2007, Diyarbakır.

131 Previous reforms in 2002 had enforced a limit on radio broadcasts in Kurdish or other regional languages of 45 minutes per day and a total of four hours a week. Meanwhile, television broadcasts in Kurdish could not exceed 30 minutes a day and a total of two hours a week.

to Turkish, since Kurds have not been able to study Kurdish in school as the right to mother tongue education remains severely curbed in Turkey.[132]

iv. Pre-approval of Kurdish Broadcasts

The mission was concerned to hear further reports from Gün TV that Kurdish language broadcasts need to inform RTÜK in advance as to their content and preparation, by detailing the time, duration, speaker and producer of the broadcast.[133] Söz Newspaper and TV however claimed that advance permission was not required, as long as the broadcaster prior to commencing their Kurdish language broadcasting had agreed to fulfil certain criteria, with regards to news and entertainment.[134] This may again be indicative of the misunderstanding or indeed, arbitrary implementation, of current regulations among local broadcasters.

v. Banned Kurdish Cassettes and Songs

The mission heard repeated reports of prosecutions being filed against broadcasters for playing songs from a list of banned Kurdish cassettes and albums, most notoriously those by famous Kurdish singer Ferhat Tunç.[135] Although it is alleged that officially no such list— which originated under the 1983 Olağanüstü Hal (State of Emergency Legislation, OHAL)— exists any longer, numerous individuals gave reports to the contrary. The mission heard that although broadcasters have continued to request updated copies of the list, it has ceased to be distributed since 2004. This was said to have resulted in broadcasters unwittingly being penalised for playing supposedly banned songs. Once again, the covert nature of this seemingly ongoing practice is explained by way of Turkey's desire not to be seen to still enforce this externally, in the context of EU-Turkey accession negotiations.[136]

vi. The Higher Turkish Radio and Television Supreme Council (RTÜK)

The mission was uncertain about the role and independence of the media regulatory body RTÜK. Although it must decide on suspensions of broadcasting, RTÜK was reported to lack expertise and staff who speak Kurdish. Further, as was pointed out by the EU in its 2005 Progress Report, the police monitor local

132 FFM interview with Ahmet Birsen, Gün TV and Radio, 7 July 2007, Diyarbakır.

133 FFM interview with Söz Newspaper and TV, 7 July 2007, Diyarbakır.

134 Ferhat Tunç is himself undergoing an ongoing three year trial for 'insulting and ridiculing the court.' It follows his article entitled 'A Revolutionary Leyla and a Song' published in the Yeniden Özgür newspaper on 19 January 2004. In the article, Tunç criticised the court case in which Leyla Zana and other former Democracy Party (DEP) MPs were tried while in detention. The case against him will continue on 13 December 2007.

135 FFM interview with Söz Newspaper and TV, 7 July 2007, Diyarbakır.

136 FFM interview with Söz Newspaper and TV, 7 July 2007, Diyarbakır.

broadcasts on behalf of RTÜK.[137] This was said to lead to them being unduly reliant on translations provided by the police to launch investigations against Kurdish language broadcasters.[138] This was raised as an area of concern to the mission, given that the police increasingly harass members of the opposition media. It was the general perception of those with whom the mission met that police translations may prove less than objective due to possible personal prejudices and lack of cultural awareness of Kurdish issues.[139] The mission further heard that under the new Anti-Terror Law, the police were raiding television and radio outlets and preventing broadcasting without RTÜK's authorisation.[140] Meanwhile, the government's recent decisions in relation to RTÜK's appointment procedure[141] further appear to have contributed to its perceived state-orientated outlook.[142]

vii. Heavy Penalties, Forced Closures, Investigations and Threats

The mission was concerned to find out about the severe and disproportionate nature of the fines applied to Kurdish language broadcasters, for failure to meet the strict restrictions placed upon them. This includes a fine of 4.5 billion old Turkish Lira (equivalent of $3,000) against Söz TV after the station played songs by famous Kurdish singer Ferhat Tunç. The case brought two years ago, is undergoing appeal at the time of writing.

Another illustrative case is that of Gün TV and Radio. Gün was originally established as Mentral television station in 1996. It was shut in down in 1999 and then again in 2002. After it changed its vision and mission, it officially changed its name to Gün TV in 2002. At the same time, it started Gün Newspaper and Radio. However, due to pressure from officials and heavy fines forcing them into financial difficulties, they had to make a choice of keeping one or the other, or risk losing both. Gün Newspaper was closed in 2004. In the meantime, following a change to Kurdish language broadcasting restrictions in 2003, it became the first private station to apply to RTÜK for permission to make a weekly Kurdish language series on culture and art. This was only granted in 2006.

Gün reported that after the commencement of their Kurdish language broadcasting, they came under increasing pressure from the authorities. For instance, they cited

137 Turkey 2005 Progress Report EN{COM (2005) 561 final}, 26; FFM interview with Ahmet Birsen, Gün TV and Radio, 7 July 2007, Diyarbakır.

138 Turkey 2005 Progress Report EN{COM (2005) 561 final}, 26.

139 Turkey 2005 Progress Report EN{COM (2005) 561 final}, 26.

140 See Turkey 2006 Progress Report EN{COM (2006) 649 final}, 16.

141 FFM interview with FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Ding, of Özgür Radyo, 4 July 2007, İstanbul.

142 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

the launch of an ongoing legal investigation after they played a song called 'Siya Save', which contained the word 'Kurdistan'. Gün stated that the 100 year old song by an anonymous singer was written for Kurdish princes, and so has no political meaning. Most recently, Gün was fined 80 billion old Turkish Lira by RTÜK (the equivalent of 80,000 YTL or $60,000) for inciting people against the police. This was said to have resulted from a television report on the 'security circle' established by the police following on an explosion in Diyarbakır city centre on 12 September 2006, in which ten people, including several children, were killed. During the broadcast they had reported the shutting down of shops in the area for security reasons. Gün stated that the extreme and disproportionate nature of the fine has forced them to borrow money in order to make small incremental payments and avoid being shut down. In the meantime, they have appealed the decision to the regional administrative court. [143]

The mission learned that the enforcement of such heavy fines has subsequently forced many Kurdish language broadcasters to either shut down or downsize their operations in the face of financial ruin. This was said to have left just three remaining local stations broadcasting in Kurdish: Gün TV and Radio, Söz TV and a station in Urfa. [144]

The mission also heard the testimony of socialist station, Özgür Radyo ('Free Radio') and the raids and legal investigations instigated against them since September 2006.

Özgür Radyo was established in 1995. The mission was informed that due to its oppositional stance, it has been closed four times during its twelve years of operations, in 1999, 1998 and 2000 and 2004. However, it reported that violations began again when its Chief Broadcasting Coordinator, Füsun Erdoğan, was arrested in the street on 8 September 2006 and the radio's premises were raided thereafter on 21 September 2006.

Özgür Radyo was reporting on raids against other media establishments when 30 to 40 police officers were said to have raided their offices, and many others from the anti-terror branch surrounded their premises at 5pm. They were reported to have stopped the station from continuing its broadcasts, in violation of the Press Law. The station further claimed that it had not been given advance warning from RTÜK, nor did the police wait for lawyers to be present before searching the building, as is customary. Police seized computers, cameras, recording equipment, and journalist's

143 The station also has bureaus in Iran, Syria and Europe. Its programmes are mainly for Kurds in Kurdistan, so it is mostly in Kurmanji and Sorani, and also features programmes in Arabic and Syriac for Syrians, with English-language programmes once a week.

144 FFM interview with Söz Newspaper and TV, 7 July 2007, Diyarbakır.

note books; everything but their tables and chairs. The only computer that was said to have not been touched was the one they used for broadcasting; its hard disc was instead copied. The police were reported to have left the building at 1am, in a state of disarray.

During the office raid, the police claimed they found a typed list naming the members of the outlawed MKLP. However, the mission is doubtful about the likelihood of an illegal organisation openly and explicitly naming its members in this way. The mission heard many reports suggesting that those suspected or accused of membership of an illegal organisation were set-up, with circumstantial evidence being used to show them as belonging to or having broadcasting policies that are parallel to the aims of terrorist organisations. Those arrested believed that they had been targeted in their capacity as journalists, with a view to suppressing social opposition to the authorities and restricting the media from providing information to the public.[145]

More recently, the radio station claimed that they had received two threats on 2 February 2007 from the Turkish Revenge Brigade (TİT). This group has also similarly been linked to threats made against Hrant Dink (who was subsequently murdered), Orhan Pamuk (who fled Turkey fearing the seriousness of the threats made), and other Turkish intellectuals. The threats warned them to be careful and that one of their staff members would be killed if they did not change their broadcasting policy, underlining that they knew where they live, and what time they come to and leave the office. This was said to be illustrative of the mob mentality that accompanies the trials of those charged under Article 301. The station stated that it had sent a complaint to the local prosecutors' and governors' offices, but that there had been no outcome and reportedly no attempt had been made to trace the Internet Protocol address or computer from which the email threat had been sent.

viii. Satellite Television

Kurdish satellite television KTV is based in Kurdistan, Iraq. It established a bureau in south-east Turkey in June 2006 as part of its policy 'to produce Kurdish television and improve Kurdish culture for Kurds everywhere'.[146] The operation of KTV would seem to indicate progress in the greater availability of Kurdish language broadcasting

145 FFM interview with FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul.

146 It also has bureaus in Iran, Syria and Europe. FFM interview with Mehmet Eren, Director, Kurdistan TV Regional Office, 6 July 2007, Diyarbakır.

in Turkey. Yet the mission was informed that its viewing figures have grown as a result of increased suppression of the Kurds, and of Roj TV in particular.[147]

Danish-based Roj TV has been available in Turkey since 2004. Yet the Turkish government has in the past successfully pressured both the British and French authorities to revoke its license as MED TV and MEDYA TV respectively, by claiming that it has links with and is the voice of the PKK.[148] It continues to lobby against the Danish authorities in this regard, despite the May 2007 proclamation by the Danish courts that the station's broadcasts are legal. In addition, 56 mayors of the pro-Kurdish DTP Party are currently on trial under Article 314 of the Penal Code for 'membership of an illegal organisation' (i.e. the PKK). This was brought after they wrote a letter to the Danish Prime Minister in December 2005, underlining Roj TV's importance for Kurdish culture and exhorting him not to shut it down.[149] The Mayors were arrested in September 2006 and their trials are ongoing. Their lawyers are also being prosecuted.

The government has further been accused of interfering with and breaking Roj TV's signal to hinder viewing, which has apparently led to a growing KTV audience.[150] As of October 2006, the Roj TV signal has been completely blocked in several cities throughout east and south-eastern Turkey, while other cities in western Turkey experience disrupted signals. This seems to underline the degree to which the government seeks to extend its influence beyond the country's physical borders in order to restrict the use of Kurdish within Turkey.[151]

Nonetheless, KTV Director Mehmet Eren believes that in his 17 years as a journalist— during which he has been arrested 20 times, subjected to torture and has witnessed the killing of his peers— he has observed a relatively improved situation since the EU accession process began. He relayed to the mission that although he is subject to continued harassment, following the commencement of accession talks he has not been arrested nor have his offices been raided. Yet at the same time, he cited the numbers of people in opposition and Kurdish media still on trial and in prison under the new Anti-Terror Law and PSVK legislation. In this regard, he did

147 FFM interview with Mehmet Eren, Director, Kurdistan TV Regional Office, 6 July 2007, Diyarbakır.

148 Roj TV was initially established as MED TV in the UK. After its license was revoked in 1999, it re-established itself as MEDYA TV using a satellite link up with France to broadcast from Brussels. Its license was revoked by the French authorities in 2004. Its subsequently re-established itself once more as Roj TV in Denmark in 2004.

149 FFM interview with with Sezgin Tanrıkulu, Chairman of the Diyarbakır Bar Association, 6 July 2007, Diyarbakır.

150 FFM interview with Mehmet Eren, Director, Kurdistan TV Regional Office, 6 July 2007, Diyarbakır.

151 See KHRP's Human Rights Violations Against Kurds in Turkey, Report Presented to the OSCE, OSCE Human Dimension Implementation Meeting, 24 September - 5 October 2007.

not believe the situation regarding human rights and freedom of expression had improved sufficiently. He underlined that the station is not officially registered as Kurdistan TV due to legal difficulties in Turkey, yet through the use of its signature KTV equipment is known by the Turkish authorities. He further pointed out that since the Kurds gained power in Iraq, and due to its Kurdish language broadcasting and pro-Kurdish orientation, KTV is always subject to harassment such as being followed, filmed, and pictured by security forces, as well as being obstructed from attending and reporting on public rallies.

b) Print Media

i. Office Raids, Closures, Suspensions, and Confiscation Notices

The mission was shocked to hear of recent raids against media establishments and the still frequent closures of and confiscation notices against local, particularly pro-Kurdish, newspapers.

According to İHD, eight newspapers and publishing companies were raided in the first half of 2007; four were magazine offices, three newspapers and one a new agency.[152] For instance, following its publication of diary extracts concerning planned military coups in 2004, Nokta magazine's offices were raided by fifty police officers on 13 April 2007 at the request of the Military Prosecutor of General Staff.[153] The premises were said to have been occupied for four days, during which time files on their computer hard drives were examined and copied.[154] This was described as a violation of the Press Law, according to which no journalist or publication can be forced to divulge its sources.[155]

The mission further heard that Article 6 of the new Anti-Terror Law has been used to override Turkey's constitutional and press laws, which prohibit the closure of newspapers.[156] The mission was informed that in March 2007 alone, five pro-

152 'Human Rights Violations in Turkey January-June 2007', Documentation Office of Human Rights Association (İHD), 21 October 2007.

153 'Daily Human Rights Report', Human Rights Foundation of Turkey, 16 April 2007, available at http://www.tihv.org.tr/EN/index.php?option=com_content&task=view&id=300&Itemid=75 (last accessed 10 September 2007).

154 See '"Nokta" magazine's offices raided, files copied, premises occupied by police for four days, following critical articles about military', IPS Communication Foundation (BIANET), 24 April 2007, available at http://www.ifex.org/en/content/view/full/82760 (last accessed 11 September 2007).

155 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

156 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

Kurdish newspapers were shut down, including most notably Gündem and Azidiya Welat. [157]

Gündem (Agenda) originally started as Özgür Gündem (Free Agenda), in 1990 and as recognised by the International Press Freedom Awards in 1996;

> was widely read and respected as an unbiased newspaper that offered readers an alternative to the inadequate coverage of the Kurdish issue by the mainstream, pro-government media. And it also broke new ground with its hard-hitting reporting on the fighting between the military and the PKK guerrillas in the country's Southeast. [158]

It has famously re-invented itself 17 times during its 17 years, for each of the occasions on which it has been faced with closure or suspension. Since its establishment it has experienced increasing numbers of investigations and court cases, and the deaths and the disappearances of many of its staff and friends. [159] It also had its offices in İstanbul bombed on 4 December 1994. This was undoubtedly due to its critical reporting and pro-Kurdish standpoint at the height of political tensions in Turkey during the 1990s.

Gündem's editor relayed to the mission its most recent experiences prior and subsequent to the opening of Gündem Newspaper's latest incarnation on 17 January 2007. Yüksel Genç confirmed that from 1 March 2004 until its closure on 16 November 2006, it was in operation as Ülkede Ozgür Gündem (Free Agenda in the Country). During this two and a half year period it had reportedly over 700 cases brought against its editors, some journalists and correspondents, had tens of thousands of issues confiscated, had its offices raided, was fined a total of 344,964 YTL (approximately $289,675), and was twice closed. Its second closure by İstanbul's 10th High Criminal Court in November 2006 was for allegedly conducting propaganda for the PKK and praising crimes committed by this group in 13 of its issues. Its closure came after the newspaper published extracts from the diaries of the ex-soldiers allegedly involved in the Şemdinli incident, and six

157 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

158 'Freedom Awards'; The International Press Freedom Awards; Committee to Protect Journalists; http://www.cpj.org/attacks96/frontmatter/ipfa.html; (last accessed 18 September 2007).

159 The confessions two years ago of a former PKK member Abdulkadir Aygan arrested in 1987, confirmed the existence and long suspected involvement of the gendarmerie intelligence organisation (JITEM), whom he subsequently joined, in the disappearances and deaths of Gündem's journalists and friends during the 1990s. Twenty-three bodies of the 25 people reported missing have since been discovered. The youngest killed was a ten year old volunteer distributor for the newspaper. FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

days after a statement by Büyükanıt declaring that 'its publications should not be permitted'.[160] Gündem's premises were also raided in December 2006.[161]

Since January 2007, the newspaper has been closed on four separate occasions. It received its first closure punishment as Gündem Newspaper on 6 March 2007 under Article 25 of the Press Law for 'praise of a criminal' and 'propaganda for a terrorist organisation'. The reason given for its closure was for a series of news reports on the alleged poisoning of Abdullah Öcalan, the founder and former leader of the PKK, headlined 'Öcalan is being poisoned', 'Kalkan: participation in the guerrilla fight increases' and 'Kurds appeal to Öcalan'.[162] However, controversially, the same court handed out two separate decisions concerning the grounds for its one-month suspension, on the same day.

On 9 March 2007, it reopened under the name Yaşamda Gündem (Agenda in Life). According to its Editor, 'this was a really rushed time with military operations going on'. The groups and individuals with whom the mission met referred to this as a 'shutdown paper', since it was shutdown before it was able to write or publish anything on the grounds that it was the continuation of Gündem newspaper. This was widely seen as a scandal since they were notified that not only the first, but also all future unpublished issues would be confiscated. This would appear to criminalise the newspaper's intent as perceived by the prosecutor.

Güncel (Contemporary/Actual) was subsequently launched on 19 March 2007. It was operational for twelve days. In late March 2007 it was shut down for 15 days by the İstanbul Heavy No 13 Penal Court for 'making propaganda of the PKK' and 'praising Abdullah Öcalan' in accordance with Article 6 of the new Anti-Terror Law. In the context of the suspension, the statement 'Leader of Kurdish People' was for the first time regarded as a crime.

Since the mission 'Gündem' has remained closed. As stated by Genç, it was interesting that an İstanbul heavy penal court closed Özgür Güncel for fifteen days, in the week prior to the Parliamentary elections.[163] It was closed on 13 July 2007 for an article on pre-election opinions in Batman, published on 12 July and

160 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

161 The diaries were found together with other incriminating material, including grenades identical to the one used in the attack, plus a sketch mapping the scene of the bombing, in the car of the three individuals currently on trial for the Şemdinli bombing. See KHRP TO Report, Promoting Conflict – the Şemdinli Bombing, (KHRP, London, 2007).

162 See 'Turkey: Court orders pro-Kurdish daily closed for a month'; Reporters Without Borders; March 2007 Archives; '9.03; http://www.rsf.org/fil_en.php3?id_rubrique=682&mois=03 (last accessed 1 September 2007).

163 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

entitled: 'The Batman Message: Stand By the Guerrillas'. Its issue on 13 July was also confiscated. [164]

'Gündem' was most recently closed for 30 days by the İstanbul 12th Heavy Penal Court on 11 September 2007. The closure was based on the new Anti-Terror Law and accused the newspaper of spreading PKK propaganda by publishing two articles by PKK current leader Murat Karayılan.[165] The mission was informed that the normal procedure would be for a closure decision to be made by a court based on a case with a prosecutor and defence. However, in this instance, the decision was made by the prosecutor without a defence, and was then executed by the Court. Their subsequent appeal was rejected. [166]

As with Gündem newspaper, Azadiya Welat (Free Country), the only Kurdish language newspaper in Turkey, has also had to reinvent itself continually in the face of ongoing harassment and investigations. It began as Welat, a weekly newspaper in 1991. After it was shut down in 1994, it reopened for 20 days as Dengê Welat and later that year, under the name Welatê Me. It was shut down in 1996. Later that year, it re-established itself as Azadiya Welat and on 15 August 2006 started publishing as a daily paper.

During this period, the newspaper and its former owner Hamdullah Yılmaz faced 20 cases.[167] This most recently followed a statement published by the newspaper entitled 'I accept Abdullah Öcalan as my political representative' signed by the 'Democratic People's Initiative' in August 2005. He was charged for making propaganda for an illegal organisation under Article 220 (8) of the Penal Code and Article 6 of the Anti-Terror Law.[168] His sentencing to a total of four years in prison on 28 November 2006, forced Yilmaz to flee Turkey and seek asylum in Switzerland.

Since he has left, the newspaper has faced three new cases, mostly in relation to 'disseminating propaganda of an illegal organisation', and 'praising crime and criminals'. On 22 March 2007, following Büyükanıt's statement labelling them a terrorist newspaper, Diyarbakir's fifth High Criminal Court closed Azadiya Welat

164 'Gündem Newspaper Closed for Fifteen Days'; BİA News Center; 16 July 2007; http://www.bianet.org/bianet/kategori/english/99398/gundem-newspaper-closed-for-fifteen-days (last accessed 17 July 2007).

165 'Gündem Newspaper Closed for a Month'; BİA News Center; 11 September 2007; http://www.bianet.org/english/kategori/english/101692/gundem-newspaper-closed-for-a-month (last accessed 12 September 2007).

166 FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.

167 **FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007,** Diyarbakır.

168 'Writers in Prison Committee: Half-yearly Caselist', International Pen, 30 June 2007, available at http://www.pen.org/downloads/documents/CaselistAug07.pdf (last accessed 1 September 2007).

for 20 days for allegedly 'praising crime and criminals, incitement to crime and propagandising for a separatist terrorist organisation'. This was after it reported the killing and published pictures of the bodies of 12-year-old Uğur Kaymaz and his father Ahmet Kaymaz, who were killed by the security forces in Kiziltepe, south-east Turkey in 2004.[169] Azadiya Welat suggested that reports on human rights violations in the opposition press often leads to them being accused of being PKK separatists.

Finally, DİHA underlined that although as a news agency it has never been shut down (with written media being the primary targets of closures), it was commonplace for its staff and friends to be taken into custody, and have their cameras, video cameras and computers seized. It is not lawful to seize equipment which will stop media companies from operating. Nevertheless, DİHA reported that despite appeals, they cannot usually get their equipment returned until after a trial has finished, which the authorities know can take between three to four years.[170] According to İHD, between January to June 2007, six newspapers had been subject to confiscation notices.[171]

ii. Ongoing Prosecutions

The mission was informed that 'in legal terms many articles [of the Penal Code] are restructuring freedom of expression', by criminalising not the speaker, but those who publish the speeches of others as news.[172] Indeed, interviews confirmed the disparity in the treatment and criminalisation of certain sections of the media. Hence, though the same news is featured in print and broadcast media, the former is most likely to be penalised while the latter is not.[173] Additionally, as outlined above, the mission heard of the alleged discriminatory approach of the judiciary in its treatment of local media versus the national, mainstream press.

Two current investigations appear to demonstrate the discrepancies in what critical debate in the public sphere, and by whom, is permitted. Several journalists at Petrol Newspaper are undergoing a trial under Article 301 for attempting to influence the judiciary and insulting state security forces. The mission heard that this was as a

169 The well-known case concerns their extra-judicial killing by security forces. Post mortem findings found that that Uğur Kaymaz had sustained 13 bullets to his body and hands, while his father had sustained four.

170 FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.

171 'Human Rights Violations in Turkey January-June 2007', Documentation Office of Human Rights Association (IHD), 21 October 2007.

172 FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

173 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

result of their news reports on the accidental killing of nine year old girl Mizgin Özbek by the security forces in September 2006. She is believed to have been a victim of cross-fire between the security forces and members of the PKK.[174] Söz TV and Newspaper's reports concerning the alleged bribery of a judge were not deemed to be in the public interest. Rather News Director Sait Bayram, and Journalist Fırat Avcı were arrested on 18 June 2007. They were reportedly detained for one month and still face ongoing charges for 'insulting through the media'.[175] Yet no case had apparently been brought against the national newspaper Watan, who first published the same story[176]

Elsewhere, two particular cases which are indicative of the influence of the military in initiating investigations against journalists, and dictating their parameters for free expression, are those against the now defunct weekly news magazine Nokta, and monthly culture Magazine, Esmer.

The harassment experienced by Nokta following its critical articles about the Turkish military, were repeatedly highlighted. The magazine had found and published extracts from the diary of retired navy vice admiral Özden Örnek's on 29 March 2007, alleging two planned military coups against the government in 2004. However, the planned coup attempt (which even the Chief of General Staff has himself since threatened in a public memorandum on 27 April 2007), had reportedly not yet been investigated. Rather, the Editor of Nokta, Alper Görmüş, has been brought to trial for insult and slander of the military under Article 301. The trial opened on 19 September 2007. The Editor faces a sentence of six years and eight months in prison if found guilty. This was seen as demonstrative of the way in which present legislation is interpreted and applied to favour the military; legitimating subsequent office raids and restricting media information to the public.[177]

The mission also learnt of an interesting case against populist magazine, Esmer, which covers Kurdish stories. The authors of two of its articles, sociologist İsmail Beşikçi and the publisher Ahmet Kahraman, in addition to the magazine's Editor in Chief, Ferzende Kaya and Executive Mehmet Ali İzmir, were all being tried under Article 301. The case was initiated by the Prosecutor's office in March 2006, following a complaint letter from the Chief of General Staff on 19 January 2006. According to the magazine, the two articles on the Kurdish issue published in

174 FFM interview with Arif Aslan and colleagues, Journalists' Union, 9 July 2007, Batman.

175 See 'Second Quarterly Media Monitoring Report', IPS Communication Foundation (BIANET), 18 July 2007, available at http://www.ifex.org/en/content/view/full/84908/ (last accessed 01 September 2007).

176 FFM interview with Söz Newspaper, 7 July 2007, Diyarbakır.

177 FFM interview with Necati Abay, Head of the Platform of Solidarity for Imprisoned Journalists and Halil Dinç, of Özgür Radyo, 4 July 2007, İstanbul.

December 2005, were no different to those commonly published. However, they asserted that because the complaint had been initiated by the military, the case had been brought and was still ongoing. This was despite the time limit as set forth in Turkey's Press Law having lapsed (the Law determines that a case must be brought within four months of the said article being published).[178] Although the case against Ahmet Kahraman was dropped, the trial against İsmail Beşikçi, Ferzende Kaya and Executive, Mehmet Ali İzmir, continues under Article 216 for 'inciting hatred and hostility'.[179] They face from four to six years imprisonment.

iii. Disproportionate Penalties

Although the replacement of prison sentences with fines was seen as a positive development in the new Press Law, reports of the numbers of journalists currently in or facing imprisonment in the past two years have nonetheless, been rapidly increasing. Moreover, a recent action against the Hürriyet newspaper underlines that though in a less precarious position, the mainstream press are also subject to investigation for reporting on areas of sensitivity. On 9 August 2007, Reporter Sebati Karakurt and Editors Hasan Kilic and Necdet Tatlıcan were fined 40,000 YTL and 20,000 YTL respectively for a feature report on a PKK camp on Qandil Mountain. They could still face imprisonment if the fines are not settled by 13 November 2007.[180] However, the feeling was that national Turkish newspapers such as Hürriyet are better placed to absorb such fines, and that the uniform application of penalties was unfairly weighted against the smaller, independent regional press.[181] It is therefore much easier for the mainstream Turkish press to consider the current situation as being much improved.[182]

Yet the mission found widespread agreement that the heavy fines levied against local journalists and opposition newspapers— already considered to be the main targets of legal investigations for 'insulting' and 'defamation'— were in fact regarded

178 FFM interview with Ferzende Kaya and Latif Epözdemir, Esmer Magazine; 4 July 2007, İstanbul.

179 This followed the expert testimony for the prosecution of Prof. Dr. Mehmet Emin Artuk of the Law Faculty at Marmara University, İstanbul. He concluded that there was no crime committed under Article 301 regarding degradation of Turkishness or of the armed forces. However, he argued that in Beşikçi case, 'some expressions could be interpreted as "incitement to hatred and hostility" under Article 216'. See 'Sociologist Beşikçi on Trial Again', IPS Communication Foundation (BİANET), 21 June 2007, available at http://www.bianet.org/english/kategori/english/97869/sociologist-besikci-on-trial-again (last accessed 1 September 2007).

180 See 'Third Quarterly Media Monitoring Report', IPS Communication Foundation (BİANET), 30 October 2007, available at http://www.bianet.org/english/kategori/english/102579/third-quarterly-media-monitoring-report-full-text (last accessed 30 October 2007).

181 FFM interview with Mr. Turgay Olcaytu, Mr. Recep Yaşar, Mr. Zafer Atay, Ms. Sibel Güneş and Mr. Celal Toprak of the Turkish Journalists Association, 4 July 2007, İstanbul.

182 FFM interview with İhsan Çaralan, Editor, and Şahin Bayar, Günlük Evrensel Newspaper, 5 July 2007, İstanbul.

as much worse than imprisonment. The rationale was that while a prison sentence targets the individuals without whom a local newspaper can likely continue operating in the short-term, they do not have the means with which to easily settle the heavy and disproportionate fines. Hence much like the saying relayed to the mission, 'rather than beating a poor man, just tear his coat',[183] this can saddle local newspapers and media establishments with long-term debts and force them to close permanently.

iv. Harassment of Distributors

The mission learnt that attempts to curb freedom of expression did not stop at actions against the individual journalists, editors or publishers, but in fact extended to harassment against the newspaper distributors. Although after OHAL was lifted in 2002, newspapers could be distributed legally, it heard how official distribution companies, due to threats against them and/ or acting on the conclusion of legal investigations, have refused to distribute opposition, particularly pro-Kurdish newspapers.[184] For instance, Merkez Dağıtım, which distributes Gündem and Azadiya Welat, announced that they would cease their distribution after the confiscation decision of the Public Prosecutor on 21 March 2007.

Problems with distribution have meant that volunteers, often children, have been used. Therefore the mission was especially disturbed to hear of growing reports of harassment and reprisals against voluntary distributors, and of the pre-trial detentions and use of the confidentiality clause under the Anti-Terror Law. DİHA Batman branch underlined the general practice of harassment against distributors, who are regularly threatened and have their identity cards repeatedly checked by the police.[185] Civilian police were further reported to threaten newsagents to prevent them from selling certain newspapers.[186]

In brief, the following are examples of some of the incidents relayed to the mission:

a. Mizgin Magazine reported that two of its distributors in Batman and Gercüş were arrested and accused of propagandising for an illegal organisation in March 2007. They were said to be kept in custody for four months before their first hearing. Mizgin highlighted that the

183 FFM interview with İhsan Çaralan, Editor, and Şahin Bayar, Günlük Evrensel Newspaper, 5 July 2007, İstanbul.

184 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

185 FFM interview with Ibrahim Aaikyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

186 FFM interview with Abdullah Yetik, Hamza Aksal, Mahmut Sezu, and Bayram Kılıç Mizgin Magazine, 7 July 2007, Diyarbakır.

case also violated the defendants' right to a fair trial, since they were not allowed to be present for the hearing and because the trial was not within the jurisdiction of the Higher Court before which it had been brought (it should have been brought before a Criminal Court of First Instance). Due to lack of evidence supporting the claim that they were propagandising for an illegal organisation, the case, which initially started under 314 of the Penal Code, was later brought under 216;[187]

b. According to DİHA, between June and July 2007, distributors in ten different cities in Turkey were threatened with knives, facing attack and the confiscation of the newspapers;[188]
c. Azadiya Welat reported their anxiety following the arrest of three of its voluntary distributors at the beginning of July 2007, whom due to the confidentiality clause of the Anti-Terror law, were not aware of the accusations made against them; [189]
d. Two ladies working for Fırat News Agency were arrested in Mersin in January 2007. At the time of the mission, they had been in detention for seven months. Again, they had not been informed of the charges against them;[190]
e. The mission also heard several reports of the arrest of two distributors of Fırat News Agency in May 2007, who were later released but when the parents of one of the distributors were informed, the father had a heart attack and died;[191]
f. Gündem alleged that four days prior to the mission, one of their volunteers had been badly beaten. [192]

c) Online Media

Turkey, as a member of the Organisation for Security and Economic Co-operation in Europe (OSCE) is obliged to ensure 'that individuals can freely choose their sources of information.' Further than in this context they will 'take every opportunity offered by modern means of communication…to increase the freer and wider dissemination of information of all kinds.'[193]

187 FFM interview with Abdullah Yetik, Hamza Aksal, Mahmut Sezu, and Bayram Kılıç Mizgin Magazine, 7 July 2007, Diyarbakır.

188 **FFM interview with Ertuş Bozkur, Editor, DİHA, 6 July 2007, Diyarbakır.**

189 Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

190 FFM interview with Maşallah Dekak and Semiha Alankuç, Editors, Azadiya Welat, 6 July 2007, Diyarbakır.

191 FFM interview with Tayip Temel, Editor of Azadiya Welat, 6 July 2007, Diyarbakir.

192 FFM interview with Yüksel Genç, Editor of Gündem Newspaper, 4 July 2007, İstanbul.

193 Vienna Document 1989, 'Co-operation in Humanitarian and Other Fields', par. 34, 35.

However beyond continuing to use old laws to silence the media, the government has also issued new legislation that curtails freedom of expression online. A new censorship law targeting online publications was passed just months after Hrant Dink's death. As detailed by the Kurdish Human Rights Project in its submission to the OSCE in September 2007, the Internet Censorship Bill provides for the criminal prosecution of anyone publishing materials online that are seen as insulting to the memory of Atatürk, or that seem to promote suicide, sexual abuse of children, prostitution or drug use.[194] While the legislation appears to only permit a measured practice of censorship, its implementation procedures are vague and considered easily open to abuse. Indeed, these provisions seem designed to induce self-censorship by websites as they hold Internet Service Providers and public internet cafes responsible for the availability of contentious content.

This is supported by the mission's own findings. It learnt that in many cities in Turkey the police produce a list of internet sites that are considered to be obscene. The list is subsequently circulated to internet cafes, so that the listed sites can be blocked from public access through the use of imposed filters. According to DİHA, the list is intended to protect against child pornography and other illicit behaviour, yet with no central monitoring body, the nature and application of this practice is quite arbitrary, and is used as a means to block Kurdish websites and those of other opposition media.[195] The law also allows the government to block websites 'when there is sufficient evidence of the improper aspect of content'.[196]

The new Internet Censorship bill therefore has the potential to dramatically affect the media's ability to publicise material online. According to İHD, between January to June 2007, seven websites had been banned[197] However, BİA highlighted that even in 2006 before the passage of this new law, that websites had become new targets for attacks.[198] The report noted that nationalists had hacked into three websites in 2006, and that journalists had been assaulted and threatened in connection with online publications. This news is especially troubling given the recent murder of Hrant Dink by nationalists and the Turkish army's use of its website to publish political statements and calls to action. On 11 June 2007, the Turkish General Staff

194 See KHRP's Human Rights Violations Against Kurds in Turkey, Report Presented to the OSCE, OSCE Human Dimension Implementation Meeting, 24 September - 5 October 2007.

195 The mission was informed that this also included filters against the website of the Kurdish Human Rights Project. FFM interview with Ibrahim Açıkyer of DİHA and Filiz Yürek, Gündem Newspaper, 9 July 2007, Batman.

196 The law has already been used to ban access to YouTube because of the availability of materials allegedly insulting to Atatürk. Access was restored only after YouTube removed the offensive video.

197 'Human Rights Violations in Turkey January-June 2007', Documentation Office of Human Rights Association (IHD), 21 October 2007.

198 BİA, 2006 Annual Report.

published a 'comment on terrorism' online that called for 'the noble Turkish people to show a mass reflex against terrorist activities'. This statement warned against trusting people and organisations who argue for peace, freedom and democracy as these values could be a 'smoke screen' for terrorist objectives and organisations. It further identified not only the PKK, but also the concept of a 'united Kurdish area' as a threat to Turkey's 'national and unitary structure'.

The mission was thus perturbed by a paradox wherein on one hand the government censors speech and declares that certain statements and people 'insult Turkishness' while on the other it appears to allow prominent members of the Turkish Armed Forces to make statements that suggest and even incite violent responses to perceived threats to nationalism. As KHRP noted in a recent trial observation report, in these instances 'the state apparatus protects expression that is of a violent and intimidating nature, while allowing the persecution of non-violent dissenting opinion.'[199] Therefore the mission believes that the arbitrary interpretation and enforcement of such legislation must be addressed as a matter of urgency.

199 *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, KHRP, 2007, 33.

5. Conclusions

Today journalists and human rights defenders are faced with far fewer extrajudicial killings and direct violations of the right to life than in the 'dark years' of the 1980s and 1990s. There is greater critical debate within Turkish society and the mainstream Turkish press of subjects previously considered taboo. Further, the newer, younger generation of prosecutors and judges is considered to be more open-minded and more mindful of complying with ECHR Article 10. This is largely due to the impact of the EU-Turkey accession process and in particular the package of reforms introduced during 2003 to 2004.

Nonetheless since 2005, there has been a rapid and alarming deterioration in the general human rights situation, especially with regard to the right to freedom of expression and freedom of the media in Turkey.

Several key trends have undone the progress and undermined the optimism signalled by the reforms of 2003 to 2004. Chief amongst these are:

- The EU's perceived disengagement with Turkey with regard to its accession to the EU;
- The pervading influence of the Turkish military;
- Rising anti-EU and nationalist sentiment;
- The introduction of retrogressive legislation such as the new Turkish Penal Code, Anti-Terror Law, and Police Powers Law, along with their arbitrary interpretation and discriminatory application.

Over the past two years there has been an increased practice of self-censorship among some sections of the media. This has been due to ongoing closures, suspensions and confiscation notices against opposition, particularly Kurdish, media establishments and the subjection of journalists to lengthy pre-trial detentions, repeated legal investigations, heavy fines, and persistent harassment. These appear to be tactics employed to restrict social opposition to the authorities and to hinder the provision of dissenting opinion to the public, with the aim of ultimately frustrating the independent opposition media out of business.

There is now much greater debate on the problems and limitations of the infamous Article 301 of the new Penal Code against Turkish intellectuals. However, there is very little discussion or awareness of the application of Articles 220 (8) and 216 and other controversial and far-reaching articles of the Penal Code and new Anti-Terror law against ordinary, notably Kurdish and pro-Kurdish journalists and reporters.

It is questionable for the state apparatus and larger media groups to dismiss journalists imprisoned or under investigation as working for 'terrorist newspapers' or not being 'proper journalists'. The mission is under no doubt that many with whom it met were journalists working for proper newspapers and broadcasters that were merely reporting on news that their readership wanted to see reported. The mission believes that attacks against them are ultimately a threat to freedom of the media in Turkey as a whole.

6. Recommendations

This Report urges the Republic of Turkey to:

- Review and repeal articles of the Penal Code which infringe upon the right to freedom of expression;

- Review and repeal aspects of the new Anti-Terror Law and Police Powers law which are stifling free speech in Turkey, in particular Articles 301, 220 (8) and 216;

- Honour its obligations under Article 10 of the European Convention on Human Rights by fostering a culture of critical expression and free speech within the country;

- Introduce further training for the judiciary, prosecutors and state officials regarding international human rights standards in order to ensure that judges and prosecutors are aware of, and implement the principles of freedom of expression as established in the jurisprudence of the ECtHR;

- Lift its prohibitive restrictions on Kurdish language broadcasting and cease criminalising the peaceful expression of cultural and linguistic identity;

- Actively promote a climate of democratic debate where media institutions can legitimately report on issues of public interest, even where this is critical of Turkish state policy or practice, free from judicial and extra judicial impediments;

- Allow journalists to enter and legitimately report on and publicly scrutinise events inside the security zones of the provinces of Şirnak, Siirt, and Hakkari;

- Tolerate and positively assist attempts by the private media to represent and accommodate the demographic composition of the country by engaging with those involved in the private media, including representatives of minority media, in order to review and formulate policy in this area;

- Enact legislation preventing the formation of monopolies which exclude minorities from the private media.

This Report urges the European Union to:

- Uphold its commitment to the reform process by resuming Turkey's accession bid;

- Continue to closely monitor the reform process in Turkey, particularly the situation regarding freedom of expression;

- Use its good offices and those of its member states to engage the Turkish government on the question of the inappropriate, malicious and discriminatory application of the lesser-known articles 220 (8) and 216 of the Turkish Penal code, along with that of better-known Article 301;

- Maintain continued dialogue with and exert persistent pressure on Turkey to ensure that it fulfils its obligations and implements the agreed legal reforms pursuant to the Copenhagen Criteria, particularly in the realm of minority rights;

- Advocate the reform of legislation impinging on the right to freedom of expression and ensure that the reforms go beyond theoretical rhetoric and are practicably applied;

- Actively support and encourage civil society groups in Turkey in order to promote a climate of political and cultural dialogue, which could herald the arrival of meaningful democratic reform.

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