

TURKEY

Stakeholder Report for the United Nations Universal Periodic Review

Submitted by the Stockholm Center for Freedom

for the 35rd Session of the Working Group
on the Universal Periodic Review
January 2020

Submitted in July 2019

Founded in 2017, the Stockholm Center for Freedom (SCF) is an advocacy organization that promotes the rule of law, democracy and fundamental rights and freedoms with a special focus on Turkey, a country of 80 million that is experiencing a dramatic decline in its parliamentary democracy under the current leadership. SCF is a non-profit organization set up by a group of journalists who have been forced to live in self-exile in Sweden against the background of a massive crackdown on press freedom in Turkey, where some 200 journalists have been jailed and a large number of media outlets have been shuttered by a series of arbitrary decisions taken by the Turkish authorities.

This submission focuses on the arbitrary violation of the right to own property, in particular, media outlets.

I. EXECUTIVE SUMMARY

1. During the period under review, the Turkish government shut down and liquidated dozens of critical media outlets that were owned and run by both private persons and corporations. Turkish authorities unlawfully shut down six national news agencies, 53 newspapers, 20 magazines, 37 radio stations, 34 television stations and 29 publishing houses, distribution and delivery companies between June 20, 2016 and June 19, 2018 under state of emergency decrees following a coup attempt on July 15, 2016¹.
2. Moreover, the Turkish government accused these critical, independent and opposition media outlets of spreading terrorist propaganda based on dubious evidence, harassing and intimidating thousands of journalists and media professionals and denying hundreds a fair trial and due process before courts that were already under the strict control of the executive branch. As a result of a relentless crackdown on freedom of the press, hundreds of journalists were detained, arrested, convicted or forced to flee the country. Turkey had more journalists in jail than any other country in the world as of July 2019².
3. Thousands of journalists and media workers have lost their jobs due to the unlawful seizure and closure of media outlets. Most of those who became unemployed overnight are still jobless due to alleged connections to terrorist groups or are forced to seek employment in a field unrelated to journalism in an unregistered job market.³.
4. Freedom of expression and freedom of speech were restricted, and the right to own property was violated.

II. BACKGROUND AND FRAMEWORK

A) 2015 Universal Periodic Review

¹ Media Ownership Monitor Turkey, Shutdown Media, online available at <https://turkey.mom-rsf.org/en/findings/shutdown-media/>

² Press freedom in Turkey: Still far worse than you think!, May 3, 2019, Stockholm Center for Freedom, <https://stockholmcf.org/press-freedom-in-turkey-still-far-worse-than-you-think/>

³ Report: Freedom of the press in Turkey: Far worse than you think, p.6, January 26, 2017, online available at <https://stockholmcf.org/freedom-of-the-press-in-turkey-far-worse-than-you-think-2/>

5. Turkey received 32 recommendations regarding freedom of opinion and expression during its last UPR in 2015.⁴ The Turkish government responded to these recommendations by either supporting or making note of them.
6. Turkey supported the recommendation of the Netherlands that it should exercise restraint in using anti-terrorism legislation in legal procedures against journalists and ensure the proportionality of measures that limit access to the Internet⁵
7. Turkey supported the recommendation of France that it should reform the law on counterterrorism in order to prevent the imprisonment of journalists.⁶
8. Turkey supported the recommendation of the United States that it should strengthen the protection of freedom of expression by allowing discourse and greater access to information, both online and offline, and ensure that the penal code and anti-terror laws are consistent with international obligations.⁷
9. Turkey supported the recommendation of Austria that it should guarantee the right to freedom of expression, online and offline, to fully ensure that journalists can pursue their profession without harassment and fear of reprisal, and review its legislation to bring it in line with international human rights standards.⁸
10. Turkey supported the recommendation of Norway that it should refrain from censoring social and conventional media and ensure that freedom of expression is safeguarded in all forms.⁹

B) Major Developments

⁴ UN General Assembly, Report of the Working Group on the Universal Periodic Review, 26th Session, available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

⁹ *ibid*

11. On October 18, 2015 Turkey's third largest media outlet, Koza İpek Holding, was confiscated; the entire management of 22 companies, including a media group with two national TV networks and two national daily newspapers and one radio station, was unlawfully seized. The government appointed caretakers to run the companies and turned its media outlet into a government mouthpiece overnight. The total loss caused by the caretakers to the publicly traded holding was reported to have exceeded half a billion euros in the space of 10 days. Given that there was no judgment rendered in fair trial proceedings, the decision to take over the management has no legitimacy under the Turkish constitution or Turkish law. The sole 'legal' basis for this decision was a request of the Finance Ministry's Financial Crimes Investigation Board (MASAK) based on reasonable suspicion and a request to the investigating judge from the Ankara Chief Public Prosecutor's Office. The trustees took control of the media outlet and changed its editorial policy. Many journalists including chief editors were summarily fired after the takeover.
12. On March 1, 2016 Turkish authorities shut down the media businesses seized on October 18, 2015 from Koza İpek Holding.
13. On March 4, 2016 Turkish authorities moved to seize Feza Publishing Company, which owned Zaman, the country's then-best-selling daily; the Today's Zaman English-language daily; and the Aksiyon news weekly magazine. It was reportedly based on Article 133 of the Code on Criminal Procedure (CMK), which states that "if there is evidence that a crime has been committed within the framework of activities of a company and it is necessary to reveal the material truth during the investigation and trial, the judge or court may appoint a trustee for the undertaking of the company's business." The Turkish constitution strictly prohibited this procedure from being applied to media outlets; yet, the government went ahead and appointed trustees to run the Feza Publishing Company. As in the case of Koza İpek, the editorial stance of Feza Publishing media outlets was turned into a pro-government line after the takeover.
14. On March 8, 2016 Turkish authorities seized the country's then-largest privately run news agency, the Cihan News Agency.

15. On March 12, 2016 Cihan Medya Dağıtım, a major newspaper distribution and delivery company, was also seized by the government as part of the government crackdown on media infrastructure and as a way of depriving newspapers of alternate delivery options. The company immediately announced that it would not distribute critical newspapers after the takeover.
16. On March 12, 2016 Irmak TV, which was critical of the government, was seized by the government.
17. On July 15, 2016 Turkey survived a coup attempt, following which the Turkish government declared a three-month state of emergency, on July 20, 2016.
18. The Turkish Parliament extended the state of emergency seven times for another three months on each renewal. It lasted almost two years and ended on July 19, 2018.
19. The two-year-long state of emergency granted the Turkish government extraordinary powers that were blatantly abused in many cases that had nothing to do with public safety or national security matters. Under it, the government pressed ahead with many controversial decrees that had the force of law, were not required to be approved by parliament and were exempted from challenge in the Constitutional Court.
20. Decrees numbered 668 (July 27, 2016), 670 (August 17, 2016) 675 (October 29, 2016), 677 (November 22, 2016), 689 (April 4, 2017), 693 (August 25, 2017), 695 (December 24, 2017) and 701 (July 8, 2018) announced the shutting down of six news agencies, 41 radio stations, 38 TV stations, 70 newspapers, 20 magazines and 29 printing houses and distribution companies.
21. The shuttered media outlets consisted of Kurdish media or those that were affiliated with the Gülen movement, which the Turkish government accused of masterminding the coup attempt, labeling it a “terrorist organization,” although the movement strongly denied any involvement in the coup attempt or any terrorist activity and the government has failed to present any evidence to support the charges. The movement proposed the formation of an international commission to expose the perpetrators, which was rejected by the Turkish government.

22. The real estate and assets of the closed media companies were transferred to the treasury, and the government announced that there would be no judicial remedy available to the shuttered media outlets.
23. A commission was set up by the government to look into complaints from individuals who were adversely affected by the government decrees during the state of emergency, on January 23, 2017.
24. Only 25 shuttered media outlets among 179 in total were reinstated.

B) Legal Framework

25. Article 30 of the Turkish Constitution states: "A printing house and its annexes, duly established as a press enterprise under law, and press equipment shall not be seized, confiscated or barred from operation on the grounds of it having been used in a crime."
26. Article 26 of the Turkish Constitution states: Everyone has the 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. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing. The exercise of these freedoms may be restricted 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 a 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.
27. Article 35 of the Turkish Constitution states: "Everyone has the right to own and inherit property. These rights may be limited by law only in view of the public interest. The exercise of the right to property shall not contravene the public interest."

28. Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Paris on March 20, 1952, which was ratified by Turkey, states: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."
29. Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on June 4, 1950, which was ratified by Turkey, states: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."
30. The definition of "Terrorism" in Article 1 of the Anti-Terror Law, or TMK 3713, is: "Terrorism is 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."
31. Turkey has a broad definition of terrorism that includes crimes against the constitutional order and the internal and external security of the state, which the government regularly used to criminalize the legitimate exercise of freedom of expression and invalidate the right to own property.
32. Turkish authorities are reluctant to narrow the definition of terrorism. Critical journalists and writers are often falsely accused of spreading terrorist propaganda in the pursuit of their profession.

III. RECOMMENDATIONS

33. The Turkish government should decriminalize the right to dissent and the right to differ, stop abusing the criminal justice system for political purposes and reform abusive anti-terrorism laws.
- 34.** The Turkish government should release all journalists and media professionals who were wrongfully accused and jailed, drop all charges and pay compensation for damages sustained.
35. The seized and shuttered media outlets should be allowed to reopen, their properties and assets reinstated and compensation for damages sustained by journalists and media outlet owners awarded.
36. The Turkish government should stop criminalizing the use of encrypted digital communications and stop pursuing criminal charges for those who express their legitimate views on social media and exercise their right to free speech.
37. The Turkish government should crack down on those who threaten and harass journalists, tackle hate speech and incidents of hate crime against critical journalists and take measures to deal with those who incite violence against journalists.