



TURKEY'S JOURNALISTS ON THE ROPES:

JOINT INTERNATIONAL PRESS FREEDOM MISSION TO TURKEY
(OCTOBER 6 – 9, 2020)

MISSION REPORT

#FreeTurkeyJournalists



This project is funded by the European Union

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- European Centre for Press and Media Freedom (ECPMF)
- European Federation of Journalists (EFJ)
- Osservatorio Balcani Caucaso Transeuropa (OBCT)
- PEN International
- Reporters without Borders (RSF)
- South East Europe Media Organisation (SEEMO)



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Introduction

Eleven international freedom of expression, journalists' and human rights organizations carried out a joint mission to Turkey on October 6 to 9, 2020, meeting with media professionals, civil society actors, judicial and regulatory authorities, members of parliament and representatives of diplomatic missions, for the purpose of reviewing the status of media freedom in the country.

The mission was organised in the wake of the Covid-19 pandemic, the sharp rise in targeting of media by regulators, increased physical attacks on journalists and a new restrictive law on social media with the potential to impose further limitations on the remaining spaces for independent reporting and public commentary.

The mission also provided the opportunity to assess how the situation had evolved in the 13 months since a previous visit in September 2019, which had focused on pre-trial detention, trial proceedings, the abuse of anti-terror law to target critical journalists as well as the prospect for the Judicial Reform Strategy to enact significant change.

These issues were set out in detail in the 2019 mission report *Turkey's Journalists in the Dock: Judicial Silencing of the Fourth Estate*.

Overview of key developments in 2019/2020

In the year since the 2019 mission we have seen the following developments:

- In October 2019, the Judicial Reform Strategy introduced a mild tightening of the definition of terrorist propaganda, and an extension of the right of appeal for those convicted to prison sentences of under five years.¹ However, the Turkish authorities failed to address the fundamental issue of judicial independence and ignored the central challenge of reforming the system for nominating members of the Board of Judges and Prosecutors (HSK), which is responsible for appointing, promoting and disciplining judges and prosecutors. The current system, in which the president and governing party appoint the vast majority of the 13 board members, enables direct executive influence over the careers of judges and prosecutors.

¹ Judicial Reform Strategy, [TR]

https://sgb.adalet.gov.tr/Resimler/SayfaDokuman/23122019162931YRS_TR.pdf

- Despite clearer limits on the duration of pre-trial detention, journalists continue to be arbitrarily detained and jailed for months for their journalism. The most prominent example was the March 2020 arrest of six journalists for “revealing the name of a national intelligence agent” after reporting on the agent’s death in Libya and funeral.² Although the agent’s identity had already been made public in parliament, the journalists were held for several months until September when five of them were found guilty before being released pending appeal.³
- Despite the revised definition of terrorist propaganda, the charge continues to be used to criminalize and prosecute journalists.
- In general, public criticism of topics that are sensitive to the government is liable to be met with criminal charges. Journalists reporting on Turkey’s military activities in Syria or Libya, for example, have been charged with a range of crimes including breaches of secrecy law or provoking hatred.
- The broadcast regulator Radio and Television High Council (RTÜK) has imposed fines on independent broadcasters including Halk TV, TELE1, KRT and Fox TV⁴, threatening their license to operate.
- The Public Advertising Agency, BİK, has also overseen a sharp rise in advertising bans against independent newspapers, cutting a crucial supply of income threatening their viability.
- The safety of jailed journalists was put at risk by the government, as the parole law of April 2020 that provided for the early release of tens of thousands of prisoners to ease overcrowded prisons in light of the Covid-19 threat excluded individuals in pre-trial detention and anyone convicted of terrorism-related crimes, espionage or crimes against the intelligence services – laws which are frequently used to prosecute journalists.⁵

2 “Murat Ağirel and two more journalists were arrested for reports on MIT officials died in Libya”, BBC Turkish <https://www.bbc.com/turkce/haberler-turkiye-51789318>

3 “Journalists released after final hearing on revealing MIT official died in Libya”, Medyascope <https://medyascope.tv/2020/09/09/libyada-hayatini-kaybeden-mit-mensubunun-ifsasi-davasinda-karar-durusmasi-goruldu-tutuklu-gazeteciler-serbest-birakildi/>

4 RTÜK High Council Rulings <https://www.rtuk.gov.tr/ust-kurul-kararlari>

5 “Parole Law on Official Gazette: Possibility of release for around 90,000 people”, BBC Turkish <https://www.bbc.com/turkce/haberler-turkiye-52269724>

- The social media law, rushed through parliament in July, and that came into force on October 1, requires social media companies to establish legal representation in Turkey and the transfer of the personal data of all Turkish users to servers in the country. Complying with the law would make the companies an extension of the state's censorship apparatus. Failure to comply could result in the blocking of their services in Turkey.

Meanwhile, hundreds more continue to face prosecution and travel bans in the face of a compromised judiciary that denies journalists the right to a fair trial.

The fall in numbers of jailed and prosecuted journalists is partly the result of the conclusion of cases opened in the aftermath of the 2016 failed coup. It is also a reflection of how successfully the media has been muzzled.

More recently the battleground for control of media has shifted from the courts to media regulatory bodies, whose independence has been removed by authorities which have been instrumentalized to target critical media. This, together with the state capture of previously independent media through ownership transfers, has ensured the further stifling of independent voices.

“ There has been a significant fall in the number of journalists in jail from a high of 170 in 2017. The International Press Institute (IPI) counted 77 journalists held behind bars at the start of October 2020. Despite this “progress”, Turkey remains one of the world’s biggest jailers of journalists.

Mission Participants

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

- ARTICLE 19
- Association of European Journalists (AEJ)
- Committee to Protect Journalists (CPJ)
- European Centre for Press and Media Freedom (ECPMF)
- European Federation of Journalists (EFJ)
- Human Rights Watch (HRW)
- Osservatorio Balcani Caucaso Transeuropa (OBCT)
- PEN International
- Reporters without Borders (RSF)
- the South East Europe Media Organisation (SEEMO).

Meetings

Meetings were held from October 6 to 9 in Istanbul, Ankara and online, with the following groups:

- Turkey-based civil society organisations representing journalists and human rights groups
- Leading journalists and media professionals
- Members of Parliament from three opposition parties (CHP, İYİ Party, HDP)
- The Constitutional Court (TCC)
- The Ministry of Justice, Human Rights Department
- İlhan Taşçı, CHP member of the broadcast regulator (RTÜK)
- The Delegation of the European Union
- 17 diplomatic missions hosted by the UK embassy

Due to travel restrictions the meetings were held in a hybrid format with Turkey-based representatives attending meetings in person, while international representatives joined meetings online.

We would like to record our thanks to all those who gave their time both to meet with the delegation and to be part of the delegation over those four days.



Meeting with leading journalists, Oct 6, 2020



Meeting with local NGOs, Oct 6, 2020

Summary Conclusions

A press conference was held the week following the mission on Wednesday, October 14, in English and Turkish. The accompanying press release summarized the results of the mission as follows:

Compromised independence of Turkey's institutions chokes press freedom

Eleven international rights groups conclude press freedom mission to Turkey

Turkey's press freedom crisis is worsening amid growing state capture of media, the lack of independence of regulatory institutions, and a new social media law designed to clamp down on the remaining spaces for free comment, a coalition of 11 international press freedom, journalism and human rights groups warned following a four-day mission to the country last week. They also flagged the continued jailing and prosecution of journalists as well as ongoing concerns over the safety of journalists and judicial independence.

Jailing of journalists and threats to their safety

Scores of journalists remain behind bars in Turkey or face baseless prosecutions in retaliation for their work. State authorities continue to instrumentalize a justice system that does not guarantee basic due process rights in court. The lack of political will to end this pattern, largely unchanged since 2016, is hugely disturbing. This month's court decision to declare former Cumhuriyet editor Can Dündar a fugitive and confiscate his assets symbolizes the relentless persecution of critical voices and constitutes a new form of attack on journalists through the seizure of the private property of journalists and their families as reprisal for their legitimate journalistic work.

In a meeting with the Human Rights Department of the Ministry of Justice in Ankara, mission members also called on authorities to ensure the prosecution of those responsible for physical attacks on journalists, which are on the rise, especially in local areas.

The safety of journalists remains seriously threatened by Turkey's effective exclusion of journalists and political prisoners from an early release programme announced earlier this year to ease overcrowding in prisons in the context of the Covid-19 pandemic. Journalists who are already deprived of their liberty face a grave risk to their health.

Weakening the independence of the courts

Meanwhile Turkey's authorities in recent months have widened their efforts to silence the press by stepping up online censorship through the new law targeting social media, mobilizing partisan regulatory bodies, and launching a new offensive against judicial independence by targeting Turkey's Constitutional Court (TCC). On the day the mission met with the TCC and the Ministry of Justice, the Justice Minister announced his support for the 'restructuring' of the TCC in line with the country's presidential system.

The proposal, initiated by the right-wing nationalist MHP party and backed by President Erdogan, would undermine any independence enjoyed by the TCC, which, despite delays in its decision making and on occasion failure of lower courts to implement its rulings, remains an essential guarantor of the fundamental rights embedded in the constitution, including press freedom.

The issue is critical given concerns that the general lack of judicial independence in Turkey has underpinned the government's crackdown on the press.

Separately, in its meeting with the TCC, the mission urged the court to give greater priority to press freedom cases, including those related to website blockings, noting that many of these cases involve ongoing rights violations. The delegation also urged the court to select pilot cases that can set precedents for lower courts to follow and to address the problem of lower courts ignoring constitutional court rulings, which seriously threatens the rule of law. Delegates also raised the continuing problem of Turkey's criminal defamation laws and the need for clear judgements by the TCC on defamation cases to affirm the right to freedom of expression.

Crushing critics on social media

In its meeting with the Ministry of Justice, the delegation repeated strong criticism of the social media law that came into force on October 1 and that paves the way for greater online censorship. Social media platforms as well as online news sites are among the last bastions for critical journalism in Turkey following the state-led takeover of mainstream media. While the government claims the measure is based on "similar" legislation in Western countries, Turkey's courts and regulatory bodies lack the independence necessary to prevent abuse of the law. In practice the law therefore could serve as a new tool to silence critics online.

The response of the social media companies remains uncertain, but mission members fear that, should the law be implemented in its current form, the companies would effectively become an extension of the government's censorship apparatus, complying with take down requests without the possibility of recourse to any independent review.

Political manipulation of regulatory bodies

The delegation calls for an end to the misuse of state regulatory bodies, including the Radio and Television High Council (RTÜK) and the Press Advertising Authority (BİK), to punish and financially cripple independent media. RTÜK has stepped up a campaign of fines and broadcast bans on independent television broadcasters. While the office of the RTÜK chair declined the delegation's request for a meeting, İlhan Taşçı, an opposition member of the body, received the delegation and agreed with its concerns about politically motivated targeting of critical broadcasters. Meanwhile, BİK, which press freedom groups met earlier this year, has increasingly issued spurious state advertising bans on critical newspapers. Both RTÜK and BİK are effectively controlled by the government and demonstrate a woeful lack of independence despite being nominally independent institutions.

International concern over threats to free speech and rule of law in Turkey

The mission also met with representatives of 17 diplomatic missions in Turkey – a sign of the global concern over press freedom and the rule of law in Turkey – as well as the Delegation of the European Union. Mission members welcome the recent, unvarnished findings of the EU's progress report on Turkey, which highlights a "serious backsliding" on freedom of expression. But the international community must step up its bilateral and multilateral efforts to bring Turkey back into the club of countries that respects the rule of law. Human rights issues, including press freedom, must not be held hostage to geopolitical developments.



WATCH THE RECORDING OF THE PRESS CONFERENCE [HERE](#)

Key Issues

I. Arrests, Physical Attacks and Investigations

Journalists from across the media spectrum continue to face arrests and prosecutions over their coverage of sensitive issues for the government, in particular military operations, economic decline, Kurdish issues and those of Turkey's other minority groups. This year coverage of the Covid-19 pandemic was added to the list as IPI recorded 13 incidents between March and August in which journalists were detained, investigated or faced systematic violations of their rights while reporting on Covid-19 cases⁶. During the mission, journalists and editors confirmed that these violations had a great chilling effect on media coverage of Covid-19, successfully stifling independent coverage and ensuring the government's narrative dominates.

The arrests of journalists continue to be of great concern. Since the beginning of 2020, at least 22 journalists were arrested, some of whom have already been released while investigations against them continue. As of November 2020, at least 130 hearings involving journalists as defendants were held in 2020 despite the recess period between March and June 15 due to Covid-19⁷ measures. According to Gazete Karınca's monthly press reports, at least 30 new investigations or lawsuits were opened against journalists in the first eight months of 2020.⁸

Physical attacks on journalists are a growing concern with ten assaults recorded since April 2020. These include cases in which journalists were targeted by the police while covering protests or were assaulted by unknown assailants after incitement by state officials or politicians for criticizing regional policies or revealing corruption. Attacks included a shooting targeting a journalist's residence in Antalya, the arson of a car belonging to a local journalism association in Nevşehir, and the firing of shots at the building of a local newspaper, Ses Kocaeli, after its critical coverage.⁹

Many journalists continue to receive online threats and harassment, including death threats. Verbal attacks by governmental officials have often been followed by investigation and arrests of journalists. Earlier this year Interior Minister Süleyman Soylu's verbal attacks on two journalists, İsmail Dükel of TELE1 and Müyesser Yıldız of Odatv,¹⁰ preceded their arrests for "military

6 See IPI's Covid-19 tracker for more details <https://ipi.media/covid19-media-freedom-monitoring/>

7 According to IPI Trials Calendar <https://freeturkeyjournalists.ipi.media/trials-calendar/>

8 Monthly Press Reports, Gazete Karınca <https://gazetekarinca.com/category/basin-raporu/>

9 Council of Europe Platform Alert: <https://go.coe.int/INpvR>

10 "Soylu targeted journalist Yıldız, Yıldız replied" <https://www.cumhuriyet.com.tr/haber/soylu-gazeteci-muyesser-yildizi-hedef-aldi-yildizdan-yanit-geldi-1739729>

espionage”.¹¹ Soylu accused Yıldız of having “terrorist” sympathies after correcting Soylu’s announcement of a militant camp takeover. Yıldız remained in jail until November 9, 2020.¹²

During a meeting with the Human Rights Department at the Justice Ministry, the delegation called for more action to protect journalists, urging authorities to condemn and fully investigate all attacks on journalists. The ministry representatives side-stepped the question, stating that judges and prosecutors are responsible for taking action and are fully independent and are monitored by the Judges and Prosecutors Council (HSK), which also acts “independently”.

Justice Ministry representatives also claimed that, thanks to the Judicial Reform Package, judges “no longer even arrest journalists in most cases”, ignoring the intimidation of journalists when spurious criminal investigations are opened against them. The delegation underlined that the “reforms” are not reflected in the judicial action on the ground and that the Justice Ministry must do more to protect journalists by effective monitoring of the judiciary.

II. Judicial Independence

The heart of the government’s control of public discourse has been its ruthless capture of the judiciary and media regulators that, to function as effective democratic institutions, must be enabled to operate independently of political interest and pressure.

However, the systematic undermining of the courts and regulators through the imposition of party-loyal appointees and a vertical power structure across all levers of authority have turned them into an extension of presidential power.

The systematic clampdown and subsequent crisis of judicial independence and long-term erosion of respect for fair trial rights in the courtroom have had a domino effect on all fundamental rights. Without an independent judiciary, the public’s ability to challenge and oppose the misuse of arbitrary power and to assert its own rights, especially the right to freedom of expression, collapses.

11 “Journalist Müyesser Yıldız arrested”, Bianet <https://bianet.org/english/law/225585-journalist-muyesser-yildiz-arrested>

12 “Court releases journalists Müyesser Yıldız in military espionage case”, Bianet <https://bianet.org/english/freedom-of-expression/234110-court-releases-journalist-muyesser-yildiz-in-military-espionage-case>

According to a report published by IPI and the Turkey-based Media and Law Studies Association (MLSA) covering 12 months of monitoring trials of journalists up to March 2020,¹³ the pre-trial detention of journalists is a common and arbitrary practice that deters journalists and increases the pressure to self-censor. During that report's monitoring period, the right to a lawful judge was violated in 27 percent of cases through changes to at least one member of the judicial panel during the course of a trial. Changes in the judicial panel have been used to intimidate judges from ruling counter to political interests.

3,947 judges and prosecutors had been sacked since July 2016.

Justice Minister Abdülhamit Gül reported during the 2021 budget planning meeting

The underlying problem facing the judiciary is the nomination process to the Council of Judges and Prosecutors (HSK), which is responsible for appointing, promoting and disciplining judges. In April 2017 the process moved from direct election by judges themselves, to nomination by the executive and legislative, providing the president the power to appoint six of the 13 HSK members, and parliament seven. This effectively gives the governing AKP-MHP coalition direct control over the selection of all members of the HSK responsible for judicial and prosecutorial appointments.

In light of the almost 4000 judges removed from their posts after being accused of membership in the Gülen movement in the aftermath of the July 2016 coup attempt, and the appointment of a new generation of inexperienced judges, this power has been used to reshape the judiciary along political pro-AKP-MHP lines. On November 10, 2020, Justice Minister Abdülhamit Gül reported during the 2021 budget planning meeting that 3,947 judges and prosecutors had been sacked since July 2016.¹⁴

Even the initial plans to strengthen the principle of the immovability of judges outlined in the Judicial Reform Strategy, including introducing objective criteria for the appointment, transfer and promotion of judges and guarantees that would enable judges to refuse relocation, which might

13 Turkey Free Expression Trial Monitoring Final Report, March 2020

https://freeturkeyjournalists.ipi.media/wp-content/uploads/2020/07/ENG_TMReport_0702.pdf

14 Justice Ministry Statement, Nov 10, 2020 <https://basin.adalet.gov.tr/adalet-bakanligi-2021-butcesi-plan-ve-butce-komisyonu-nda-kabul-edildi>

have offered a semblance of redress, were withdrawn from the final package. Indeed, shortly after the JRS was announced, the HSK instructed the relocation of 3,722 judges and prosecutors, in breach of the principle of immovability¹⁵.

Regrettably, the HSK turned down a request to meet with the mission.

One of the remaining institutions that has partially stood up against the politicization of the judiciary in recent years and acted to protect fundamental rights has been Turkey's Constitutional Court (TCC). The mission met with a 5-person delegation of TCC rapporteurs led by the General Secretary Murat Şen and the Deputy General Secretary Mücahit Aydın to discuss the court's record on freedom of expression cases.



Meeting with the Constitutional Court in Ankara, Oct 8, 2020

The mission asked about the failure of the court to prioritize and act speedily on freedom of expression cases, which often involve an ongoing violation of rights. The mission particularly called for the prioritization of cases related to online regulation and appeals against the blocking of websites. Such cases not only involve an ongoing violation of the public's right to access

¹⁵ "3722 judges and prosecutors were relocated", Odatv <https://odatv4.com/3722-hakim-ve-savcinin-yeri-degisti-31051950.html>

information, but also, once resolved, would serve as pilot cases in the online field, setting precedents for lower courts to follow.

The TCC, often after serious delay, has eventually made some positive rulings to protect freedom of expression online and offline. However, lower courts increasingly ignore these rulings; for example, they have refused to lift website blockings in some cases.

Sendika.org was first blocked in July 2015 and had to wait four-and-a-half years before the TCC ruled, in March 2020, that blocking Sendika.org constituted a violation of freedom of expression rights. Despite the TCC issuing a second ruling in a separate case, in September 2020 to unblock Sendika.org the lower courts continued to refuse to act until late October after the ECtHR requested Turkey to provide a defense in an application brought to Strasbourg by Sendika.org. Only at this point did Turkish courts formally instruct the opening of over 100 websites and Twitter accounts, including those of Sendika.org and Dicle News Agency.

Article 153 of Turkey's constitution states that the rulings of the TCC are final. The rulings are therefore binding on the lower courts and the refusal to abide by them undermines the rule of law and the principle of judicial certainty. The only current mechanism available to the TCC to sanction lower courts is to issue reports to the HSK on the failure of individual judges to follow their rulings.

In our meeting, the court recognized the problem, claiming that lower courts often do not understand their rulings and described such cases as "road accidents". The court is planning to address this issue through the establishment of a new unit to train lower courts and facilitate their observance of the TCC's rulings, with the assistance of the Council of Europe. The project is expected to start in February 2021.

The growing tension within the judiciary between the TCC and the lower courts and the obvious hostility with which the government has received some of the TCC rulings has, since September, prompted a renewed call for the restructuring of the TCC led by the nationalist MHP leader Devlet Bahçeli, and supported by President Erdogan. Minister of Justice Abdulhamit Gül added his support on the day the mission met with the TCC. While no plans for restructuring have yet been advanced, it is expected that they would further undermine the independence of the TCC.

Such a move would require a change of the constitution, which makes it less likely to happen. Moreover, in 2022, a number of TCC judges will be replaced through the rotation system and the new appointments will be nominated by the president, enabling the government to reshape the court. Meanwhile, the ability of the government to pressure the TCC and to encourage the broader judiciary to ignore its rulings, thereby doing irreparable damage to the rule of law, should not be underestimated.

III. Manipulation of Regulatory Bodies

The mission delegation highlighted how Turkey's remaining critical newspapers, news sites and broadcasters have been put under immense financial and censorship pressure through an upsurge in fines and punishments issued by media regulators in the last two years. State regulatory bodies such as the Radio and Television High Council (RTÜK), the Press Advertising Agency (BİK), and the Information and Communications Technologies Authority (BTK), originally established as autonomous bodies to regulate and protect the quality, independence and diversity of Turkish media have now fallen under the control of the AKP-MHP coalition and presidential offices. The mission requested meetings with the RTÜK president and BTK representatives. Both requests went unanswered.

Press Advertising Agency (BİK)

An IPI-led delegation of five press freedom organizations had, however, been able to meet with BİK Director Rıdvan Duran on February 6, 2020¹⁶ following advertising bans on BirGün and Evrensel newspapers.

Since Duran was appointed in August 2019 there has been a sharp increase in advertising bans issued against independent newspapers including Evrensel, BirGün, Sözcü and Cumhuriyet. Evrensel and BirGün were issued indefinite ad bans in September 2019, completely cutting the newspapers' public funding, an important revenue stream. BirGün's indefinite ban was lifted on February 25, while Evrensel is still subject to the indefinite ban pending a final evaluation by BİK. If the final evaluation is negative, Evrensel's right to receive public advertising will be removed for at least three years.

BİK does not make reports on its activities public nor does it publish information on how much money it distributes to newspapers, who the beneficiaries are or which newspapers received bans and why.

Despite this lack of transparency, IPI has seen internal BİK reports showing that, in the first five months of 2020, BİK issued bans on 39 national and local newspapers totaling 316 days. By comparison, during the first nine months of 2019, BİK issued bans on six newspapers totaling nine days only.

16 "Turkey: Global call to lift public ad ban on independent newspaper Evrensel", IPI Statement <https://freeturkeyjournalists.ipi.media/turkey-global-call-to-lift-public-ad-ban-on-independent-newspaper-evrensel/>

Radio and Television High Council (RTÜK)

As part of the mission, a small delegation met in Ankara with İlhan Taşçı, the CHP member of RTÜK. Taşçı is one of the three opposition party members in the RTÜK High Council, which decides on broadcast bans and financial penalties.

RTÜK, established in 1994 by the Turkish Constitution, has a unique structure of nine members appointed by the Turkish Parliament based on parliamentary representation, and any change in its structure would require a change in the constitution. The distribution of RTÜK members based on their nomination by political party is as follows: AKP (4), MHP (2), CHP (2), HDP (1). HDP's representative, Ali Ürküt, is currently in pre-trial detention following his arrest on October 2, along with 16 other HDP politicians, as part of an ongoing clampdown on the party. RTÜK issues decisions by absolute majority and requires at least 5 members' vote to make a decision. The members nominated by the AKP and MHP are therefore able to issue decisions alone.



Mission delegation meets with RTÜK member İlhan Taşçı in Ankara, Oct 8, 2020

Normally, RTÜK's staff monitors some 1,700 radio and TV stations for possible violations of the broadcast regulations and enter reports on breaches into an electronic system. The RTÜK chair then presents the reports to the High Council members in regular meetings for evaluation. However, Taşçı told the mission that in recent years around 100 experienced officers had been "exiled" in another RTÜK facility under the name of strategy development, and have been replaced by new staff loyal to the government.

In the last three years, these young officers now bring reports on violations directly to the RTÜK chair, Ebubekir Şahin, for approval before uploading the cases into the electronic system finally brought to the Council meetings. Therefore, Taşçı underlined, members no longer see all alerts in the system but only the selected ones, which are heavily critical of the government.

Taşçı is currently the most outspoken member of RTÜK, revealing statistics and reports on RTÜK's broadcasting bans to the public. Taşçı's former CHP colleague and long-term Hürriyet ombudsman Faruk Bildirici was dismissed from his position in RTÜK after being accused of misusing his position. Bildirici had been quite outspoken in his criticism of the systematic corruption within RTÜK.

While RTÜK was granted new powers¹⁷ to monitor internet broadcasting in August 2019, Taşçı reported that RTÜK's priority is to continue the intimidation of four TV stations: HALK TV, TELE1, KRT and FOX TV. In July, HALK TV and TELE1 received 5-day broadcasting bans over critical commentaries by TV hosts – even including criticisms of a historical Ottoman figure¹⁸. If these broadcasters receive a second ban under the same regulation clause, their licenses will be revoked.

In a social media post in May 2020, Taşçı published statistics¹⁹ showing that over the past 18 months, the four TV stations received a total of 36 sanctions, while mainstream pro-government stations received six.

İlhan Taşçı @ilhantasci

RTÜK Başkanı Ebubekir Şahin, kendisine kimsenin talimat vermediğini ama Cumhurbaşkanının talimatını emir telakki edeceğini açıkladı. Talimat almadığını söylediği dönemki muhalif kanallara verilen cezaların tablosu bu! Bir de talimat aldığında yapacaklarını siz düşünün...

Translate Tweet

YÜRÜK KURULUŞU		TOPLAM YAPTIRIM SAYISI	YÜRÜK KURULUŞU		TOPLAM YAPTIRIM SAYISI
A HABER		0	HALK TV	10 İdari Para Cezası 3 Yayın Durdurma (Toplam: 12 Program)	13
KANAL 7		0	TELE 1	8 İdari Para Cezası 3 Yayın Durdurma (Toplam: 12 Program)	11
TV NET		0	FOX	7 İdari Para Cezası 1 Yayın Durdurma (Toplam: 2 Program)	8
ATV	1 Uyan	1	KRT	3 İdari Para Cezası 1 Yayın Durdurma (Toplam: 2 Program)	4
ÜLKE TV	1 Uyan	1			
TGRT HABER	1 İdari Para Cezası	1			

İlhan Taşçı | Radyo ve Televizyon Üst Kurulu Üyesi

6:29 AM · May 18, 2020 · Twitter for iPhone

2.7K Retweets 128 Quote Tweets 9.4K Likes

17 "New powers of Turkey's media watchdog threaten last bastion of free press: The internet", IPI article by Selin Uğurtaş <https://freeturkeyjournalists.ipi.media/new-powers-of-turkeys-media-watchdog-threaten-last-bastion-of-free-press-the-internet/>

18 "IPI condemns 5-day broadcast bans on Turkey's Halk TV, TELE1", IPI statement <https://freeturkeyjournalists.ipi.media/ipi-condemns-5-day-broadcast-bans-on-turkeys-halk-tv-tele1/>

19 İlhan Taşçı, <https://twitter.com/ilhantasci/status/1262238847615864832>

Information and Communications Technologies Authority (BTK)

BTK, the national telecommunications regulatory and inspections authority founded in 2000, is responsible for monitoring adherence to online regulations. In practice it carries out extensive censorship of online content.

Under Turkish criminal law, websites can be blocked either by the courts through a “protective measure” or by BTK through an administrative order. BTK can issue this administrative order under article 8 of Law 5651 in response to a variety of issues including content on gambling, child abuse, obscenity, drug use and prostitution. In 2015, BTK was granted power to implement administrative measures to temporarily remove or block content based on a new article 8/A in order to “protect individual rights to life and property, national security, public order, general public health or to prevent commitment of crime”. This new regulation gives the power to block a website without a court ruling “if a delay in the court order to block access is inconvenient”.

BTK has made widespread use of this power to block websites of critical media in Turkey. According to the 2019 report by EngelliWeb²⁰, BTK blocked over 21,000 sites and domains between 2015 and 2019 using article 8/A. Almost 2,000 of these sites were news websites and 669 were URLs of specific news articles.

IV. Social Media Law

In July 2020, the Turkish government introduced a new social media law²¹ that will provide for increased control and censorship over online content and social network providers. The law was included under the existing Law 5651 on the Arrangement of Internet Publication and Combating Crimes Committed through these Publications.

As of October 1, 2020, social media companies are required to appoint legal representatives and to move all user data of Turkish citizens to servers inside the Republic of Turkey. Should companies not comply, the law provides for a series of measures, including the reduction of bandwidth, until they are no longer able to operate in Turkey.

The law paves the way for authorities to force social media companies to remove content and hand over user data based on instructions from Turkey’s highly politicized regulators and courts

20 “Buz Dağının Görünmeyen Yüzü”, İfade Özgürlüğü Derneği EngelliWeb 2019 Report”
https://ifade.org.tr/reports/EngelliWeb_2019.pdf

21 Official Gazette, <https://www.resmigazete.gov.tr/eskiler/2020/07/20200731-1.htm>

using Turkey's loosely worded definitions of terrorism and other crimes that are used to persecute independent critics and journalists.

To date, none of the major social media companies, such as Facebook, Twitter and Google, have formally announced how they intend to respond to the law.

What is at stake? Governmental and regulatory bodies issue hundreds of take-down orders every day to social media companies and the companies comply with a portion of them. According to Twitter's transparency report on the period July to December 2019²², out of the 27,500 legal demands they received globally to remove content, 19 percent came from Turkey. Twitter complied with 31 percent of these requests overall. Twitter reported that it had received over 1,000 content removal requests under article 8/A or Law 5651 during the Turkish military operations in Syria in October 2019 alone.

Out of 193 verified accounts of journalists and news outlets which were subjects of legal demands, Twitter withheld 13 tweets in Turkey due to violations of anti-terror law. The Twitter report underlines that no action was undertaken for the remaining requests that relate to journalist and media outlet accounts.

“ The mission is concerned that the government will continue to justify the law on the grounds of combating hate speech and by accusing the social media companies who refuse to comply of seeking to avoid paying tax. However, the true purpose of the law is clearly to remove the final arena in which journalists and the broader public have enjoyed relative freedoms to express themselves uncensored.

22 Twitter Transparency Reports <https://transparency.twitter.com/en/reports/removal-requests.html#2019-jul-dec>

Facebook's transparency report for the same period of July to December 2019 showed that Facebook responded to 79 percent of Turkish government requests for data. The report does not provide details of the data requested but says that they are 'in accordance with applicable law' and in line with a 'legal process'. The rate of responses for emergency requests stood at 73 percent.²³

According to the 2019 report by EngelliWeb²⁴, BTK orders (under Art 8 of Law 5651) were responsible for 69 percent of all website domains blocked in 2019. Of a total of 61,049 domains blocked, 42,145 were a result of BTK orders and 16,797 stemmed from court decisions.

While social media companies have complied with some takedown requests from Turkey, the new law requires companies to comply with all takedown requests, setting the stage for vast digital censorship. Tech companies would be forced to abide by the Turkish government's highly restrictive understanding of freedom of expression. By establishing a legal presence in Turkey with a named legal representative, they would be potentially be liable to face high fines and even imprisonment for defying content removal orders. On November 4, 2020, a Turkish official announced on Twitter that a number of social media platforms, including Facebook, Twitter, YouTube, had been fined 10 million Turkish liras each (approx. 1 million euros) for failing to comply with the local representation requirement after a 30-day compliance deadline expired.²⁵

The relocation of user data to servers in Turkey poses another threat to the privacy rights of Turkey's citizens. Without adequate checks and balances or restraint on the misuse of law, it could potentially lead to abuse of personal data by the authorities, particularly against its critics.

In concrete terms, the social media law amends the existing "Law 5651 on the Arrangement of Internet Publication and Combating Crimes Committed through these Publications"²⁶ passed in 2007. It requires social media networks with over one million users to respond to individual or institutional applications to implement blocking and content removal requests within 48 hours. The requirement to implement a court order within four hours remains unchanged.²⁷ Failure to meet these deadlines and to comply with regulations would lead to excessive fines and a ban on

23 Facebook Transparency Report July-December 2019 <https://govtrequests.facebook.com/government-data-requests/country/TR>

24 "Buz Dağının Görünmeyen Yüzü", İfade Özgürlüğü Derneği EngelliWeb 2019 Report" https://ifade.org.tr/reports/EngelliWeb_2019.pdf

25 "IPI urges Turkey to withdraw the sanctions on tech companies under new social media law", IPI Statement <https://freeturkeyjournalists.ipi.media/ipi-urges-turkey-to-withdraw-the-sanctions-on-tech-companies-under-new-social-media-law/>

26 Current legislation <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5651.pdf>

27 "Social Media Law: What is the new regulation be like?", BBC Turkish <https://www.bbc.com/turkce/haberler-dunya-53581303>

advertising of up to three months. Further delays would be met with the reduction of the platform's bandwidth by up to 50 percent and then by up to 90 percent, rendering the platform unusable.

According to Presidential Communications Director Fahrettin Altun, the law is needed to protect citizens against "criminal acts such as sexual abuse, obscenity, gambling, fraud, incitement to crime, terrorist propaganda and insult".

During the meeting with the Ministry of Justice, the delegation was told that the law was similar to other laws being implemented in France or Germany to combat hate speech and online abuse, and that Turkey had every right to insist that user data be held within the country. The mission observed that unlike in Germany and France, Turkey lacks fundamental checks and balances, and an independent judiciary and appeals process which can protect citizens against gross abuse of such data.

The three MPs of opposition parties CHP, İYİ Party and HDP that the delegation met also expressed serious concerns about the potential misuse of this law and the lack of checks and balances.

The MPs underlined the huge risk in the government acquiring the power to shut down social media. In their view, the complete control of regulatory bodies paralyzes the functioning of the media. Moreover, the social media law threatens the last free space for critical views, especially for Turkey's minority communities.

The mission is concerned that the government will continue to justify the law on the grounds of combating hate speech and by accusing the social media companies who refuse to comply of seeking to avoid paying tax. However, the true purpose of the law is clearly to remove the final arena in which journalists and the broader public have enjoyed relative freedoms to express themselves uncensored.

V. International Diplomacy

The delegation completed its mission with meetings first with the head of political affairs at the European Union Delegation (EUD), Eva Horelova. The following day it then presented the preliminary findings of the mission to 17 diplomatic missions to Turkey at a webinar hosted by the British Embassy.

The mission noted that it welcomed the depth and breadth of the European Commission's Enlargement Progress report on Turkey published on October 6, which documents in detail the level of "serious backsliding" on freedom of expression in the past year.

However, it highlighted the stark contrast between the extensive work conducted by the EUD in exposing the failure of Turkey to respect democratic principles and protect basic human rights and the position taken by the Council of the European Union towards Turkey in its conclusions of October 1-2.

The Council of the European Union, in order to secure stability in the Eastern Mediterranean with respect to disputed off-shore drilling rights around Cyprus, has offered to launch talks on the modernization of the Customs Union and trade facilitation, people to people contacts, high level dialogues, and continued cooperation on migration issues, without any mention of the country's domestic human rights failings.

Without underestimating the importance of broader geopolitical stability in the Eastern Mediterranean and beyond, the offer to reward Turkey with talks on a Customs Union will be seen as a betrayal of European values and of the human rights activists in Turkey who look to Europe for inspiration and leadership.

Member States of the European Union must put basic human rights, including freedom of expression, back on the agenda, and make improvements in this field a pre-condition to improved relations with Turkey. Respect for basic human rights are essential for the long term stability and prosperity of the region.



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