

## FREEDOM OF EXPRESSION: WORKING SESSION 16

### **Current Situation**

Last year the Turkish government's record on freedom of expression abuses was among the worst in Europe, and in 2006-2007 the situation has worsened. Despite overwhelming criticism from the United Nations (UN), the European Commission and countless NGOs, Turkey has not repealed or amended its restrictive Anti-Terror laws, including the widely-denounced Article 301, which criminalises "insulting Turkishness". In fact, instances of prosecution under these laws have actually been on the rise, with Independent Communication Network (BIA) reporting that cases against journalists, publishers and activists for offences relating to words they have said or written rose from 157 in 2005 to reach 293 in 2006.<sup>1</sup> 72 of those prosecuted were charged under the infamous Article 301 alone, which is a dramatic rise from the 29 prosecuted in 2005. Others were charged under a variety of Anti-Terror laws, ranging from Article 216's "inflaming hatred and hostility among the peoples" to law 5816, which criminalises "insulting the memory of Atatürk".

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<sup>1</sup> BIA's 2006 Report Monitoring Freedoms and Rights in Turkey, published 16/02/2007.

## **The Harassment, Prosecution and Murder of Hrant Dink**

The event that most dramatically punctuates this year's discussion of freedom of expression is the murder of noted Armenian journalist Hrant Dink in January of 2007. While the Turkish government joined in the international condemnation this murder received, but refused to acknowledge the role it played in fuelling the nationalism that sparked this attack by trying Dink repeatedly under Article 301, in effect labelling him an enemy of "Turkishness". It was also rumoured that Dink received official warnings up until the day he died. Indeed, even as the government prosecuted Dink's murderers, it continued to bring charges against his son and publisher in relation to comments he had made before his death. Only a few short months after the killing, Serkis Seropyan and Arat Dink were charged under Article 301 in relation to Hrant Dink's statement that an Armenian genocide had taken place. This trial has been postponed until 11 October 2007 after defence counsel requested the withdrawal of the judges and prosecutor who brought the case on the grounds that they could not maintain an objective stance. Former President of the Human Rights Association's Istanbul branch Eren Keskin was also charged with "degrading the army" in an article she wrote on Dink's death, showing that even on the heels of a nationalism-fuelled murder, the Turkish government has continued to censor speech and label dissident views "anti-nationalist".

### **New Legislation: An Internet Censorship Law**

Beyond continuing to use old laws to silence the media, the government has also issued new legislation that curtails freedom of expression. A new censorship law targeting online publications was passed only a few months after Dink's death. The Internet Censorship bill provides for the criminal prosecution of anyone publishing materials online that are seen as insulting to the memory of Atatürk, or that seem to promote suicide, sexual abuse of children, prostitution or drug use. While the language of the legislation may seem to make the censorship specifically targeted on its face, its implementation measures are vague and easily open to abuse. Indeed, these provisions seem designed to induce self-censorship by websites as they hold Internet Service Providers (ISPs) responsible for their content. The law also allows the government to block websites "when there is sufficient evidence of the improper aspect of content". The law has already been used to ban access to YouTube.com because of the availability of materials allegedly insulting to Atatürk. Access was restored only after YouTube.com removed the offensive video.

### **Inconsistent, Arbitrary Application and Interpretation of Legislation**

The problem of media censorship in Turkey often has less to do with the legislation itself, however, than its application. In February of 2007 KHRP sent a mission to observe the trial of Songül Özkan, owner and director of *Evrensel Basım Yayın* publishing house. The mission not only observed that the Turkish

judiciary interprets censorship laws arbitrarily and inconsistently, but also revealed the wider effects of these laws and their usage on political discourse, safety and the livelihood of journalists and publishers in Turkey. Specifically the mission noted that the Turkish government charges publishers and journalists tactically, repeatedly indicting them for similar crimes and dragging out their trials such that publishing houses cannot grow and develop business and are thus frustrated out of business.<sup>2</sup> Özkan's case, for example, was opened on 17 November 2003, but no decision on her guilt or innocence is expected until at least 2008. Peri Publishing House owner Ahmet Önal has had a total of 26 cases brought against him, of which 13 were thrown out because the time limit under the statute of limitations had expired. Furthermore, the Turkish legal system renders publishers liable twice for the same publication, as Article 11 of the new Press Law (Law No. 5187) allows that if the writer cannot be tried in Turkey or already has been imprisoned for life, his publisher will be charged with *both* authorship and publication. It is this provision that has allowed the government to pass charges made against Dink on to his publisher and editor since his death.

Though the Turkish government continues to receive criticism for its extreme censorship measures, the situation on the ground is only getting worse.

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<sup>2</sup> 'Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession'. Trial Observation Report, KHRP May 2007, p.32.

## OSCE Commitments

- **Regarding general freedom of expression rights:**
  - Participating States recognize and value the right to freedom of expression as “a fundamental human right and a basic component of a democratic society.” (Budapest Document 1994, “Decisions: VOOO. The Human Dimension”, par. 36)
  - Consequently, they affirm that “everyone will have the right to freedom of expression...to hold opinions, and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” This right may *only* be restricted in ways “prescribed by law and...consistent with international standards.” (Copenhagen Document 1990, par. 9.1)
- **Regarding freedom of political expression and campaigning:**
  - Participating States will “ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them” (Copenhagen Document 1990, par. 7.7)

- **Regarding freedom of expression of human rights defenders:**
  - Participating States will “respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information.” (Copenhagen Document 1990, par. 10.1)
- **Regarding freedom of expression for the media and publishers:**
  - Participating States “make it their aim to facilitate the freer and wider dissemination of information of all kinds.” (Helsinki Document 1975, “Co-operation in Humanitarian and Other Fields”)
  - They reaffirm “the right of the media to collect, report and disseminate information, news and opinions. *Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.* They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.” (Moscow Document 1991, par. 26)
  - In furtherance of this belief, Participating States will take “no measures aimed at barring journalists from the legitimate

exercise of their profession other than those required by the exigencies of the situation.” (Moscow Document 1991, par. 28.9)

- They will also “condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.” (Moscow Document 1991, par. 37)

- **Regarding freedom of expression through electronic media:**

- Participating States “will ensure that individuals can freely choose their sources of information.” In this context they will “take every opportunity offered by modern means of communication...to increase the freer and wider dissemination of information of all kinds.” (Vienna Document 1989, “Co-operation in Humanitarian and Other Fields”, par. 34, 35)

### **Assessment 2006-2007**

2006-2007 has witnessed the almost daily arrest of journalists, publishers, political activists, academics, human rights defenders and politicians who have tried to exercise their basic right to freedom of expression. The sheer volume of cases brought against individuals and institutions in Turkey based on expressions of thought or opinion makes a full report impossible; this assessment therefore simply highlights some of the year’s most notable arrests and urges the

OSCE to consider the gravity of the censorship problem in Turkey in 2006-2007, bearing in mind how it has affected both Turkish domestic and foreign policy.

**a) Politicians, professors and political activists:**

Again in 2006-2007 Turkey has violated its obligation as an OSCE participating State to not only allow but also encourage freedom of expression in its attempt to silence political activists and leaders whose views contradict those of the ruling regime.

Universities are often centres of political activism, discussion and inquiry, but both the Turkish government and independent nationalist groups have sought to limit and control the types of political thought put forward by professors and students. Professor Atilla Yayla, for example, has been targeted by Nationalist and Kemalist circles after he made comments critical of Atatürk at a conference. On 20 February 2007 Mehmet Emin Demir, a student of Kurdish descent, was convicted of “making propaganda of terrorist organisation and/or its aims” when in an interview on Abbas Güçlü's television programme he said “the PKK is a consequence, not a cause”. The police not only arrested him, but later searched his house, confiscating his computer and other “forbidden material”, including two books written by Abdullah Öcalan.

Turkey's new Anti-Terror laws have also allowed it to target new subjects, such as the Armenian genocide. Since the passage of Article 301, the Turkish government has brought criminal charges against writers who discuss Armenian



issues for “defaming Turkishness”. One example is Erhan Akay, who was sentenced to 5 months in prison for writing about Armenian-Turkish relations. In this and many other instances the Turkish government has used Article 301 not only to censor political speech, but also as an attempt at re-writing Turkish history and erasing the cultural identity of its national minorities.

Kurdish politicians have also been a favourite target of the new Anti-Terror laws, with MPs and mayors from the south-eastern part of Turkey coming under constant attack for statements they have made. In May of 2007, DTP Mayor of Cizre (Sirnak) Aydin Budak was removed from office in connection with a speech he made during the Kurdish Newroz celebration on 21 March 2007. He was later tried for allegedly saluting Abdullah Öcalan in the speech. Leyla Zana was also arrested for a Newroz-related statement she gave at the request of a Turkish prosecutor in May 2007. The prosecutor asked Zana to make a statement regarding her Newroz speech, then promptly launched a case against her for “making propaganda of an illegal organization” when she called Öcalan “leader of the Kurds” in this speech. On 24 May 2007, DEP MP Hatip Dicle was prosecuted for a speech he made in London on the Kurdish question. Generally Kurds and pro-Kurdish politicians receive great attention from Turkish authorities and have been systematically arrested, harassed and even removed in office for expressing viewpoints that the Turkish government finds objectionable. The goal of these focused attacks on freedom of expression seems to be not only to silence dissident voices, but also to disrupt and confuse the political process.

In this way the Turkish government deprives the Kurdish people of their leadership and denies this sizable minority (roughly 25 per cent of the nation's population) Parliamentary representation. In these instances the Turkish government also violates the collective rights of national minorities to use their own language and be represented in Parliament, which it has promised to uphold as part of its Commitments as an OSCE participating State.

Turkey's duty to allow freedom of expression in the political arena goes beyond a simple political obligation to fulfil the OSCE Commitments, however. It must also honour this right in order to have a healthy, functioning democracy where all voices are heard and represented. It remains imperative that Turkey allow freedom of expression in the realm of politics not only in order to follow up on its obligations as an OSCE Participating State, but also to legitimise and strengthen its own government.

**b) human rights defenders:**

According to OSCE Commitments, international law and the general requirements of representative democracy, human rights defenders must be free to speak out against human rights abuses and distribute information regarding their work. The Turkish government, however, continues to abridge and deny this right any time it is used in ways that criticise or question the government and its actions. In late 2006, for example, lawyer and vice-president of the Human Rights Association (IHD) Diyarbakir Reyhan Yalcýndađ Baydemir

was prosecuted under Article 277 for “influencing the judiciary” when she urged that children arrested for burning a Turkish flag be released. On June 8, 2007, three members of the IHD in Adana were sentenced to a prison term of two years and eight months each for criticising military operations in a press release. The Adana penal court convicted the three of “inciting the people to hatred towards the state.” One of those convicted was branch president Ethem Acikalin, who faces further charges under Article 301 for protesting against killings in Adana and Diyarbakir.

Turkey has continued to use its Anti-Terror laws to censor human rights defenders, deterring them from speaking out against the Turkish government and the behaviour of its officers. The OSCE has stated that it values the work of human rights defenders and all Participating States have promised to uphold and protect human rights defenders who work in their country. Thus Turkey’s censorship and harassment of human rights defenders constitutes a violation of the commitments it signed as an OSCE Participating State, and must be condemned.

**c) the media: journalists, publishers and radio stations:**

The Turkish government keeps a close eye on the media as a means of controlling dissident voices within the Turkish community, and particularly those of religious and ethnic minority groups. In pursuit of this agenda, the Turkish government has been quick to move against journalists, publishers and

distributors of other media forms, such as radio stations, that publicise views that critique, criticise or even simply irritate the ruling regime. The government's main weapons in this battle against dissident voices have been its Anti-Terror laws and particularly Article 301, but the government's agents have also simply closed publishing houses or radio stations if they find their content offensive, and has in some instances they have resorted to intimidation in an attempt to ensure the media will tow the party line.

In 2006-2007 Turkey has charged and arrested a record number of people for an offence relating to something they have said or written. Some of the most notable arrests of the year include:

**Eren Keskin** – this former chairwoman of the Human Rights Association's Istanbul branch was convicted on 23 January 2007 for saying in a 2002 speech that "torture is a state policy in Turkey". Keskin's six-month prison term was converted to a fine of 900 YTL (about US \$706), and she was immediately re-arrested in June for her writings on the murder of Hrant Dink and an article in which she referred to Turkey's "dirty history" and used the word "Kurdistan". On 11 July 2007 she was convicted of these offences under Article 301, and her 1-year sentence was again converted to a fine.

**Sinan Kara** – this journalist was arrested for writing in two articles for the leftist magazine *Ülkede Özgür Gündem* that "in Turkey, the Army is above the law".

**Sýrrý Öztürk** – the Sorun Publishing House owner was tried under Article 301 along with author Osman Tiftikçi for a book called “The Evolution of the Army from the Ottomans to Today.” The Chief of Staff of the Turkish Military launched the case because the book allegedly “publicly insults the military forces by the means of the press”.

**Birgül Özbarýp** – this reporter for Ülkede Özgür Gündem faces up to 21 years in jail for violating Article 318, that is, “alienating the public from the institution of military service” by conducting interviews and writing articles on conscientious objection.

**Cengiz Kapmaz** – the Istanbul 11<sup>th</sup> Criminal Court heard a case charging this journalist with “praising the PKK leader Öcalan and the PKK” in an article entitled “Allow the PKK into the National Assembly”.

**Mehmet Caðcað** – this cartoonist was charged with “severe violation of personal rights” for portraying Prime Minister Erdoğan as an insect in the 7 July 2006 edition of *Leman Magazine*.

**Fatih Taş, İpek Çalışlar and Ragýp Zarakolu** – these journalists and publishers were charged with “insulting Atatürk” under law 5816. Though Taş and Çalışlar were acquitted, Zarakolu and two of his translators remain on trial under this law. Peri Publishing House owner Ahmet Önal was convicted under this law in relation to publishing the book “Ambitions and Prisoners” by Evin Çiçek.

These arrests are emblematic of many, many more. It is simply not possible to overstate the gravity and breadth of Turkey's continued violations of the right to free expression. Yet, despite the increase in people arrested, charged, tried and convicted of breaking the law by something they have written or said and the increased international attention Turkey's violation of the right to freedom of expression has garnered, the number of convictions and cost of damages awarded by the European Court of Human Rights against Turkey in cases involving freedom of speech actually declined in 2006. According to the 2006 BIA report, the 2006 damage award total was little over half of what it was in 2005, and awarded to only 45 individuals.<sup>3</sup> Indeed, in spite of warnings from writers, publishers and several NGOs that, as drafted, the new penal code could result in more arrests and further censorship, the EU approved the Turkish Criminal Code of 2004 as a reform that would bring Turkey more in line with European standards. And though the European Commission did recently criticise the Turkish government for slowing the pace of its reforms and in particular for its terrible record on limiting freedom of expression, the Commission was criticised both within Turkey and from international NGOs for not coming down harder on the Turkish government for its censorship record during recent talks about EU accession.

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<sup>3</sup> BIA 2006 report.

Where the Turkish government has failed to use its pliant Anti-Terror laws to provoke submissive self-censorship or otherwise silence dissident members of the media, it has often asserted its authority to simply shut down media operations it deems unacceptable. In November 2006, Istanbul's 10th High Criminal Court closed Ülkede Özgür Gündem for 15 days for allegedly conducting propaganda for the PKK and praising crimes committed by this group in 13 of its issues. Istanbul's 13<sup>th</sup> High Criminal Court issued two orders in 2007 suspending the publication of daily newspaper Gündem for "praising a crime and a criminal" in reports stating "Öcalan is poisoned", "Kalkan: large numbers join the Guerillas", and "Kurds Appeal for Öcalan", all published in early March 2007. In Diyarbakir the 5<sup>th</sup> High Criminal Court banned newspaper Azadiya Welat for 20 days. The ban started on 22 March 2007 and was enacted for publishing reports and pictures that allegedly "praise crime and criminals, incite to crime and propagandise for a separatist terrorist organisation".

**d) electronic media rights and the Turkish Army's use of the internet:**

The new Internet Censorship bill discussed above has the potential to dramatically affect the ability of the media to publicise the material it wishes to online. Even before the passage of this new law, however, the Independent Communications Network (BIA) noted that in 2006 websites had become new

targets for attacks.<sup>4</sup> The report noted that nationalists had hacked into three websites in 2006, and that journalists have been assaulted and threatened in connection with online publications. This news is especially troubling given the recent murder of Hrant Dink by nationalists and the Turkish army's use of its website to publish political statements and calls to action. On 11 June 2007, the Turkish General Staff published a "comment on terrorism" that called for "the noble Turkish people to show a mass reflex against terrorist activities". This statement warned against trusting people and organisations who argue for peace, freedom and democracy as these values could be a "smoke screen" for terrorist objectives and organisations. It further identified not only the PKK, but also the concept of a "united Kurdish area" as a threat to Turkey's "national and unitary structure".

Particularly given the recent murder of Hrant Dink by nationalists, which happened on the heels of the Turkish government condemning him for "insulting Turkishness", this call to arms by the Turkish army is alarming and dangerous. The government was quick to brush aside any such allegations, calling this statement a "press release". In actual fact, the government's manipulation of the media is hypocritical, short-sighted and perilous. On the one hand the government censors speech and declares that certain statements and people "insult Turkishness", but on the other allows prominent members of the Turkish Armed Forces to make statements that suggest and even incite

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<sup>4</sup> BIA 2006 annual report.



violent responses to perceived threats to nationalism. As KHRP noted in its trial observation report, in these instances “the state apparatus protect expression that is of a violent and intimidating nature, while allowing the persecution of non-violent dissenting opinion.”<sup>5</sup> The laws allowing the Turkish government to manipulate speech in this manner must be amended before they produce more violent results.

### **Recommendations to the Government of Turkey**

In order to be considered a true democracy and in order to live up to its commitments as an OSCE Participating State, Turkey must take concrete steps to engender freedom of expression and facilitate political discourse. Accordingly, KHRP urges the state of Turkey to:

- fully overhaul its legal system, starting with the amendment of the following laws such that they clearly do not violate freedom of expression:
  - Article 84 – criminalises inciting or assisting suicide
  - Article 125 – criminalises offending honour, dignity and respectability or insulting public officials
  - Article 132 – criminalises violating the secrecy of communication
  - Article 134 – criminalises violating the secrecy of private life
  - Article 215 – criminalises praising crime or criminals

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<sup>5</sup> ‘Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession.’ Trial Observation Report, KHRP, May 2007, p.34.

- Article 215 – criminalises inciting hatred and enmity among people
- Article 218 – criminalises offences committed against public peace by means of the press
- Article 285 – criminalises violating the secrecy of an investigation
- Article 286 – criminalises sound and visual recording in investigation and prosecution procedures
- Article 288 – criminalises attempting to influence a fair trial
- Article 299 – criminalises insulting the President
- Article 301 – criminalises degrading the Turkish identity, republic, state institutions and organs
- Article 305 – criminalises providing benefits to activities conducted against basic national interests
- Article 318 – criminalises discouraging the people from military service;
- educate and train all members of the Judiciary on Turkey’s international obligations to foster freedom of expression and allow healthy political discourse to flourish within its borders such that they understand how to interpret Turkish law in line with these principles;
- condemn attacks on members of the media, politicians, students, academics, human rights defenders and anyone else when these crimes are motivated by expressions of thought or opinion;

- repeal the new Internet Censorship law, and otherwise reduce pressure on all forms of media to self-censor;
- denounce any use of violence motivated by nationalism;
- encourage freedom of speech and support the media in its endeavour to capture all voices and viewpoints represented in Turkey;
- support and encourage discourse on minority interests so as to diffuse intense feelings of nationalism that may result in violence.

### **Recommendations to the OSCE**

Recalling its desire to defend freedom of expression within the OSCE participating State region as voiced by the Commitments found in the Copenhagen Document, KHRP urgently requests the OSCE to:

- take note of the dire position of publishers and other media members in Turkey as noted in KHRP's 2007 trial observation report and similar reports made by other NGOs;
- closely monitor freedom of expression in Turkey by sending its own trial observation missions to track the status of publishers and other media members in Turkey in 2007 and 2008;
- use its good offices with the Council of Europe and United Nations to exert pressure on Turkey to cease its extreme censorship measures
- take note of the intersections of censorship and nationalism-fuelled violence in Turkey and strongly condemn both;

- direct Turkey towards a liberalisation of its views on freedom of expression so as to guarantee the right to free speech and the independence of the media, as envisioned in the principles of the OSCE;
- maintain close contact and dialogue with human rights defenders, NGOs, IGOs and members of the media to keep abreast of all developments regarding freedom of expression in Turkey;
- criticise Turkish legislation, including Article 301, that impedes upon the right to freedom of expression and the independence of the media;
- encourage Turkey to repeal any provisions that contract the OSCE obligations to guarantee the right of everyone, including publishers, politicians, students, academics and the media, to enjoy the right to freedom of expression without interference by public authority, as agreed upon in the 1990 Copenhagen Document.