




Society for
Threatened Peoples

memo

Turkey

must guarantee freedom of the press
and freedom of expression!



PRESSEFREIHEIT
in der TÜRKEI
garantieren!

Introduction

Initially, the policy of Turkish President Recep Tayyip Erdoğan had seemed promising with regard to reforms and a possible rapprochement with the European Union – but such initiatives were later called off. In this memorandum, we would like to address the development of the Turkish media (Part 1) and the aspect of freedom of the press and freedom of expression (Part 2), especially in the period after the attempted coup in July 2016. For this purpose, it will be necessary to consider the political developments and events of the previous years, which are briefly outlined here.

2013 marked a turning point in Turkey: The municipal government of Istanbul had planned to cut down the trees in the Gezi Park in order make place for a new shopping center – and the project was backed by Recep Tayyip Erdoğan, then Prime Minister. On May 28, environmentalists had stood in the way of the approaching bulldozers, and the police responded with batons, tear gas, and rubber bullets. Many celebrities, politicians, and organizations – including many Kurdish, pro-Kurdish, and left-wing groups – showed solidarity with the environmentalists. What had started as an ordinary citizen protest turned into nationwide protests against the authoritarian policy of Erdoğan's government.

Between December 17 and 25, 2013, a total number of 35 businessmen who were close to Erdoğan – including the sons of three ministers – were arrested in raids, unveiling the largest corruption scandal in the country so far. However, Erdoğan called these raids an "attempted coup", and all those affected were later released and all

investigators involved were removed from the case. Moreover, many of them were later dismissed and arrested themselves.

In the parliamentary elections of June 7, 2015, the AKP was "punished" for its increasingly authoritarian approach and for its restrictions on the freedom of the press and the freedom of expression. The party lost many votes and was no longer able to form the government on its own. All coalition negotiations failed. Thus, November 1, 2015, saw a repeat election.

By then, 600 policemen and soldiers were said to have died in the southeast of the country in the summer of 2015, as a consequence of attacks by government forces on more than 30 cities in the predominantly Kurdish-inhabited areas. About 500,000 people were displaced.¹ By the end of July 2015, Erdoğan had already declared that the peace process with the Kurds has failed². Previously, he had suggested that everything could be solved peacefully if he were to be granted 400 seats in parliament (the parliamentary majority) and: "If I step down, there will be terror" was the message of the powerful man in Ankara.

1. Development in the media

The development of the media landscape in Turkey is characterized by reprisals, which can be divided into four categories:

- ✘ Forced administration and closure of media institutions
- ✘ Witch hunt on media workers
- ✘ Seizure of media companies and assets
- ✘ Destruction of archives and book burnings

Forced administration and closure of media institutions

On October 10, 2015, the editor-in-chief of the English-language newspaper Today's Zaman, Bülent Keneş, was arrested for criticizing Erdoğan in a Twitter message. Five days later, the journalist was released after his lawyers filed a complaint. During the Gezi protests, the newspaper had strongly criticized the AKP government and, thus, had made them angry.

Editors of the "Koza Ipek Media Group" made similar experiences. Some of the group's media had criticized the government for the police forces' harsh measures against the protesters. In consequence, the then Prime Minister demanded the head of the media group, Akın İpek, to dismiss the respective employees and to instead employ journalists who "conform to government standards". İpek had rejected this – so he and his company were then put on a "black list".

Only three days before the new elections on November 1, 2015, the Koza Ipek Media Group was placed under forced administration. The com-

pany's newspapers "Kanaltürk" and "Bugün TV", as well as the newspapers "Bugün" and "Millet", were taken over by Erdoğan-loyal businessmen.

Ankara also made a move against the "Kaynak Holding" and its publishing houses: The group, known for its proximity to the Gülen movement, was placed under forced administration on November 17, 2015. The publishers of Kaynak Holding were responsible for the magazines "Sızıntı" (with a circulation of 700,000 copies) and other magazines such as "Yağmur," "Yeni Ümit" and "Fountain".

On March 4, 2016, rumors emerged that the newspaper "Zaman" would be placed under forced administration. It was assumed that this paper would be the most affected, as – in addition to the forced administration – many of the newspaper's journalists were to be arrested. In the evening hours, the police surrounded the newspaper's headquarters in Istanbul, and water cannons were brought into position. Thousands of people had gathered in front of the building to prevent a takeover. The police used batons, tear gas, and water cannons to push through with the takeover. On the day of the takeover, the newspaper had a circulation of 650,000 – but two days later, the circulation had dropped to 2,000 copies. On September 1, 2016, the owner of the newspaper, the "Feza Gazetecilik AŞ," was confiscated and transferred to the state Savings Deposit Insurance Fund TMSF. The same happened to the news agency "Cihan Haber Ajansı" (CHA), which also belonged to Feza Gazetecilik AŞ.

On July 27, 2016, during the state of emergency under Decree 674, a total of 16 TV channels, 3 news agencies, 23 radio stations, 45 newspapers, 15 magazines, and 29 publishing houses and distributors were closed down. Among them were Barış TV, Bugun TV, Can Erzincan TV, Dünya TV, Hira TV, Irmak TV, Kanal 124, Kanaltürk, MC TV, IMC TV, Mehtap TV, Merkür TV, Samanyolu Haber, Samanyolu TV, SRT TV, Tuna Shopping TV, Yumurcak TV, Taraf Gazetesi, Zaman Gazetesi, Bugün Gazetesi, Aksiyon Dergisi, Sızıntı Dergisi, Nokta Dergisi, Cihan Haber Ajansı, Muhabir Haber Ajansı, and SEM Haber Ajansı.

In the end, the Doğan Yayın holding company was no longer able to withstand the pressure from the government. Its media (Hürriyet, Poste, KanalD, CNN Türk, and the news agency DoğanHaber Ajansı) were transferred to the government-loyal Demirören group.

Witch hunt on media workers

After the media groups Koza Ipek and Zaman were placed under forced administration, hundreds of editors were dismissed within a very short time and replaced by government-loyal journalists from "Sabah-ATV" and the "Yeni Şafak" Group.³ Many of the dismissed media workers did not even receive severance pay. Some of them founded newspapers like "Özgür Düşünce", "Yeni Hayat", "Yarına Bakış", or Meydan. Only a few days after the attempted coup on July 15, 2016, these newspapers were banned as well. Many founding members were arrested. Critics of the government were regarded as members of the Fethullah Terrorist Organization "FETÖ", and critical media workers were seen as members of FETÖ media.

More than 100 journalists, among them also well-known faces like Ahmet Altan, Nazlı Ilıcak, Şahin Alpay, and Mustafa Ünal, were arrested. Currently, up to 200 journalists are being held in Turkish prisons. Some of those who were wanted by

warrant and managed to flee were punished hard nonetheless, as family members were arrested in their place. Thus, the wife of Bulent Korucu and the daughter of İbrahim Karayeğen were arrested.

Confiscation of media companies and assets

According to President Recep Tayyip Erdoğan, the attempted coup of July 15, 2016 was "a gift of God". In the first two months after the coup, just about all government-critical media – most of which were close to the movement around Fethullah Gülen, who lives in exile in the United States – were banned. The ban affected 179 media institutions (53 newspapers, 34 TV channels, 37 radio stations, 20 magazines, 6 news agencies, and 29 publishing houses). A total number of 620 journalists accreditation were withdrawn, and several passports were invalidated. The assets of the media houses were transferred to the state. Thus, after the final closure of the Cihan Haber Ajansı news agency, its equipment, technical devices, and broadcasting vehicles were sold to government-loyal media at the lowest prices. Following the coup attempt, the assets of media workers were not safe either. On December 1, 2016, a court in Istanbul ordered the confiscation of the assets of 57 journalists. Later, following complaints, the ruling was changed to a kind of "ban on passing on", according to which the assets of imprisoned media workers may not be transferred to third parties. All those who are wanted by warrant and managed to flee are exempt from this: their property is considered confiscated.

Destruction of archives and book burnings

Archives are very important for media institutions. After the media were placed under forced administration, their electronic archives were deleted or locked. The first action taken by the administrative receivers was to block the web-

sites of the newspapers "Bugün" and "Zaman". When they were back online, it became clear that the archives had been deleted. The same happened to the news agency Cihan Haber Ajansi, to Irmak TV, and to Cihan Radyo. The entire archives of the news agency Cihan Haber Ajansi were destroyed.

The bookstore chain "NT" with its approximately 100 branches, which belonged to the forcibly administered Kaynak Holding, and many other publishing houses were ordered to destroy large quantities of books, including schoolbooks, as many of them allegedly contained so-called "FETÖ propaganda". For example, 892,000 books were destroyed because they mentioned the US state of Pennsylvania. This is the state in which the preacher Fethullah Gülen lives, whom the Turkish government and president Erdoğan see as the mastermind behind the attempted coup in

2016. In summary, the attempted coup of 2016 gave the Turkish government the opportunity to bring the media under its control. During the state of emergency, a total of 179 Kurdish media and media close to the Gülen-Movement were closed down by decree in order to deprive the population of any access to independent critical reporting. Above all, this serves to avoid critical reports regarding corruption and nepotism within the government and coverage of human rights violations. It must be assumed that the government-loyal media often publish fictional news and that they are sometimes used for outright agitation. If a government also controls the judiciary, the only remaining instance of control are the media. In Turkey, this has become practically impossible – especially after the coup attempt.

2. Freedom of expression

International regulations

Freedom of expression is a fundamental aspect of the UN Charter of Human Rights, which was signed by Turkey on April 6, 1949. On August 15, 2000, Turkey also signed the International Covenant on Civil and Political Rights (ICCPR). The European Convention on Human Rights (ECHR) applies in Turkey as well. Therefore, the Turkish government is obliged to respect European and international law and to protect the right to freedom of expression. Particularly important in this respect are:

Article 10, paragraph 1, of the ECHR

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.

Article 19 of the ICCPR

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it spe-

cial duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.

On July 21, 2016, the Turkish government notified the Council of Europe that it was suspending certain obligations. At the same time, Ankara also notified the United Nations that it was suspending the rights in Articles 2 and 3 as well as Articles 9, 10, 12, 13, 14, 17, 19, 20, 21, 22, 25, and 26 of the ICCPR.

Although certain rights in the Civil Pact and the European Convention on Human Rights can be suspended, it is not possible to suspend all of them. Some of the rights must not be suspended under any circumstances. Also, the suspension of rights must not discriminate against anyone. This is to ensure that human rights are respected.

Freedom of expression must not be restricted even in a state of emergency. Other rights of the Civil Pact may only be restricted if this is absolutely necessary, and, according to a decision by the UN Human Rights Committee, only temporarily.

Freedom of expression in the Turkish constitution

Freedom of expression is also protected by the Turkish constitution, which states the following:

Article 25

Everyone has the right to freedom of thought and opinion.

No one shall be compelled to reveal his thoughts and opinions for any reason or purpose; nor shall any one be blamed or accused on account of his thought and opinions.

Article 26

Everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licencing.

Article 28

The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission and to the deposit of a financial guarantee

Article 30

A printing press or its annexes duly established as a publishing house under law shall not be seized, confiscated, or barred from operation on the grounds of being an instrument of crime.

Restrictions on the freedom of expression under Turkish law

Turkey is the country most frequently condemned by the European Court of Human Rights (ECJ) for restrictions on the freedom of expression. According to information from the ECJ, there have been 40 violations of Article 10 of the ICCPR.

From the cases of violations of the freedom of expression and the freedom of the press that have been investigated by the ECJ so far, it is clear that these cases are mainly to be seen as related to Turkish criminal law (Türk Ceza Kanunu, TCK) and the anti-terrorism laws (Terörle Mücadele Kanunu, TMK). These laws are frequently used to justify restrictions on the freedom of expression. Thus, they are in contradiction with the Turkish constitution, the European Convention on Human Rights, and the Civil Pact.

Anti-Terror Law No. 3713

The Anti-Terror Law No. 3713 prohibits "membership in a terrorist organization" and "terrorist propaganda". If the case of a conviction, the sentences range from one to five years in prison. However, anyone who commits these offences with the help of the media is threatened with an additional 50% of the prison sentence. Thus, media workers can be sentenced to five years imprisonment with an additional 2.5 years in prison.

Moreover, the offences of "membership in a terrorist organization" or "terrorist propaganda" are not clearly defined. Thus, the law is open to interpretation regarding the nature of terrorist acts.

Provisions from the Turkish Criminal Code

Section 301 of the Turkish Penal Code TCK focuses on punishing insults to the Turkish nation, the state, or the institutions and organs of the state – with prison sentences ranging from six months to five years.

Hundreds of intellectuals have received prison sentences under this law. The murdered journalist Hrant Dink, who was murdered by radical nationalist Turks in 2007, had been convicted for "insulting Turkishness" as well.

In its Universal Periodic Review (UPR), the UN Human Rights Council recommended that Turkey should amend or abolish this paragraph. So far, Turkey has not complied with this recommendation.

According to paragraph 216 of the TCK, anyone who incites the people to hatred and enmity is to be punished with a prison sentence of up to three years. This paragraph also serves as a basis for restrictions on the freedom of expression. In 2011, pianist Fazıl Say was sentenced to ten months in prison.

The TCK only vaguely defines the offences of "membership of a terrorist organization" and "terrorist propaganda". This allows for arbitrary restrictions on the freedom of expression. Thus, many journalists and scientists are in prison for "membership in an armed terrorist organization" (§314 TCK) or for "membership of a terrorist organization and committing crimes in its name" (§ 220 TCK, paragraph 6).

Paragraph 299 was added to the TCK as early as in 2004. Anyone who insults the President can be punished with a prison sentence of one to four years. If this crime is committed with the help of the media, the sentenced can be extended to up to five years in prison. Based on this paragraph, any criticism of president Erdoğan can be considered a criminal offence. This is a contradic-

tion to the Turkish constitution and the Civil Pact – and it is clearly incompatible with real freedom of expression. Artists, media workers, caricaturists, students, trade unionists, citizens, and even minors have already been charged for critical social media posts. In 2017 alone, there were 20,593 cases on the basis of this paragraph. A total of 2,099 people were convicted. The corruption scandal of December 2013 was followed by around 13,000 proceedings based on alleged insults to Erdoğan.

Bans on the Internet

The first major move to restrict the freedom of expression on the Internet was taken by the Turkish government in 2007, when access to the video platform YouTube was blocked in Turkey. Subsequently, the Ministry of Communications was established in a fast-track procedure, and laws were passed to protect children from the dangers of the Internet. By this reasoning, the Turkish government was given the opportunity to block access to specific websites. Then, the law 5651 was passed, and extended later. The law gave the Ministry of Communications a free hand. In addition, the law protects the employees of the ministry in case they make mistakes. Also, access to the websites of opposition groups in other countries was blocked. The Turkish government resorts to such measures again and again, blocking access to certain platforms on the Internet.

In March 2015, the law was extended by paragraph 8 A. Since then, the Ministry of Communications is allowed to block access to websites without a court order. In 2015, access to 110,000 internet pages was blocked. In 2016, the number of banned websites was 213,398.

The Internet encyclopedia Wikipedia was blocked completely on April 29, 2017. Wikipedia had refused to delete an article about the Turkish government's support for terrorist groups in Syria.

Based on the law 5651, Facebook, Twitter, and Youtube were blocked for two years after 2014. The Constitutional Court later overturned the respective sentences and bans, but, in doing so, offended the Turkish government. According to Erdoğan, the Twitter verdict was "gayırımılli", meaning "non-national".

The so-called Peace Criminal Courts (Sulh Ceza Hakimlikleri), which were established in June 2014 with extensive powers, blocked 20,000 URLs. In 60 judgments, these special courts ordered the blocking of the website of the newspaper "Cumhuriyet". The "Sözcü" newspaper received 36 verdicts, the "Radikal" 28, the "Zaman" 24, and the "T24" news site around 40 verdicts.

Even more restrictions after the constitutional reform of 2017

The constitutional reform of 2017 gave President Erdoğan extensive powers – and led to another blow to freedom of expression, as the head of state was given control over both the Executive as well as the Judiciary. In the run-up to the constitutional referendum, the Venice Commission of the Council of Europe expressed its concerns. The experts warned that the constitutional amendment was a step backwards. In April, 51.4 percent of Turkey's population had voted for the controversial constitutional amendment. In consequence, Erdoğan was able to fill the "Council of Judges and Prosecutors" (Hakimler ve Savcılar Kurulu) – which appoints judges, for example – with his own people. In matters of freedom of expression, the judges henceforth tend to decide in favor of the government.

In conclusion, it can be stated that Erdoğan's AKP has expanded its power significantly following the coup attempt and the constitutional referendum. This means that the powerful man in Ankara can now practically run the country whatever way

he will. He can simply order judgments against journalists or against members of the opposition. Most recently, the AKP and its ultra-nationalist opposition partner MHP passed a new penal code, releasing 90,000 prisoners. Political prisoners, on the other hand, could not benefit from the amnesty. The former co-chairman of the pro-Kurdish left-wing HDP, Selahattin Demirtaş, his party friend and deposed mayor of Diyarbakır, Selçuk Mızraklı, the human rights activist Osman Kavala, and journalists like Mehmet Baransu are to remain behind bars, leaving them defenseless against the coronavirus. The attempted coup in 2016 cost the lives of around 250 civilians. Since then, there have been 511,000 arrests – and there have been massive restrictions on the freedom of expression since the failed coup. 191 journalists have been imprisoned after the government had linked them to the attempted coup; 167 media workers against whom arrest warrants had been issued were able to leave the country. In addition, 34 foreign journalists were expelled from the country.

Demands and recommendations for action

- ✘ The Turkish government must lift all restrictions on the freedom of expression and the freedom of the press. All international standards must be respected. Independent institutions have to guarantee freedom of expression and freedom of the press.
- ✘ The Turkish penal code and the anti-terrorist laws may no longer be misused to restrict the freedom of expression. The criminalization of citizens on the basis of critical reporting or peaceful expression of opinion must be stopped immediately.
- ✘ Journalists must once again be sure that their statements will no longer be prosecuted based on anti-terrorist laws. Proceedings against media workers, scientists, activists, NGO employees, and opposition politicians have to be dropped.
- ✘ The so-called insult paragraphs must be amended – and they must no longer serve as a basis to harass the Kurdish community and to cut down on the right to freedom of press and the freedom of expression. Paragraph 299 of the Turkish penal code, which provides for prison sentences of up to five years for insulting the president, must be abolished completely. Section 125 of the Turkish penal code, which provides for prison sentences of at least one year for insults, must be abolished as well.
- ✘ The investigations against the "Scientists for Peace" (Barış İçin Akademisyenler) and the arrests of the members because of their calls for peace must be stopped. Dismissed academics must be able to return to their jobs.
- ✘ Measures must be taken to support independent media. The blocking of journalists' and activists' websites must be lifted; confiscated media houses and equipment must be returned immediately.
- ✘ In order to guarantee freedom of expression on the Internet as well, Law 5651 must be amended. Blockings must only be possible through courts. Blockings of internet pages with infinite duration should no longer be possible.
- ✘ Discussions regarding the recognition of the national rights of members of the Kurdish community and other ethnic and religious communities such as the Assyrian/Aramaic, Armenian, Christian, Alevi and Yiddish communities in the print and digital media and elsewhere must no longer be treated as "terrorist propaganda". Media workers, politicians, and everyone else must have the right to freely express their views on the policies of the country without fear.

Footnotes

- ¹ UN data quoted in the newspaper "Die Welt", March 10, 2017.
<https://www.welt.de/newsticker/news1/article162758395/UNO-wirft-Tuerkei-schwere-Menschenrechtsverletzungen-in-den-Kurdengebieten-vor.html>
- ² <https://www.nzz.ch/international/europa/erdogan-beendet-friedensprozesses-mit-kurden-1.18586888> (July 28, 2015)
- ³ <https://www.fr.de/kultur/erdogans-handeln-purer-wahnsinn-11630369.html> (October 28, 2015)

Imprint



Society for Threatened Peoples (STP)

PO-Box 2024, D-37010 Göttingen

Phone: +49 551 49906-0, Fax: +49 551 58028

Email: info@gfbv.de, www.gfbv.de

Donation account at the Bank für Sozialwirtschaft:

(IBAN) DE07 2512 0510 0000 506070

(BIC) BFSWDE33HAN

The STP is a human rights organization for persecuted ethnic and religious minorities; NGO with consultative status at the United Nations and participatory status at the Council of Europe. Sections, offices, and representatives in Bosnia-Herzegovina, Germany, Great Britain, South Tyrol/Italy, Kurdistan/Iraq, Switzerland, and the United States.

Authors: Erkan Pehlivan, Journalist (Frankfurt am Main)
Kamal Sido, Middle East Consultant of the STP

Editor: Inse Geismar, Consultant for Publications and
Public Relations

Layout: Tanja Wieczorek

Cover picture: Caroline Siems, STP

Memorandum 04/2020

Published by the Society for Threatened Peoples
in April 2020

For human rights. Worldwide.



Society for
Threatened Peoples

For human rights. Worldwide.



Society for
Threatened Peoples

PO-Box 2024, D-37010 Göttingen

Phone: +49 551 49906-0

Fax: +49 551 58028

Email: info@gfbv.de

www.gfbv.de

Donation account at the

Bank für Sozialwirtschaft:

(IBAN) DE07 2512 0510 0000 506070

(BIC) BFSWDE33HAN