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**Contribution of Reporters Without Borders (a non-governmental organisation with special consultative status) about press freedom in TURKEY**

**Introduction: Overview of press freedom situation**

Step by step, the past few years have brought Turkey to a crossroads. The society has been more and more challenging the nationalist and hard-line secular model inherited from Kemal Atatürk era, while the authorities, eager to join the EU, have showed some attempts to initiate a change in repressive laws and policies, especially towards Armenian and Kurdish minorities. However, politico-judiciary cases such as "Ergenekon" trial have exemplified the depth of links between radical nationalist groups and high-level army and State servants.

At the centre of this political and social battleground, the situation of press freedom has continued worsening. Many journalists have been tried for exercising their profession, often facing jail sentences over unfounded charges. Even if actual jail sentences are scarce, continuous trials maintain pressure on all journalists and prevent them from investigating "sensitive" issues such as Kurdish and Armenian claims, the secular State, or the activity of nationalist groups. Together with the figure of Kemal Atatürk (protected from offences by a 1951 law), these topics still constitute serious taboos.

Since it was modified in 2005, the Article 301 of Turkish Criminal Code, punishing damage to "Turkish identity" with prison sentences of up to two years, has brought some 200 intellectuals, journalists and publishers to court, including famous Hrant Dink and Orhan Pamuk. Based on this article, the final Court of appeal recently ruled that any Turkish citizen could seek damages from the latter for declaring in an interview: "30,000 Kurds and 1 million of Armenians were killed on this land, but nobody dears to speak about it." Amendments to the Article 301 adopted in April 2008 have not produced any noticeable improvement.

But judges, soldiers and police officers are also keen on referring to Article 305 (damage to fundamental national interests), Article 318 (turning the population against military service), Article 288 (insulting judiciary institutions), or Article 299 (defaming the President of

Turkish Republic), among others, to narrow free speech. Furthermore, penalties are very often increased by half when it is a media committing the offence.

The government just allowed private media to broadcast in Kurdish language, but discussing the claims of national minorities or accounting on the "counter-terrorist" operations in Eastern Turkey in an independent way is still virtually impossible. Any journalist mentioning the "Kongra-Gel" (former PKK) or quoting one of its leaders, even to criticise him, can face jail sentences for separatist or terrorist propaganda. The Anti-Terrorism Law No. 3713 and Article 216 of the Criminal Code (punishing incitement to hatred, hostility or humiliation) are invoked against more than fifteen journalists nowadays, including *Milliyet's* journalist Namik Durukan and its editor-in-chief Hasan Cakkalkurt, who face a 7 years jail sentence for publishing excerpts of an interview with a PKK leader. Editor in chief of Kurdish newspaper *Azadiya Zelat* Vedat Kursun has spent nearly one year in jail, waiting for his trial for alleged "propaganda in favour of PKK". While he has been imprisoned since January 2009, the first hearing took place only on 10 September, and the next one is planned for 2 December.

The daily *Günlük* and the weekly *Özgür Ortam* have been suspended several times over similar charges. In September, *Demokratik Açılım*, which had replaced closed *Günlük* in late August, was closed too for one month over charges of "propaganda in favour of PKK". On 20 October 2009, the European Court for Human Rights ruled Turkish authorities to pay hundreds of thousands Euros to 26 journalists of such temporary closed newspapers.

Many independent journalists and intellectuals, such as Aydin Engin, Ahmet Insel, Baskin Oran, or Sevan Nishanyan, have recently received threats from radical nationalist groups. The trial of the alleged killers of Hrant Dink, a Turkish journalist of Armenian origin shot dead on 19 January 2007, has continued, and the hearings opened to the press and public. Although there are many reasons to suspect the direct involvement of security forces in Dink's murder, both locally and in Ankara, most of them have not faced any criminal proceedings.

But investigating this sensitive case has proved very difficult for independent journalists. *Milliyet* correspondent Nedim Sener faces 32 years of jail sentence for allegedly "displaying confidential informations", "attempting to influence the outcome of a fair trial", and "offending police and secret services officers". Another journalist, Kemal Göktaş of *Vatan* newspaper, also published a book on the Dink case, and is also tried over similar charges.

But the "deep State" does not have the monopoly of damage to press freedom. In September 2009, the government imposed an unprecedented tax fine on Dogan Yayın, the country's largest media group. This 1.75 billion Euros fine for alleged tax irregularities, in addition to earlier penalties, exceeds the total value of all assets owned by the group. Dogan Yayın owns eight leading newspapers such as *Hürriyet*, *Milliyet*, *Vatan*, as well as twenty TV channels and a number of radio stations, websites, editing houses... This incident follows a long-lasting conflict between the media group, which owns most of the opposition titles, and AKP party-led government. Dogan group appealed to the ruling and the stakeholders are now reportedly negotiating to work out an agreement.

## **1. Online freedom**

The law No 5651 "On the fight against online crime" allows a prosecutor to ban access to any website inciting to suicide, pedophilia or drug use, but also infringing the 1951 law on Kemal

Atatürk, within 24 hours. During year 2008, about ten web sites, including YouTube, Dailymotion or Google Groups, have been blocked by such a court decision.

Newspapers recently stated that 292 websites in Turkish language and 138 websites in foreign languages, had been listed by the army headquarters in April 2009, and sorted between "separatist", "in favour of the EU", "Islamist", and others. This list includes a number of websites defending human rights, as well as newspapers *The Independent* or *The New York Times*.

## **2. Government steps to improve the situation**

Turkish authorities have taken some steps to improve respect for press freedom:

- In April 2008, the Parliament modified the Article 301 of Turkish Criminal Code, replacing the notion of "Turkishness" by "Turkish nation", reducing the maximum penalty from 3 to 2 years of jail, and above all, making mandatory for all sentences to be endorsed by the Ministry of Justice. Thanks to the will of the latter to show a less nationalist face, the actual number of jail sentences has indeed diminished, but the number of trials remains about the same. The "offence to Turkish nation" is still punished with up to 2 years of imprisonment, which allows judges to put enormous pressure on journalists criticising the institutions or investigating the issues of Kurdish and other minorities. Besides, this reform only concerns Article 301, while manyfold other repressive law articles are not modified.

- In November 2009, private media obtained the right to broadcast in other languages than Turkish language (especially in Kurdish language), without time limit. This possibility was previously limited to five hours per week for radio stations and four hours per week for TV channels. All content in other languages had to be simultaneously translated into Turkish language, which allowed broadcasting only news bulletins or music programmes.

## **3. Working with non-governmental organisations (NGO)**

Reporters Without Borders regrets the lack of accountability of State bodies such as army and police, as well as courts. Public, NGOs' and journalists' access to information from these institutions is frequently hampered.

## **4. Recommendations**

1. Entirely abolish all the laws and articles of the Criminal Code that narrow the space of democratic debate in the media. In particular, get rid of all the provisions concerning offence to Kemal Atatürk and the "Turkish nation", the Kurdish and Armenian issues, criticising judiciary and State institution. Abolish the Anti-Terrorism Law.
2. Put an end to the practice of temporary closing newspapers investigating sensitive issues.
3. Review the Law No 5651 on online crime in order to precise the nature of these crimes and introduce restrictions to the practice of blocking access to suspect web-sites.
4. Continue to engage serious investigations on the connections between radical nationalist groups, State and justice institutions. In particular, make all efforts to bring the backers of Hrant Dink's murder into court.

5. Ensure that the pluralism of media and press freedom are taken into consideration in the final decision on penalties imposed on Dogan Yayin group.

*The information in this report was gathered and checked by Reporters Without Borders, which has a network of correspondents in 130 countries and partner organisations in about 20.*

*There are countries where journalists can spend years in prison because of a word or a photo that offends. Reporters Without Borders has been working tirelessly to defend press freedom since 1985 because it believes that imprisoning or killing a journalist eliminates a vital witness and threatens everyone's right to be kept informed.*

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