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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Report of the Special Rapporteur on the promotion and
protection of the right to freedom of opinion and expression
on his mission to Turkey*****Note by the Secretariat**

From 14 to 18 November 2016, the Special Rapporteur conducted an official visit to Turkey at the invitation of the Government. The visit took place just months after July's attempted coup d'état left over two hundred dead and united people across Turkey in condemnation. In its aftermath, the Government declared a state of emergency, announced derogation under the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and adopted a series of decrees which, it averred, were meant to address the security threats that gave rise to the coup attempt. Those decrees supplemented an already dense network of anti-terrorism laws and proscriptions on expression, such as expression critical of the president and other government officials. Cumulatively, the laws preceding the coup attempt and those that followed give authorities broad and increasingly unreviewable discretion to take measures against the press, writers, universities, jurists, civil servants, human rights defenders and many others. They have established one of the worst environments for freedom of expression in Turkey in decades, if not one that is unprecedented in its modern history.

The official mission gave the Special Rapporteur an opportunity to hear from Government authorities in Ankara as well as journalists, activists, writers, artists, lawyers, imprisoned individuals and others in Ankara and Istanbul who are facing the brunt of the restrictions. Based on his visit and evaluation of the legal and policy framework in force, the Special Rapporteur concludes that the Government, in order to act in accordance with its international obligations, should take a number of steps as a matter of the highest priority in order to reverse the crisis and return the country to its democratic path. As an immediate measure of the highest humanitarian priority, the Special Rapporteur urges the Government to release all those detained in recent years on the basis of their exercise of the right to freedom of expression.

* The present report was submitted after the deadline in order to reflect the most recent developments.

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey**

Contents

	<i>Page</i>
I. Introduction	3
II. International legal standards.....	4
III. The domestic legal framework	4
A. Constitution	4
B. Legislation	5
C. State of emergency	7
IV. Attacks on the media and the right to information	9
A. Arrest and detention of journalists.....	9
B. Media shutdowns	11
C. Revocation of press-cards.....	12
V. Restrictions on the internet.....	12
VI. Academic freedom	14
VII. Political activity	15
VIII. Dismissal of public officials.....	15
IX. Civil society	16
X. The judiciary, the bar and due process	17
A. Structural changes to the judiciary.....	17
B. Dismissal of judges and prosecutors.....	17
C. Lack of judicial review	18
D. Access of lawyer and due process	18
XI. Recommendations	19
A. Media freedom and access to information	19
B. Restrain the substantial restrictions on the internet.....	19
C. Review of emergency decrees	20
D. Review of national legislation	20

** Circulated in the language of submission only.

I. Introduction

1. Pursuant to Human Rights Council Resolution 25/2, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Turkey from 14 to 18 November 2016. The purpose of the visit was to gather information, engage in a dialogue concerning freedom of expression in the country, and offer recommendations to the Government and other stakeholders. During the visit, which the Government limited to five days, the Special Rapporteur visited Ankara and Istanbul.
2. The Special Rapporteur is grateful to the Government for its invitation and cooperation, in particular for facilitating government meetings. The Special Rapporteur met with senior officials at the Ministry of Foreign Affairs, Ministry of Justice, Prosecutor's Office, Ministry of Interior, Parliamentary Human Rights Inquiry Committee, Directorate General of Press and Information, Information and Communication Technologies Authority, Constitutional Court, and Court of Cassation.
3. The Special Rapporteur met with journalists, writers, artists, lawyers, academics, politicians, and representatives of non-governmental organizations. The Ministry of Justice permitted him to visit five individuals affiliated with *Cumhuriyet* newspaper held at Silivri Prison in Istanbul – Hakan Karasinir, Bülent Utku, Güray Tekin Öz, Mustafa Kemal Güngör, and Onder Celik – and the writer and activist Necmiye Alpay at Bakirköy Women's Prison in Istanbul. The Government denied requests to visit the imprisoned writers and journalists Asli Erdogan, Ahmet Altan, Mehmet Altan, Kadri Gursel, Murat Sabuncu, Turhan Gunay, cartoonist Musa Kart, and Judge Aydin Sefa Akay.
4. The Special Rapporteur met with representatives of the UN Country Team and diplomatic missions and greatly appreciates the support provided by the UN Resident Coordinator and staff members in Ankara in the execution of the mission.
5. Senior officials stressed that they take into consideration international recommendations to strengthen the country's commitment to freedom of expression. They emphasized that Turkey faces special challenges that require extraordinary measures to protect life, public order and national security. Authorities underscored their view that the measures taken under state of emergency decree are necessary to counter these threats, in particular by the Gülenist movement the Government refers to as "*Fethullahçı Terör Örgütü*" ("FETÖ") and the *Partiya Karkerên Kurdistan* ("PKK" or Kurdistan Workers Party, which the Government emphasizes has been listed as terrorist by the United States and European Union). The Government's positions aligned with the comments it provided to the Council of Europe Commissioner on Human Rights in February of this year after he raised similar concerns to the ones raised herein.¹
6. The Special Rapporteur understands those threats and has deep sympathy with the victims of the July 2016 attempted *coup d'état* and the instances of terrorism in recent years. The attempted coup, widely and appropriately condemned across the political spectrum in Turkey and internationally, caused the deaths of 249 persons, including 181 civilians, and led to allegations that Fetullah Gülen and his movement bore responsibility. The war in Syria has led to a refugee flow that taxes Turkish resources, while the end of peace talks with Kurdish groups has led the Government to take positions far from those pursued earlier in the present administration.
7. These are serious challenges. Nonetheless, as the Special Rapporteur's visit found, across society, laws and policies of censorship and criminalization are working to repress opinion and expression in all of the places that are fundamental to democratic life – the media, educational institutions, the judiciary and the bar, government bureaucracy, political

¹ Observations By Turkey On The Memorandum Of Commissioner Muiznieks On Freedom Of Expression And Media, 15 February 2017. See also Memorandum on Freedom of Expression and Media Freedom in Turkey, by Nils Muiznieks, Council of Europe Commissioner for Human Rights, 15 February 2017.

space, and the vast online expanses of the digital age. They do so notwithstanding limited evidence that the restrictions are necessary to protect legitimate interests such as national security and public order or the rights and reputations of others. Legal and institutional pressures coupled with increasing executive control and dominance, punctuated by the Constitutional amendments adopted in April 2017, erode the foundations necessary for the exercise of freedom of opinion and expression. In short, the mission illuminated a squeezing of civil society space that signals a radical backsliding from Turkey's democratic path and deserves the most urgent attention to reverse.

II. International legal standards

8. Article 19(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, guarantees everyone's right to hold opinions without interference. Article 19(2) protects everyone's right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, through any media. In accordance with Article 19(3), any restriction imposed on this right must be provided by law and be necessary and proportionate to protect the rights or reputations of others, national security or public order, or public health and morals. Article 20 calls for the prohibition of advocacy of national, religious or racial hatred that constitutes incitement to violence, hostility or discrimination. Turkey is also bound by the law of the European Convention on Human Rights (ECHR) and the jurisdiction of the European Court of Human Rights (ECtHR) and is a member of the Organization on Security and Cooperation in Europe (OSCE).

9. Article 4 of the ICCPR permits derogations from Article 19(2) during declared states of emergency only where strictly necessary according to the exigencies of the situation. The right to freedom of opinion is not subject to derogation in ordinary circumstances or during states of emergency (See General Comment 34, para. 5). The Human Rights Committee has held that measures derogating from the provisions of the ICCPR must be of an "exceptional and temporary nature" (General Comment 29).

10. Government officials expressed to the Special Rapporteur Turkey's commitment to international and regional human rights law and to the supervisory role played by the European Court of Human Rights. Members of the judiciary and the Prosecutor's Office stressed the centrality of the ECHR and the jurisprudence of the ECtHR. Yet several cases were brought to the attention of the Special Rapporteur, in which courts and prosecutors interpreted legislation in ways that ran counter to the ECtHR and judgments of the Constitutional Court aimed at bringing interpretation into line with European case law.

III. The domestic legal framework

11. The Constitution guarantees freedom of opinion and expression and provides a framework for limitations and exceptions. The Special Rapporteur believes that laws and policies, described below, combine to impose significant interferences with the freedom of opinion and expression in Turkey.

A. Constitution

12. Turkey's Constitution of 1982 guarantees the right to freedom of opinion and expression while also permitting problematic restrictions. Article 25 protects opinion, while Article 26 protects everyone's "right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities." Through Act no. 4709 on 3 October 2001, the Parliament amended Article 26 to permit restrictions:

" . . . for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding

information duly classified as state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.”

13. Articles 28 and 29 of the Constitution safeguard freedom of the press. Nonetheless, several grounds are provided for restricting press freedom: “Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, are held responsible under the law relevant to these offences”. Article 28 (6)(7) and (8) and article 29 provide conditions for the suspension and seizure of publications.

B. Legislation

14. *Anti-terrorism*: The Penal Code, Code of Criminal Procedure, and Anti-Terrorism Law limit Constitutional guarantees. Several provisions of the Anti-Terrorism Law (Law no. 3713) concern membership in and propaganda supporting terrorist organizations, yet key terms are left undefined. The law does not define acts that would constitute terrorism but covers:

“... any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.”²

15. Article 7(2) permits punishment of a term of one to five years imprisonment for those who make “propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations’ methods which contain violence, force or threat. The provision also increases the punishment by half for propaganda expressed via press and publication.

16. The Penal Code punishes membership in criminal organizations. Membership in a criminal organization includes “any person who establishes, controls or joins a criminal organisation”.³ Article 220(8) provides for imprisonment ranging from one to three years for anyone who makes “propaganda for an organization in a manner which would legitimize or praise the terror organization’s methods including force, violence or threats or in a manner which would incite use of these methods”. The article increases the penalty by half if the propaganda is expressed through the press or broadcasting.

17. The Government has a critical duty to protect against terrorist threats, but international law mandates respect for human rights in the fight against terrorism.⁴ In keeping with these dual requirements, criminal offences should be narrowly defined and applied according to strict implementation of the standards of necessity and proportionality. Despite this, counter-terrorism and national security provisions in Turkish legislation are used to restrict freedom of expression through overly broad and vague language that allows for subjective interpretation without adequate judicial oversight.

18. *Defamation and insult*: The civil and criminal law provide for the suppression of defamation, even of public authorities. Article 125 of the Penal Code criminalizes insult; its paragraph 3 concerns defamation against “a public officer due to the performance of his public duty” as well as insults against beliefs, including religious ones, with penalties of at least one year in prison. Part 3 of the Penal Code criminalizes insult of the President,

² Anti-Terrorism Law, Article 1(1).

³ Article 6.

⁴ A/RES/57/219; CCPR/C/21/Rev.1/Add.11; S/RES/456; A/HRC/6/17.

national anthem, flag and the institutions and organs of the state, and increases the penalty of such crimes by one-sixth if made in public. Article 299 criminalizes defamation of the President, with sentences of one to four years in prison. Though the Minister of Justice must formally initiate, prominent officials, including the President, frequently bring criminal defamation cases against journalists, artists, and academics. Reports indicate that the Justice Ministry has initiated up to two thousand defamation cases for “insult” of the President.⁵

19. *Surveillance*: Law 6532 (2014) grants the National Intelligence Organization (MİT) the power to access personal data without a court order.⁶ Under Article 3, the MİT has the authority to collect information, documents, and data from public institutions, financial institutions and entities with or without a legal character. All institutions and entities must comply with MİT demands for access to their data and archives. Article 7 establishes severe punishments for obtaining or publishing information about the MİT. The article makes distribution of information or documents related to the MİT punishable by three to nine years in prison. If prosecutors receive complaints regarding the activities of MİT, Article 6 obliges them to notify the director of MİT. The director can then choose to block the investigation.

20. *Internet*: Law no. 5651, the Internet Law, allows the Government to restrict access to Internet content and telecommunications networks. Amendments in March 2015 introduced Article 8(A), which expands the power of the Telecommunications and Communication Presidency (TIB) to order the blocking of websites on vaguely defined grounds and without prior court approval. Article 8 concerns blocking with respect to encouragement of and incitement to suicide; sexual exploitation and abuse of children; facilitation of the use of drugs; provision of substances dangerous to health; obscenity; gambling; and crimes committed against Atatürk. “Sufficient suspicion” enables a court or the TIB to issue a blocking order. The Internet Law also regulates website blocking, allowing the government to restrict access to network services. Four articles provide for the blocking of websites and posts: Article 8 (protection of children from harmful content); Article 8A (protection of national security, public order, protection of life and property, and protection of public health and prevention of crime); Article 9 (violation of individual rights); and Article 9A (violation of privacy of individuals).

21. Article 10 of the Internet Law provides broad authority to monitor the Internet and issue administrative blocking decisions or restrict access to certain websites. As of 2015, the government had used the blocking measures, along with related court decisions, to block over 110,000 websites and over 16,500 URLs.⁷ Under Emergency Decree no. 671, the Information and Communications Technology Authority (ICTA) implements blocking and filtering orders. In requesting access bans, the office of the prime minister submits a formal request to ICTA, which must forward the request to a Criminal Peace Judge within a 24-hour period. If approved within 48 hours, all relevant service providers are obligated to acquiesce to the decision, otherwise the decision is automatically revoked. There is no appeal following a court order. The Regulation on Collective Internet Use Providers, published in the Official Gazette on 11 April 2017, requires collective internet use providers to apply detailed filter systems to identify content deemed criminal, to store users’ access details and data for two years, and to develop systems to identify internet users in public places.⁸ The criteria for filtering are not publicly available and the

⁵ For an overview of Turkish law and freedom of expression generally, see Yaman Akdeniz and Kerem Altıparmak, *Silencing Effect on Dissent and Freedom of Expression in Turkey*, in Journalism at Risk: Threats, Challenges and Perspectives, Council of Europe Publishing 2015,

⁶ Universal Periodic Review: Turkey (2015), Joint Submission of Freedom of Expression Organizations, available at <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=1390&file=EnglishTranslation>.

⁷ See Swiss Institute of Comparative Law, *Comparative Study on Blocking, Filtering and Take-Down of Illegal Internet Content*, 20 December 2015, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900016806554bf>.

⁸ The regulation available in Turkish: <http://www.resmigazete.gov.tr/eskiler/2017/04/20170411-3.htm>

government does not provide a list of what is filtered. Decree no. 671 amended Law 5809 (“Law of Digital Communications”) to authorize the Government to take “any necessary measure” on the grounds of “national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedom” and to notify the ICTA for their implementation. Any company providing digital communications must enforce the authorities’ order within two hours.

22. Article 4 of the Internet Law provides for the general liability of content and hosting providers, protecting them from liability for content to which they link. Providers may receive requests from the government and private individuals or companies to take down specific content. They are required under article 9(2) to respond to claims of violations of individual rights within 24 hours.

23. Internet blockings have been ruled unconstitutional by the ECtHR and the Constitutional Court. The Constitutional Court ruled that a 2014 ban on Twitter violated freedom of expression guarantees, and concluded that banning access to Twitter by the administrative act had no legal basis and gave rise to a serious violation of freedom of expression.⁹ The Court also found that a ban on access to YouTube (to prevent disclosure of state secrets) breached the applicant’s right to freedom of expression. The Court held that there was no legal provision in the Internet Law allowing authorities to impose blanket blocking orders on access to the entire website on account of one example of content.¹⁰

C. State of emergency

24. On 21 July 2016, the Turkish Government notified the UN Secretary-General of its invocation of article 4 (derogation) of the ICCPR and that the derogation applied to obligations under, *inter alia*, Article 19 of the Covenant.¹¹ The Government has introduced a series of legal amendments through emergency decrees, which bypass ordinary legislative procedure and will continue to be in effect after the state of emergency is lifted. Among those laws are amendments made to the Anti-Terror Law and the Electronic Communications Law (both through Decree 671). The Electronic Communications Law was amended to expand the grounds for content takedown.

25. The state of emergency, endorsed by Parliament on 21 July 2016, announces its purpose “to take required measures in the most speedy and effective manner in the fight against FETÖ terrorist organization in order to save our nation from this ferocious terror network and return to normalcy as soon as possible.”¹² The declaration emphasizes that the purpose is “not to restrict fundamental freedoms of our citizens”.¹³

26. Decrees adopted since July 2016 have broadened the scope of the original emergency to include those who “belong to, connect to, or have contact with the Fetullahist Terrorist Organization” (Decree 668), public personnel who have “membership, affiliation or connection to the Fetullahist Terrorist Organization” and even the spouses and children of such persons (Decree 670). Decree 671 amended Law 5651, denying employment in the TIB to persons who have “membership, affiliation, link or connection with” terrorist groups, without limiting to the Gülen movement.

⁹ Constitutional Court, Application No. 2014/3986, 2 April 2014.

¹⁰ Constitutional Court, Application No. 2014/4705, 29 May 2014. See also ECtHR, *Ahmet Yildirim v. Turkey*, Application No.3111/10, 8 December 2012 ([Cengiz and Others v. Turkey, Application No. 48226/10 and 14027/11, 1 December 2015 \(](http://hudoc.echr.coe.int/eng#{\)

¹¹ Turkey: Notification Under Article 4(3), Transmittal of the Secretary General, 21 July 2016, available at <https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf>.

¹² English translation of the state of emergency declaration available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000168069538b>.

¹³ *Id.*

27. In the time between the imposition of the state of emergency and the Special Rapporteur's visit, the Council of Ministers issued ten emergency decrees with the force of law, granting Turkish authorities wide-ranging powers.¹⁴ Article 15 of the Constitution provides that measures under state of emergency must not "violate obligations under international law", and that even under state of emergency certain fundamental rights must be respected. According to the State of Emergency Law of 1983, the scope of such decrees should be limited to the original emergency purpose.¹⁵ The law sets out 17 types of measures, including those that allow for prohibition or restrictions applicable to publications, broadcasting and dissemination of information and ideas through any media, and plays and films. The state of emergency continues in force at the time of this writing, having been renewed for a fourth three-month period on 17 April 2017.

28. The state of emergency decrees adopted in the aftermath of the coup attempt are far-reaching and give authorities wide discretionary powers to derogate from human rights obligations, without providing adequate channels for judicial review and appeal. The emergency decrees apply to anyone "assessed to be" a member of a terrorist organisation, as well as to anyone acting in union or contact with such organizations. The decrees lack criteria for assessing membership or contact and leave overly broad discretion to authorities responsible for their execution, waiving ordinary administrative safeguards. The lack of criteria for assessing membership also applies to the procedure by which the High Council of Judges and Prosecutors (HSYK), the High Courts and Constitutional Court are empowered to dismiss judges and prosecutors. The decrees do not specify criteria on which such assessments are to be based, nor do they require individualised reasoning. The persons concerned are not provided with evidence against them; many are unaware of investigations against them. The decrees also facilitate impunity and lack of accountability by affording full legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees.

29. The Constitutional Court decided in landmark decisions to reject the limits to judicial review of decrees imposed by article 148 of the Constitution, which provides that "decrees having the force of law issued during a state of emergency...shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance".¹⁶ On 12 October 2016, however, the Court unanimously voted to uphold the limits imposed by article 148 in the case of the emergency decrees. Applications that claimed unconstitutionality of emergency decrees could no longer be subject to the Court's review. Thus, while the Constitution on the one hand imposes limits on derogations from human rights requirements, it fails to provide effective oversight mechanism to ensure that the limits are observed.

30. Following the Special Rapporteur's visit, emergency decree no. 685 of 23 January 2017 established a Commission of Inquiry for State Emergency Practices, tasked with reviewing and deciding on complaints about emergency practices. Composed of seven members, of whom five are assigned directly by the Government and two by the government-dominated HSYK, the Commission shall "carry out an assessment of and render a decision on" state of emergency measures that fall into one or more of four listed categories: 1) dismissal or discharge from public service, profession or organization; 2) dismissal from studentship; 3) closure of associations, foundations, trade unions; media outlets; schools and higher education institutions and publishing houses; 4) annulment of ranks of retired personnel.¹⁷ Article 2 of Decree 685 prevents the lodging of separate applications regarding additional measures introduced by decree. Members of the Commission were appointed on 16 May 2017 and the Commission began its work on 22

¹⁴ Eleven additional decree laws were issued between the time of the visit of the Special Rapporteur and the time of the finalization of this report in April 2017. In total, since 20 July 2016, there are thus 21 emergency decrees with the force of law. Extracts of English translations of Emergency Decree Laws by the European Commission for Democracy through Law, available at [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)011-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)011-e)

¹⁵ English translation available at: <http://www.legislationline.org/documents/action/popup/id/6974>

¹⁶ Constitutional Court decisions E.1990/25, K.1991/1; E. 1991/6, K.1991/20; and E.2003/28, K.2003.

¹⁷ Decree 685, article 2.

May 2017. The Special Rapporteur is concerned about the narrow scope of the Commission's mandate and its lack of independence and impartiality.

IV. Attacks on the media and the right to information

31. On the basis of emergency decrees, over 100 media outlets were reportedly closed during the first six weeks of the state of emergency.¹⁸ Since 15 July 2016 and the time of the writing of this report, reports indicate that at least 177 media outlets have been closed; 231 journalists have been arrested (over 150 journalists are in prison); nearly 10,000 journalists and media workers have been dismissed; and the press cards of at least 778 journalists have been cancelled.¹⁹ Publications taking seriously investigative journalism and their role as a public watchdog frequently face harsh penalties under anti-terrorism, insult and state-of-emergency laws. Many of the closures affect outlets allegedly connected to the Gülenist movement, such as the large circulation *Zaman*, but many others have involved outlets without any such evident connections.²⁰ While the situation has intensified in the period since the coup attempt, the assault on the press began well before July 2016.

32. In meetings with the Special Rapporteur, the authorities stressed that no journalist is prosecuted for "being a journalist", but for having committed a crime. However, as seen below, examples of journalist arrests and prosecutions demonstrate an expansive definition of crime interfering with core values of freedom of expression.

A. Arrest, detention and harassment of journalists

33. At the time of the Special Rapporteur's visit, an estimated 155 journalists and media workers were imprisoned, in most cases based on vague charges and with either very little or no evidence presented or publicly available.²¹ The figures may not reflect those who were released but continue to face charges and potential future imprisonment. What follows is a small sample of illustrative cases brought to the attention of the Special Rapporteur.

34. The intense pressure and harassment of Turkey's oldest newspaper, *Cumhuriyet*, stands out as one prominent example. On 31 October 2016, authorities detained sixteen staff members of *Cumhuriyet*, all of whom remain in prison at the time of writing.²² The Istanbul Prosecutor's Office justified the arrests by referring to material published by the newspaper shortly before the coup, which allegedly justified the coup. Predating the coup

¹⁸ The complete list of media outlets closed under Decree 668 is available at:

<http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf>; <https://rsf.org/en/reports/turkey-you-cannot-report-news-under-state-emergency>.

¹⁹ PEN International, 18 January 2017, available at <http://www.pen-international.org/newsitems/turkey-list-of-journalists-detained-charged-before-and-after-coup-attempt/>. See also Hurriyet Daily News, 894 Turkish journalists dismissed since January 2016: Report, available at <http://www.hurriyetdailynews.com/894-turkish-journalists-dismissed-since-january-2016-report.aspx?pageID=238&nID=99181&NewsCatID=339>; Erol Önderoğlu, 2016: Journalism Gripped by State of Emergency, 17 February 2017, available at <http://bianet.org/english/media/183723-2016-journalism-gripped-by-state-of-emergency>.

²⁰ Statement by the Special Rapporteur of 8 March 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17172&LangID=E>. Government claimed to the Council of Europe that it re-opened 300 "institutions", including 20 media outlets: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2961655&SecMode=1&DocId=2397286&Usage=2>.

²¹ PEN International, *supra* footnote 18. See also Communication of the Special Rapporteur, 28 July 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3292>, and Government Response, 6 December 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34107>.

²² Bianet English, 31 October 2016, available at <http://bianet.org/english/media/180156-operation-in-cumhuriyet-daily-14-taken-into-custody>.

attempt, authorities had arrested senior editors of the newspaper on counter-terrorism charges based solely on their reporting; both editor-in-chief, Can Dündar, and the Ankara bureau chief, Erdem Gül, were convicted and sentenced to prison, though Mr. Dündar has been forced into exile.²³ Mr. Dündar and Mr. Gül were held in detention for 92 days and released only after the Constitutional Court held that their detentions were “a violation of their rights”.²⁴ They were later convicted by Istanbul’s 14th Court for Serious Crimes and sentenced to five years and five years and ten months in prison, respectively, for “revealing state secrets”.²⁵ Following an assassination attempt in Turkey, Mr Dündar left Turkey in exile and is at risk of losing his citizenship by virtue of an emergency decree, while his wife’s passport has been annulled, preventing her from leaving Turkey.²⁶ In late December, authorities arrested another of *Cumhuriyet*’s investigative journalists, Ahmet Sik, accusing him of “publicly humiliating the Republic of Turkey, its judicial organs, military and police organizations”, and for spreading “terrorist propaganda”.²⁷

35. Prosecutors regularly accuse individuals of unprovable – and impossible to defend against – allegations. For example, on 10 September 2016, Ahmet Altan and Mehmet Altan, two well-known intellectuals, were detained as part of the investigation launched following the attempted coup, accused of transmitting “subliminal messages” in support of the coup on a TV talk show. After twelve days in detention, on 22 September 2016, Istanbul 10th Criminal Judgeship of Peace ordered Mehmet Altan to be held in pre-trial detention on charges of “being a member of a terror organization” while also ruling to release his brother, Ahmet Altan, on probation. Ahmet Altan was arrested again later in the day after the Public Chief Prosecutor objected to his release. Both remain in detention to the date of this writing.

36. The shutdown of the daily newspaper *Özgür Gündem* by emergency decree 675 demonstrates the widespread consequence of the crackdown on national security grounds. The legal actions taken against the newspaper targeted both its regular staff and people who had loose connection to the newspaper, such as its advisors or symbolic editors, many of whom are intellectuals wanting to make a contribution towards solving the Kurdish issue through dialogue.²⁸ The arrest and detention of Asli Erdogan and Necmiye Alpay on the basis of article 314 of the Penal Code (“member of a terror organization”) for having served on the consultative board of *Özgür Gündem* illuminate the lack of necessity and proportionality in the way counter-terrorism legislation is used against expression. Both were kept in prison for more than four months, before being released on 29 December 2016, but continue to face trial and potentially life-long prison terms and are barred from leaving the country.

37. Because of the mandate’s historic concern for the safety of journalists and writers, the Special Rapporteur sought access to a number of detainees. The Ministry of Justice permitted him to visit five individuals affiliated with *Cumhuriyet* and activist Necmiye Alpay, as noted above (see para. 3). The Special Rapporteur also spoke with lawyers for or

²³ The President stated at the time, “The individual who reported this as an exclusive story will pay a heavy price for this”. *Hurriyet Daily News*, 1 June 2015, available at <http://www.hurriyetdailynews.com/cumhuriyets-editor-in-chief-to-pay-heavy-price-says-turkish-president-.aspx?pageID=238&nID=83269&NewsCatID=338>

²⁴ Constitutional Court, judgment of 25 February 2016.

²⁵ BBC, 6 May 2016, available at <http://www.bbc.com/news/world-europe-36233282>

²⁶ Turkey Purge, 28 December 2016, available at <https://turkeypurge.com/turkey-purge-in-past-5-days-288-arrested-457-others-detained-over-coup-charges>

²⁷ Pen International, 29 December 2016, available at <http://www.pen-international.org/newsitems/turkey-investigative-journalist-ahmet-sik-arrested/> In 2014, in *Sik v. Turkey*, the European Court of Human Rights held that an earlier arrest and detention represented a violation of the right to freedom of expression (Application no. 53413/11).

²⁸ Communication of the Special Rapporteur, 24 June 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=3229>; Government Response, 3 August 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33878>. On the arrests of Kurdish journalists, see Communication of the Special Rapporteur, 4 September 2015, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18460>.

associates of other detainees. The Ministry of Justice denied the Special Rapporteur access to others (see para. 3). While the visited detainees seemed in good health, the men held in a wing of Silivri Prison housing, according to the Government, 456 prisoners,²⁹ reported an initial detention process that involved days without access to information about the charges against them, or access to legal support, and at least two days of sleep-deprivation that culminated in a 2 a.m. court presentation. They reported limited access to counsel, books, pen and paper, or other ways to access information or communicate with the outside world. They expressed total bewilderment at the basis for their detentions.

B. Media shutdowns

38. Media freedom in Turkey was under threat prior to July. Since then, the scope of the crackdown has broadened dramatically. On 27 July 2016, on the basis of emergency decree 667 and 668, authorities ordered the shutdown of over 130 media outlets. On 28 September 2016, another 12 television and 11 radio stations (owned or operated by members of the Kurdish or Alevi communities) were shut down, without the involvement of the judiciary or any review procedure, on charges that they spread “terrorist propaganda”.³⁰ On 29 October 2016, another 11 Kurdish newspapers, two news agencies and three magazines were shut down on the basis of emergency decree 676.³¹

39. The crackdown affects media outlets affiliated with the Gülen movement and journalists working or having previously worked for such outlets, journalists perceived to have connections to the Gülen movement, and independent, oppositional or minority media outlets and journalists accused of affiliation with the Gülen movement, despite little to no evidence to support these accusations. Dozens of journalists working for such outlets have been imprisoned while many others have been left unemployed, despite distant if any evidence of connection to the movement, let alone activities unlawful under Turkish law and subject to limitation under human rights law.

40. The crackdown on media outlets also takes place through government takeover. On 5 March 2016, the large-circulation *Zaman* group was taken over by a government appointed administrative board over alleged links between the owner of its parent company and Gülen.³² This form of takeover immediately results in a change of the editorial policy of the journals and channels under the umbrella of the commandeered parent group.

41. Media outlets subject to the emergency decrees are not limited to allegedly Gülen-affiliated media. The closure of *Özgür Gündem*, and the weekly *Evrensel*, and police raids on *Cumhuriyet* are examples of how the state of emergency has been deployed against critical or independent media outlets. On 16 August 2016, the daily *Özgür Gündem* was closed following a decision by an Istanbul 8th Criminal Court of Peace, on the basis of allegedly publishing terrorist propaganda and serving as a broadcasting organ for the PKK. The same day, the paper’s headquarters in Istanbul were raided and 22 media workers detained on charges of “resisting police”. They were released after giving testimony before prosecutors.

²⁹ Silivri Prison in combination with its general campus of ten prisons and detention houses hosts thirteen thousand prisoners.

³⁰ Reuters, 30 September 2016, available at <http://www.reuters.com/article/us-turkey-media-idUSKCN12012K>.

³¹ *Özgür Gündem*, *Azadiya Welat*, *Batman Çağdaş*, *Cizre Postası*, *Güney Express*, *İdil Haber*, *Kızıltepe'nin Sesi*, *Prestij Haber*, *Urfanatik* and *Yüksekova Haber*, *Dicle News Agency (DİHA)* and *Jin News Agency*, *Tiroji*, *Özgürlük Dünyası* and *Evrensel Kültür*.

³² Communication of Special Rapporteur, 8 March 2016, available at [https://spdb.ohchr.org/hrdb/33rd/public_-_AL_TUR_08.03.16_\(2.2016\).pdf](https://spdb.ohchr.org/hrdb/33rd/public_-_AL_TUR_08.03.16_(2.2016).pdf); Government Reply, 1 April 2016, available at [https://spdb.ohchr.org/hrdb/33rd/public_-_AL_TUR_08.03.16_\(2.2016\).pdf](https://spdb.ohchr.org/hrdb/33rd/public_-_AL_TUR_08.03.16_(2.2016).pdf).

42. On 28 August 2016, the central offices of *Azadiya Welat*, in Diyarbakir, were raided by police and 23 employees were detained. Eight remained in detention as of January 2017.³³

43. Several interlocutors commented that the media landscape is dominated by close ties between business interests and political actors. Journalists who were critical of the government have been gradually fired from these media organs, and mild criticism is subject to reprisals through demonization by pro-government columnists. In addition to the arrest of journalists and police raids on critical media, the use of financial pressure or economic ties with private media companies has led to higher concentration of media that is directly or indirectly under government control.

44. Authorities exert pressure on media outlets to change their editorial policies by threatening journalists with dismissal. News coverage that is perceived as negative to the State may be subject to punishment by the authorities. The Special Rapporteur understands that the Radio and Television Supreme Council (RTÜK) has imposed fines on TV channels for “one-sided” coverage, in particular on the situation in the Southeast.

45. In October 2016, seven critical TV channels were removed from the leading satellite television provider, Digitürk, in October 2016. Similarly, a number of channels were removed from the state-owned satellite distribution platform TÜRKSAT.³⁴

C. Revocation of press-cards

46. As a result of the media shutdowns and the blacklisting of shuttered outlets’ journalists, over 3,000 journalists are without work and unable to obtain new employment. Over 600 yellow press cards, reflecting official accreditation, have been cancelled,³⁵ others are barred from attending and reporting from Parliamentary meetings, depriving them of a critical tool for monitoring government. The Special Rapporteur is deeply concerned that the large number of cancelled press cards undermines the public’s right to information and the accountability of state institutions.

47. The Directorate General of Press and Information (BYEGM), a body under the control of the prime minister’s office, is tasked with accreditation. The Press Card Commission’s composition has changed, decreasing the number of seats for media representatives, damaging the impartiality of the accreditation process. The procedures for accreditation grant the deputy prime minister power to issue permanent press cards, a tool reportedly used to screen out journalists. For example, in December 2016, the request for renewal of press card by *Cumhuriyet*’s Can Dünder was rejected with BYEGM stating, “The request of Can Dünder, who on every occasion defames Turkey and attributes false statements to Turkey, has been denied due to national security policy”.³⁶ BYEGM rejected journalist Amberin Zaman’s card, stating that she led to polarization among the public by inciting people to hatred and enmity.³⁷ Similarly, the press card of Hasan Cemal, columnist in the T24 news portal, and Dogan Akin, editor-in-chief of the same news portal, were cancelled by the BYEGM.³⁸ The same has been applied to foreign journalists.

³³ PEN International, *supra* footnote 18.

³⁴ Hurriyet Daily News, 15 November 2015, available at <http://www.hurriyetdailynews.com/gulen-linked-tv-stations-removed-from-top-satellite-network.aspx?pageID=238&nID=91163&NewsCatID=341>; Turkish Minute, 80,000 unsubscribed from Digitürk after its removal of critical channels, 13 April 2016, available at <https://www.turkishminute.com/2016/04/13/80000-unsubscribed-digiturk-removal-critical-channels/>

³⁵ Turkey Purge, 5 January 2017, available at <https://turkeypurge.com/govt-revokes-journalist-amberin-zamans-press-card-brings-total-to-623>

³⁶ Turkey Purge, 2 December 2016, available at <https://turkeypurge.com/can-dundars-request-for-renewal-of-press-card-denied>

³⁷ *Supra* footnote 36.

³⁸ Turkey Purge, Turkey revokes permanent press cards of leading journalists, 31 October 2016, available at <https://turkeypurge.com/turkey-revokes-permanent-press-cards-of-leading-journalists>

V. Restrictions on the Internet

48. All individuals face censorship online, with a serious impact on the public's right to seek, receive and impart information and ideas regardless of frontiers. In December 2016, the Interior Ministry stated that the authorities had opened investigations into 10,000 people over social media posts, while 3,710 persons were detained for questioning and 1,656 suspects were formally arrested, over the previous six months.³⁹

Blocking of websites

49. As of March 2017, over 100,000 websites had reportedly been blocked in Turkey.⁴⁰ The Government has blocked access to URLs including pro-Kurdish websites and news sources, as well as these outlets' Twitter accounts.⁴¹ The Supreme Electoral Council of Turkey (YSK) blocked access to over 90 URLs for sharing polls before the elections. The TIB blocked access to five of the most commonly used LGBTI websites by the application of article 8 of Law no. 5651. Following an order by the Ankara Criminal Court of Peace in March 2015, 49 URLs were banned.⁴²

50. The Government pursues a policy of blocking websites following terrorist attacks. Two days after a suicide attack on 20 July 2015 in the town of Suruc, killing 32 people, a court banned access to 173 URLs as part of a ban on images and footage of the attack.⁴³ The gag order was later lifted. Similarly, following a terrorist attack on 10 October 2015 in Ankara, killing more than one hundred people, the Turkish Supreme Board on Radio and Television (RTÜK) imposed a ban on broadcasting images and videos of the attack, and four days later, Ankara's 6th Judgeship banned "all kinds of news, interviews, criticism and similar publications in print, visual, social media and all kinds of media on the internet" related to investigation of the attack.⁴⁴ Similar orders have been repeated in other cases of attacks.⁴⁵

51. Despite national and European court rulings against the blocking of access to Twitter and YouTube, first instance courts continue to order such blockings on the basis of national security justifications. On two occasions in April and July 2015, Criminal Peace

³⁹ Reuters, 24 December 2016, available at <http://www.reuters.com/article/us-turkey-security-internet-idUSKBN14D0E8>

⁴⁰ Stockholm Center for Freedom, 14 April 2017, available at <http://stockholmcf.org/scfs-website-blocked-in-turkey/>; and European Digital Rights, 21 October 2015, available at <https://edri.org/turkey-new-attempts-limit-online-access-and-freedom-of-speech/>

⁴¹ Freedom House, Freedom on the Net 2016 Report available at <https://freedomhouse.org/report/freedom-net/2016/turkey>. Such blockings pre-date the coup attempt: <https://cpj.org/2015/07/turkish-authorities-block-access-to-news-websites.php>; <http://www.hurriyetdailynews.com/turkey-blocks-kurdish-websites-as-twitter-and-facebook-slows-down.aspx?pageID=238&nid=85917>; <http://www.pen-international.org/newsitems/turkey-end-crackdown-in-the-kurdish-regions-and-look-for-a-peaceful-solution/>;

⁴² Report of the OSCE on Freedom of the Media on Turkey and Internet Censorship, available at <http://www.osce.org/fom/41091?download=true>

⁴³ Platform24, 22 July 2015, available at <http://platform24.org/en/articles/300/twitter-ban--due-to-suruc-attack-images--lifted-in-turkey>; Hurriyet Daily News, 22 July 2015, available at <http://www.hurriyetdailynews.com/turkish-court-blocks-twitter-for-hours-issues-media-ban-over-bombing.aspx?pageID=238&nid=85757&NewsCatID=339>; Statement by Article19 of 23 July 2015, available at <https://www.article19.org/resources.php/resource/38067/en/turkey-must-ensure-free-and-open-debate,-online-and-offline,-in-the-wake-of-terrorist-attack-in-suru%C3%A7>

⁴⁴ Hurriyet Daily News, 14 October 2015, available at <http://www.hurriyetdailynews.com/court-issues-total-media-ban-over-ankara-suicide-bombings.aspx?PageID=238&NID=89884&NewsCatID=341>

⁴⁵ Committee to Protect Journalist, 12 September 2016, available at <https://cpj.org/blog/2016/09/turkey-crackdown-chronicle-week-of-september-11.php>; Turkey Purge, 2 February 2017, available at <https://turkeypurge.com/breaking-reporting-breaking-news-banned-in-turkey>

Judges briefly blocked Facebook, Twitter and YouTube following wide circulation of images related to terrorist acts, finding they amounted to “terrorist propaganda”.⁴⁶

Takedown requests

52. Turkey features among the countries with the highest number of removal requests sent to Twitter. In 2016, 4013 removal requests were made by Turkish agencies, while 1556 removal requests were made by Turkish courts.⁴⁷ According to Facebook’s Government Request Report for the period January-June 2016, the company sought to restrict 861 pieces of content in response to requests from the Telecommunications Authority, Turkish courts, the Ministry of Health, the Ministry of Customs and Trade, and the Access Providers Union.⁴⁸

Network shutdowns

53. Authorities ordered network shutdowns in eleven cities in the southeast on 26 October 2016, following the detention of Diyarbakir’s mayor and co-mayor. The shutdown lasted approximately 12 hours, and cut off 6 million citizens. Similar shutdown took place on 12 September and 4 November 2016.⁴⁹

Criminalization of encryption

54. Several examples were brought to the attention of the Special Rapporteur of arrests for the alleged use of an encrypted messaging app, called ByLock. The authorities have linked ByLock to the Gülen movement, claiming that it is a secret communication tool for Gulenists. The arrests take place sometimes merely on the basis of the existence of ByLock on a person’s computer, and the evidence presented is often ambiguous. Reportedly, the MIT obtained a list of global ByLock users that has been used to track and detain persons. Tens of thousands of civil servants reportedly have been dismissed or arrested for using the application.⁵⁰

VI. Academic freedom

55. Even before the coup attempt, the Government took aim at academics. In January 2016, thousands of academics signed a “Peace Petition”, condemning the Government’s security operations in cities of southeast Turkey.⁵¹ The petition called for a resumption of peace talks with the PKK. In response, many university administrations, at the instructions of the Higher Educational Council, have taken disciplinary actions, including dismissing signatories from their positions. The Government argues that the petition echoed a statement previously made by a PKK leader and thus constituted the spread of terrorist propaganda and insult to the state. On 15 January 2016, at least twenty academics were detained and investigated by the Istanbul Prosecutor’s Office.⁵²

⁴⁶ Statement by Article19, 7 April 2015, available at <https://www.article19.org/resources.php/resource/37923/en/turkey:-social-media-sites-restored-after-blanket-blocking>

⁴⁷ Twitter, « Turkey », *Transparency Report* <https://transparency.twitter.com/en/countries/tr.html>

⁴⁸ <https://govtrequests.facebook.com/>.

⁴⁹ Turkey Blocks, 11 September and 4 November 2016, available at <https://turkeyblocks.org/2016/09/11/internet-shutdown-turkey-southeast/> ; <https://turkeyblocks.org/2016/11/04/social-media-shutdown-turkey/>

⁵⁰ Stockholm Center for Freedom, 31 March 2017, available at <http://stockholmcf.org/detention-warrants-issued-for-98-across-18-provinces-over-bylock-use/>

⁵¹ Communication of Special Rapporteur, 31 March 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21348>; Government Reply, 17 May 2016, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34044>.

⁵² Hurriyet Daily News 15 January 2016, available at <http://www.hurriyetdailynews.com/18-academics-detained-over-130-face-criminal-charges-amid-accusations-by-president-of-terrorist->

56. Emergency decree no. 675 has been used to dismiss academics from university appointments.⁵³ The Special Rapporteur spoke with academics who were at a loss to identify any cause for their removal, as they had no connection to the Gulenist movement or to the PKK. Following the attempted coup, the government dismissed approximately 27,000 teachers, as well as over 5,000 professors and administrators at universities.⁵⁴ The licences of approximately 21,000 teachers in Gülen-operated schools were cancelled.⁵⁵ Teachers of Kurdish origin, those with leftist views, or those who teach subjects such as science have been reportedly targeted. Elections within universities have been abolished and replaced with direct appointments by the President of the Republic, in effect erasing the autonomy of universities.

57. Under the state of emergency decrees of February 2017, another 330 academics were expelled together with 2,585 teachers.⁵⁶ At the universities, seminars are reportedly cancelled because professors have been dismissed. The content of classes reportedly must be relayed to higher officials for approval. Further, several teachers' union members expressed fear that the government would eradicate the choice for secular education.

VII. Political activity

58. The space for political pluralism is shrinking, and opposition parties face terrorism-related accusations. On 20 May 2016, the immunity of 154 members of parliament from all political parties was retroactively lifted by a temporary amendment to the Constitution.⁵⁷ The amendment targeted primarily the parliamentary group of the People's Democratic Party (HDP), an opposition party, which had been subject to prosecution requests for statements made that were deemed insulting to the President or other public officials, terrorist propaganda or incitement to hatred.⁵⁸ Several HDP leaders have been imprisoned on the basis of emergency decrees, as well as charges for making "false propaganda".⁵⁹ 117 investigations were initiated shortly before the Special Rapporteur's visit, in addition to the already existing 683 cases.⁶⁰ 500 of these cases belong to HDP and members of parliament of the HDP. The co-chairs of the HDP were arrested in November 2016⁶¹ and later charged

propaganda.aspx?PageID=238&NID=93887&NewsCatID=339 On 27 March 2017, Isik University dismissed two faculty members who had been signatories to the petition: Endangered Scholars Worldwide 28 March 2017, available at <http://www.endangeredscholarsworldwide.net/single-post/2017/03/28/1%C5%9F%C4%B1k-University-dismisses-two-Academics-for-Peace-signatories>

⁵³ Scholars at Risk Network 3 November 2016, available at

<https://www.scholarsatrisk.org/2016/11/1267-academics-dismissed-68-students-abroad-expelled-says-turkey-decree/>

⁵⁴ Hurriyet Daily News 20 September 2016, available at <http://www.hurriyetdailynews.com/turkey-has-dismissed-over-27000-teachers-suspended-9000-deputy-pm.aspx?pageID=238&nid=104048>

⁵⁵ Freedom for Turkish Academics, 8 September 2016, available at

<https://freedomforturkishacademics.wordpress.com/category/situation-in-turkey/>

⁵⁶ Scholars at Risk, 10 February 2017, available at <https://www.scholarsatrisk.org/2017/02/330-academics-ordered-dismissal-turkey/>

⁵⁷ Law No. 6718 Constitutional Amendment as to lifting parliamentary immunity.

⁵⁸ Information Note of the Ministry of Justice to the Constitutional Amendment as to Lifting Parliamentary Immunity Introduced by the Law 6718, available at:

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)055-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)055-e)

⁵⁹ Turkey Purge, 13 February 2017, available at <https://turkeypurge.com/police-detaib-70-hdp-members-administrators-in-istanbul>; Council of Europe Commissioner for Human Rights, Memorandum on freedom of expression and media freedom in Turkey, available at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2961658&SecMode=1&DocId=2397056&Usage=2>

⁶⁰ Turkish Minute, 11 June 2016, available at: <https://www.turkishminute.com/2016/06/11/justice-minister-immunity-files-117-deputies-sent-prosecutors/>

⁶¹ Andalou Agency, 5 November 2016, available at: <http://aa.com.tr/en/politics/turkey-hdp-co-chair-jailed-in-terror-investigation-/679014>

with propaganda, protest, incitement and similar crimes related to legitimate expression.⁶² They were sentenced to up to one year in prison and loss of their parliamentary seats. Approximately two thousand members of the HDP have been detained since the attempted coup, and 13 HDP deputies are currently in prison.

VIII. Dismissal of public officials

59. Between the time of the attempted coup and the Special Rapporteur's visit, approximately 74,000 public officials had been removed from government positions, and 100,000 had been removed from public office for political, religious or other beliefs. The dismissals take place without trial, investigation or appeal possibilities. The government issues "blacklists" containing the names of those removed from public office, reducing the possibility that they will be re-employed in either the public or private sector, leading to what one civil servant described as "civil death". According to figures provided by the Government, 30,000 public officials have been reinstated.

60. The Special Rapporteur is particularly concerned that the dismissals fail to identify specific criminal acts taken by targeted officials. In this context, it may be that the penalties target the opinions of individuals, as reflected in their alleged associations, in violation of Article 19(1) of the ICCPR.

IX. Civil society

61. Representatives of civil society emphasized that the deterioration of the right to freedom of expression does not result solely from the state of emergency. Pressures on civil society organizations limit the ability of individuals to enjoy the freedom of expression, whether individually or as a collective. On 11 November 2016, 370 NGOs operating in Turkey were suspended under emergency decree, for alleged links with terrorist organizations. The Ministry of Interior assured the Special Rapporteur that all suspensions would be individually reviewed, but on 22 November 2016, all of the suspended NGOs, plus an additional five, were permanently closed and their assets seized under emergency decree no. 677. This brought the number of closed NGOs since the attempted coup to 1,495.⁶³ According to figures provided by the Government, 187 associations and 21 foundations have been reopened by decree laws. During the mission, the Special Rapporteur met with representatives of artistic and cultural centres, women's rights organizations, children's rights organizations, and organizations working toward equality on the basis of sexual orientation and gender identity.

62. In addition to being limited on the basis of overbroad and vague defamation and counter-terrorism grounds, funding restrictions and prior censorship represent two main barriers for artistic freedom of expression in Turkey.⁶⁴ Several interlocutors pointed to the increasing use of certification systems to limit the circulation of films. The national cinema board, under the Ministry of Culture and Tourism, has the authority to evaluate films according to their consistency with public order, moral values, spiritual and physical well-being of youth, human dignity and copyright. Following amendments to the Turkish Arts Council (TÜSAK), the decision-making powers in the arts funding system is shifted to State-appointed officials rather than candidates representing artists' associations.

63. According to women's rights advocates, recent legislative changes have rolled back previous achievements in the area of women's rights. The government has suspended or

⁶² Hurriyet Daily News, 17 January 2017, available at: <http://www.hurriyetdailynews.com/prosecutor-seeks-up-to-142-years-in-prison-for-jailed-hdp-co-chair.aspx?pageID=238&nID=108635&NewsCatID=338>

⁶³ Al-Monitor, 21 November 2016, available at: <http://www.al-monitor.com/pulse/originals/2016/11/turkey-emergency-rule-cracks-down-on-ngos.html>

⁶⁴ Freemuse, *Art under Threat in 2016*, <http://artsfreedom.org/wp-content/uploads/2017/02/Freemuse-Annual-Statistics-Art-Under-Threat-2016.pdf>.

shut down women's associations.⁶⁵ Advocates claim that they have lacked access to information to challenge the shut downs. While women's advocates stated that the EU harmonization process has helped gender equality in Turkey overall, they expressed concern that enforcement and implementation of existing laws are lacking.

64. Groups advocating on behalf of children bemoaned the lack of protections for the free expression rights of children. Children's rights organizations pointed to changes to the education system in the past years that negatively affect children's rights to access to information. In 2014, a reported 2200 children were detained for participating in protests and demonstrations, and 50% of those detained were reportedly under 11 years old.⁶⁶ Children's rights organizations said that they face persistent threat of shutdown. A leading NGO in this area was among those shuttered on 22 November 2016.

65. The lack of legal and policy protections for lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals exacerbates a generally threatening environment for expression related to sexual orientation and gender identity. The Internet and digital security tools provide an important source of protection of LGBTI people in Turkey, and the compromise of digital platforms adds to their vulnerability. LGBTI people have a pervasive fear of being targeted by the government, a result of bans on LGBTI groups, targeting by pro-Government media, lack of protection for lawyers and advocates, restrictions on their ability to hold marches or otherwise express their views, and blocks on LGBTI-friendly social media applications.

X. The judiciary, the bar and due process

66. Article 19(3) requires not only clarity and precision in restrictions but also the availability of independent mechanisms to enable individuals to challenge them. In the present context, the judiciary appears to be increasingly unavailable to those charged under the Anti-Terrorism and emergency laws. Nor does it appear available to the tens of thousands of individuals who have lost their employment according to vague accusations of association with the Gülenist movement and Kurdish organizations.⁶⁷ The following elements call into question the legality of the restrictions applicable to freedom of expression.

A. Structural changes to the judiciary

67. In meetings with the Special Rapporteur, members of the Court of Cassation and the Constitutional Court expressed pride in adhering to the ECHR and incorporating the jurisprudence of the ECtHR into their decisions. For significant periods over recent history the judiciary had good reason for such pride, as the process of integration with the human rights mechanisms of Europe had a demonstrable impact on Turkish law.

68. The Special Rapporteur is concerned about structural changes to the judicial system which undermine the independence of the judiciary, even those that predate the emergency declared in 2016. Pursuant to Law No. 6545 of 2014, the system of Criminal Judicature of Peace (or Criminal Peace Judges) streamlines cases in such a way as to limit the ability to appeal and challenge emergency decrees and measures taken under such decrees. The Criminal Peace Judges decide upon measures such as arrest, pre-trial detention, search,

⁶⁵ Women's rights associations were among the NGOs closed down by Decree 667. Joint statement issued by fifty women's rights associations (in Turkish): <http://www.agos.com.tr/tr/yazi/17013/kadin-orgutlerinden-kapatilan-derneklerle-ilgili-aciklama> ⁶⁵

⁶⁶ Report by Turkey's Human Rights Association of 2014. English summary available at: <http://bianet.org/english/children/160089-report-49-kids-tortured-in-prison-64-under-detention-in-2014>

⁶⁷ Communication of Special Rapporteur, 1 December 2015, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21403>; Government Reply, 31 December 2015, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33736>.

seizure, and physical examination of the suspect. According to the Code of Criminal Procedure, article 268(3)(a), the appeal of a decision by a Criminal Peace Judge shall be reviewed by another Criminal Peace Judge. The system of horizontal appeal falls short of international standards and deprives individuals of due process and fair trial guarantees. The Special Rapporteur was alerted to several examples indicating that this system does not take into account case-law in other Turkish courts, including the Constitutional Court, that may be consistent with international human rights standards.

B. Dismissal of judges and prosecutors

69. Since 2014 the executive branch has strengthened its control of the institutions of the judiciary and prosecution, including by arrest, dismissal and arbitrary transfer of judges and prosecutors, as well as threats against lawyers. This began following the split between the ruling Justice and Development Party (AKP) and the Gülen movement, which had been closely allied with the AKP movement until 2013.

70. Following the coup attempt, authorities launched administrative investigations into the judiciary, dismissing an alarming number of judges and prosecutors on grounds of affiliation with the Gülen movement. In the first five months following the state of emergency, 3,626 judges and prosecutors were removed under emergency decree.⁶⁸ At the time of the Special Rapporteur's visit, only 198 had been reinstated.⁶⁹ Several dozen judges, including one judge serving in the UN Mechanism for International Criminal Tribunals (MICT), Judge Aydin Sedaf Akay, have been detained, even after the MICT ordered Turkish authorities to cease all legal proceedings against Judge Akay and to take all necessary measures to ensure his release from detention.⁷⁰ The Constitutional Court expelled two of its own judges.⁷¹ In February 2017, another 227 judges and prosecutors were dismissed by the Board of Judges and Prosecutors following the inclusion of their names in lists annexed to emergency decrees.⁷² By emergency decree 667, members of the judiciary who were dismissed are entitled to file an action directly with the Council of State.

C. Lack of judicial review

71. Between the declaration of the state of emergency and December 2016, the Constitutional Court received approximately 60,000 applications for judicial review, many for claims in connection with arrests, pre-trial detention and employment dismissals often connected to asserted membership in or beliefs associated with Gülenist or other organizations. During approximately the same period, more than 36,000 persons were jailed pending trial, and more 110,000 have been dismissed from public service.⁷³ However, following the court's decision of 12 October 2016 with regards to emergency decrees 668

⁶⁸ International Commission of Jurists, 6 December 2016, available at: <https://www.icj.org/turkey-emergency-measures-have-gravely-damaged-the-rule-of-law/>

⁶⁹ At the time of the writing of the report, this number had reached 4317 according to Turkey Purge, <https://turkeypurge.com/>. According to reports by Hurriyet news, another 5 judges and prosecutors were reinstated in March 2017.

⁷⁰ MICT Order, available at: <http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/rec/239107/view/NGIRABATWARE%20-%20ORDER%20TO%20THE%20GOVERNMENT%20OF%20THE%20REPUBLIC%20OF%20TURKEY%20FOR%20THE%20RELEASE%20OF%20JUDGE%20AYDIN%20SEFA%20AKAY.PDF>

⁷¹ Human Rights Watch, 5 August 2016, available at <https://www.hrw.org/news/2016/08/05/turkey-judges-prosecutors-unfairly-jailed>

⁷² Andalou Agency, 20 February 2017, available at <http://aa.com.tr/en/turkey/turkey-dismisses-227-feto-linked-judges-prosecutors/754554>

⁷³ Reuters, 18 November 2016, available at: <http://www.reuters.com/article/us-turkey-security-idUSKBN13D0IU>

and 669, the possibility for individuals to challenge the constitutionality of measures taken under emergency decrees has been, at best, made exceptionally difficult.

D. Access to lawyer and due process

72. Emergency decree 667, the first declared following the attempted coup, increased the amount of time a detainee could be held without charge from four to thirty days (article 6a). Article 19 of the Constitution allows for a maximum of four days and an extension of this period during a state of emergency. However, in the case of *Aksoy v. Turkey*, the ECtHR held that detention of fourteen days without judicial review, even during a legitimate state of emergency, violated the state's human rights obligations.⁷⁴ Decree 667 also provided for officials to observe or even record meetings between pre-trial detainees and their lawyers, in addition to restricting the choice of lawyers (article 6d). Decree 684 reduced the maximum period for detention to seven days from the arrest, excluding the time spent to take the suspect to the nearest court.

73. The Special Rapporteur visited Silivri prison, as noted above, where lawyers were permitted only very brief meetings each week. During these brief meetings, they are unable to exchange documents, and all conversations are allegedly monitored by the prison. Lawyers with whom the Special Rapporteur met explained that in most cases neither they nor their clients were informed of the specific charges, making it difficult to prepare a defence. Individuals in detention were also unable to see their lawyers until shortly before being brought to court or being interrogated, adding an additional challenge for due process.

74. Under the state of emergency decrees, judges can order that lawyers be replaced. Detained persons in many instances do not have access to legal and other books and cannot make telephone calls. Access to family members is also restricted. Lawyers representing detained persons reported harassment pursuant to the course of their work. The Government has launched tax record investigations into a number of lawyers, and many are investigated and detained.

XI. Recommendations

75. The situation for freedom of expression in Turkey is in grave crisis and requires immediate steps for Turkey to be compliant with its obligations under international human rights law. The Special Rapporteur is not alone in his assessment. The recommendations that follow are largely consistent with those made by, among others, the Parliamentary Assembly of the Council of Europe, the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media.⁷⁵

A. Media freedom and access to information

76. The Special Rapporteur is seriously concerned at the deterioration of media freedom in Turkey, which predates the coup attempt. The state of emergency cannot justify the adoption of disproportionate and arbitrary measures representing a severe blow to freedom of expression, media freedom and access to information in Turkey.

77. The Special Rapporteur urges the Government to immediately release journalists, writers, judges and academic who are detained pursuant to counter-

⁷⁴ *Aksoy v. Turkey*, 1996-VI Eur. Ct. H.R. 68 (1996).

⁷⁵ Recommendation 2097 (2017) by the Parliamentary Assembly of the Council of Europe, (<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23403&lang=en>); Memorandum on freedom of expression and media freedom in Turkey, by Nils Muižnieks, Council of Europe Commissioner for Human Rights; Statements by the OSCE Representative on freedom of the media, available at <http://www.osce.org/fom/302351> and <http://www.osce.org/fom/278326>

terrorism legislation and emergency decrees. Nobody should be held in detention, investigated or prosecuted for expressing opinions that do not constitute an actual incitement to hatred or violence consistent with Article 20 and Article 19(3).

78. The Special Rapporteur urges the Government to adopt all appropriate measures to ensure that press and other media, and all individuals, are able to comment on public issues and to inform public opinion without censorship or constraint.

79. The Government must reverse its shutdowns of media outlets, including Internet media, networks and mobile telephony, and ensure that suspension of media outlets occur only in exceptional circumstances provided for by the law, and only in accordance with appropriate judicial procedures. Such measures should always be subject to judicial review.

B. Restrain the substantial restrictions on the internet

80. The Special Rapporteur calls on the Government to review the Internet Law and revise the broad authority to block and remove online content and to introduce less intrusive measures. The Special Rapporteur urges the Government to refrain from the excessive blocking and filtering of content and limit its requests for takedowns to actual cases of incitement meeting the requirements of Article 19(3) and Article 20 of the ICCPR.

C. Review of emergency decrees

81. The Government is obligated to ensure that any restriction on freedom of expression during the state of emergency is strictly proportionate to the exigency of the situation. The tests of necessity and proportionality are not suspended during a period of derogation linked with a state of emergency.

82. The Special Rapporteur urges the Government, with a view to ending the state of emergency, to reconsider whether the conditions at issue in July remain such as to justify its continuation. Regardless, he urges review and revision of the emergency decrees so as to ensure their consistency with international human rights norms and standards. In particular, persons deprived of their liberty pursuant to the emergency decrees must be entitled, in line with Article 9 of the ICCPR, to initiate proceedings before a court to challenge the lawfulness of their detention.

83. The Special Rapporteur urges the Government to ensure that anyone who has been victim of unlawful arrest, detention, or dismissal, or has any other legal claim, must have an enforceable right to review and remedy. Persons dismissed by virtue of emergency decree must be granted access to appropriate and independent judicial and administrative mechanisms to challenge the lawfulness of the decisions and to obtain adequate reparation.

D. Review of national legislation

84. National legislation on defamation and counter-terrorism ought to be brought in line with international standards. In particular, the Special Rapporteur urges the Government to review urgently the Anti-Terrorism Law so as to ensure that counter-terrorism measures are compatible with Article 19(3) of the ICCPR. Such offences as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not continue to lead to unnecessary or disproportionate interference with freedom of expression.

85. The Special Rapporteur also calls on the Government to repeal articles 125(3) and 299 of the Penal Code, which criminalize the defamation of public officials and the President of the Republic. The mere fact that forms of expression are considered

to be insulting to a public figure is not sufficient to justify the imposition of penalties. The criminalization of individuals solely for criticism of government can never be considered to be a necessary restriction on freedom of expression. Even in the absence of repeal, the Special Rapporteur urges senior public officials to refrain from the harassing use of such tools to silence criticism in the name of “insult” of public authority.
