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## **Special Rapporteur on the promotion of the right to freedom of opinion and expression**

### **Follow-up Report on Country Visits**

#### **Call for Submissions**

#### **Turkey**

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression will present a follow-up report pursuant to country visits conducted under the auspices of the mandate. He will examine the impact of country visits on the promotion, protection, fulfilment and overall enjoyment of the right in five selected countries. He will analyse the level of implementation of recommendations made following the visits, and consider any other developments impacting upon the rights which may have occurred since the visit was completed. The findings will be presented as a supplementary report to the 41<sup>st</sup> session of the Human Rights Council in June 2019. For more information, please see the concept note attached.

In order to facilitate the preparation of the report the Special Rapporteur would welcome information from States and relevant stakeholders in response to the questions below, based primarily on recommendations made in the country visit report.

Please provide responses in the table below. We hope to receive your submission no later than 22 February 2019 to [freedex@ohchr.org](mailto:freedex@ohchr.org) with "Submission to the follow-up study on country visits of the Special Rapporteur on the right to freedom of opinion and expression" as the title of the email. Submissions will be posted on the OHCHR website at the time of the publication of the report, except for submissions from non-state actors explicitly stating their wish to remain anonymous.

**On the implementation of recommendations made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression following the visit of the Mandate Holder to Turkey**

What efforts have been made by the State to ensure that no persons are held in detention, investigated or prosecuted for sharing opinions that do not constitute an incitement to hatred or violence consistent with article 19(3) and 20 of the International Covenant on Civil and Political Rights? Have any journalists, writers, judges or academics detained on such basis been released?

(See: A/HRC/35/22/Add.3 para 77)

Limit: 1,000 words

Have measures been adopted by the State to ensure that the press, other media, and all individuals are able to comment on public issues and to inform public opinion without facing censorship or constraint?

(See: A/HRC/35/22/Add.3 para 78)

Limit: 750 words

Have steps been taken to reverse closures of media outlets, including Internet media? If so, which outlets have been granted permission to re-open? Have measures been put in place to ensure that media outlets are only suspended in exceptional circumstances prescribed by law and subject to judicial review?

(See: A/HRC/35/22/Add.3 para 79)

Limit: 750 words

Has Law no. 5652 – the Internet Law – been reviewed? If so, what changes have been made to it?

(See: A/HRC/35/22/Add.3 para 80)

On 21 March 2018, the Turkish Parliament passed a law placing online video services under the control of the broadcast media regulator, the High Council for Broadcasting (RTÜK). online video services will

need to obtain a licence in order to continue operating and, before the licence is issued, an investigation that could involve the police and Turkey's National Intelligence Organization (MIT) will be necessary. The RTÜK is now in charge of monitoring content and imposing sanctions in the event of "irregularities." It will also be able to go to a judge to get websites blocked within 24 hours if they continue to operate without a licence.

Authorities continued to arrest tens of thousands of journalists and other individuals for online commentary. In January 2018, a wave of arrests came in response to criticism of Operation Olive Branch, a military operation in Afrin, Syria. The Turkish police associated nonviolent opinions against the operation with terrorism. The state also prosecuted or sought to prosecute those deemed to insult President Erdoğan using social media, an offense punishable by up to four years in prison. According to statistics released by the interior ministry, security forces initiated investigations on almost 50,000 social media accounts during the coverage period for sharing what was deemed to be "terrorist" content online, resulting in over 20,000 "legal actions" taken.

Limit: 500 words

Have any measures been taken to ensure requests for takedowns of online content are consistent with the requirements of articles 19(3) and 20 of the International Covenant on Civil and Political Rights? Has the Government refrained from excessive blocking and filtering of content?

(A/HRC/35/22/Add.3 para 80)

Limit: 500 words

Have emergency decrees remaining in place subsequent to the state of emergency been reviewed and revised to ensure their consistency with international human rights standards? In particular, has a process been put in place enabling persons deprived of their liberty pursuant to emergency decrees to initiate challenges to the lawfulness of their detention before a court?

(See A/HRC/35/22/Add.3 para 82)

Although the SoE was recently lifted, laws integrating SoE measures into ordinary law and giving additional exceptional powers to the Executive in the name of "counterterrorism," were adopted, resulting in the continuation of such abuses and the lack of space for public freedoms. On 16 July 2018, the Minister of Justice Abdülhamit Gül declared that "the most persistent and determined fight against all kinds of terrorism will continue till the end." The new Law n°7145 not only enshrines SoE measures into ordinary law, but also undermines those constitutional guarantees that had remained unchanged in the new constitution. Another important concern is the amendment of Article 134 of the Code of Criminal Procedure, which gives authority to law enforcement to seize computer files without a judge's warrant, which only has to be requested ex post to the judges of the Criminal Peace Judgeships. In March 2017, the Venice Commission expressed numerous concerns over the jurisdiction and the practice of these Criminal Peace Judgeships.

Limit: 750 words

Have steps been taken to ensure the right to review and remedy for victims of unlawful arrest, detention or dismissal?

(See: A/HRC/35/22/Add.3 para 83)

Limit: 500 words

What has been done to grant persons dismissed from their employment pursuant to emergency decrees access to appropriate and independent judicial and administrative mechanisms to challenge the lawfulness of such decisions?

(See: A/HRC/35/22/Add.3 para 83)

STATE OF EMERGENCY INQUIRY COMMISSION: According to its founding decree, the purpose of the Commission was to assess and determine applications in relation to acts undertaken directly through executive decrees. In relation to public sector dismissals, its remit covered those dismissed by emergency decree due to alleged “membership, affiliation, allegiance, connection, or links to either ‘terrorist’ organizations or groups, structures, or entities deemed to be a threat to national security by the National Security Council. When recommending that an ad hoc body is established to review emergency measures, the Venice Commission wrote: “The essential purpose of that body would be to give individualised treatment to all cases. That body would have to respect the basic principles of due process, examine specific evidence and issue reasoned decisions. This body should be independent, impartial and be given sufficient powers to restore the status quo ante, and/or, where appropriate, to provide adequate compensation. The law should enable for subsequent judicial review of decisions of this ad hoc body. The rules surrounding the composition of the Commission are such that it does not have institutional independence from the government as five of its seven members are appointed by the President, the Minister of Justice and the Minister of Interior, while the other two are appointed by the Council of Judges and Prosecutors, an entity widely regarded as being under government influence.

Limit: 500 words

Has a process been initiated to review Law no. 3713 - the antiterrorism law – and ensure that counter-terrorism measures are compatible with article 19(3) of the International Covenant on Civil and Political Rights? If the law has been reviewed, what changes have been brought about?

(See: A/HRC/35/22/Add.3 para 84)

The abuses of anti-terrorism laws strangle freedom of expression in the country, where several provisions of the Turkish Criminal Code relating to terrorism and the Anti-Terrorism Law continue to generate some of the most serious violations of freedom of expression in the country. The legitimate exercise of freedom of expression had been criminalised as propaganda for terrorism or as proof of membership of terrorist organisations, notably in cases where no other material evidence exists of any link with a terrorist organisation and in the absence of any call or apology for violence. For example, a petition signed by academics calling for the end of violence in south-eastern Turkey continues to result in many terrorism-related sentences being handed down by Turkish courts. [Memorandum of the Coe Commissioner on Human Rights](#)



Limit: 500 words

Have steps been taken towards the repeal of articles 125(3) and 299 of the Penal Code? If so, at what stage is this process and what are its effects?

(See: A/HRC/35/22/Add.3 para 85)

Limit: 500 words

Have any further laws, regulations, policies, administrative decisions or other measures affecting the right to freedom of opinion and expression been implemented following the Special Rapporteur's visit?

Limit: 1,000 words

Is there any relevant additional information you would wish to add?

EuroMed Rights would like to bring once again the attention of the UN Special Rapporteur on Freedom of Expression on the trial against Mr. Osman ISCI, secretary of the Human Rights Association in Turkey and former member of EuroMed Rights and Mr. ISCI, alongside other 1128 people is being tried for having signed the "Academics for Peace" petition in 2016, demanding for the respect of the right to life in the South East of the country. Mr ISCI next hearing will take place in Istanbul on 13 March 2019.

Limit: 500 words