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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 41st 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 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.

SUBMISSION BY PEN INTERNATIONAL

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)

There is little evidence to show that the Turkish authorities have made efforts 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 Articles 19(3) and 20 of the International Covenant on Civil and Political Rights (ICCPR).

Since the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression visited Turkey in November 2016, scores of writers and journalists have been held in pre-trial detention for excessively long periods, facing terrorism charges with no access to the evidence against them and without compelling grounds to justify prolonging pre-trial detention. Indictments charged them with membership of armed organisations or involvement in the attempted coup of 15 July 2016, without citing any other evidence beyond writings and commentary that neither advocate nor incite violence, and they were handed lengthy prison sentences.

Several cases exemplify the Turkish authorities' attempts to silence peaceful dissent.

Writers and journalists Ahmet and Mehmet Altan, and four other co-defendants, were convicted of 'attempting to overthrow the constitutional order' under Article 309 of the Turkish Penal Code and sentenced to aggravated life sentences, or life without parole, on 16 February 2018.¹ Their sentences were upheld by an Istanbul Court on 2 October 2018 and their case is pending before the Supreme Court of Appeals. PEN International and other free expression organisations have observed the trial since the first hearing in July 2017 and have found the proceedings to be marred by profound violations² of the defendants' rights to a fair trial. Proceedings most notably ignored landmark rulings³ by the European Court of Human Rights (ECtHR), which urged the Turkish authorities to release Mehmet Altan without delay, and Turkey's Constitutional Court, which twice ruled⁴ Mehmet Altan's lengthy pre-trial detention to be in violation of his 'right to personal liberty and security.' In June 2018, the Istanbul Regional Court of Justice ordered Mehmet Altan's release pending the outcome of his appeal.

On 26 April 2018, 13 staff and journalists from opposition newspaper *Cumhuriyet* were convicted of crimes relating to terrorism and handed prison sentences of between two years, six months and eight years, one month. A total of 17 *Cumhuriyet* staff had been arrested and held in pre-trial detention, some for over a year. PEN International, alongside other freedom of expression organisations, observed and monitored proceedings.⁵ The organisations concluded that the indictment, pre-trial

¹ See PEN International, 'Life Sentences in the Landmark Case on Journalists at the Heart of the Constitutional Crisis in Turkey', 19 February 2018. Available at: <http://pen-international.org/news/life-sentences-in-the-landmark-case-on-journalists-at-the-heart-of-the-constitutional-crisis-in-turkey>

² See PEN International, 'Blatant Disregard for Fair Trial Rights as Altan's Entire Defence Team Expelled in Free Expression Case' 14 November 2017. Available at: <http://pen-international.org/news/blatant-disregard-for-fair-trial-rights-as-altans-entire-defence-team-expelled-in-free-expression-case>

³ See PEN International, 'European Court Rulings to Free Two Turkish Journalists' 26 March 2018. Available at: <http://pen-international.org/news/european-court-rulings-to-free-2-turkish-journalists>

⁴ See PEN International, 'Turkey: Implement Constitutional Court Decision to Free Journalists' 12 January 2018. Available at: <http://pen-international.org/news/turkey-implement-constitutional-court-decision-to-free-journalists>

⁵ See PEN International, 'Cumhuriyet Verdict Huge Blow to Freedom of Expression', 26 April 2018. Available at: <http://pen-international.org/news/cumhuriyet-verdict-huge-blow-to-freedom-of-expression>

detention and trial proceedings violated the human rights of the defendants, including the right to freedom of expression, the right to liberty and security and the right to a fair trial. On 19 February 2019, an appeals court in Istanbul upheld the guilty verdicts. According to the court ruling, many journalists, the accountant and board members of the newspaper will have to return to prison to serve the remainder of their sentences.⁶

Writer and former co-chair of the pro-Kurdish Peoples' Democratic Party (HDP) Selahattin Demirtaş has been held in pre-trial detention since 4 November 2016 on terror charges and faces up to 142 years in prison if conviction. On 20 November 2018, the ECtHR ruled that repeated extensions of his pre-trial detentions were unlawful, and were enforced with the purpose of 'stifling pluralism and limiting the freedom of political debate'. For the first time in Turkey's history, the ECtHR found Turkey in violation of Article 18 (limitation on use of restrictions on rights) of the European Convention on Human Rights in conjunction with Article 5(3) of the Convention (right to be brought promptly before a judge) and called on the Turkish authorities to end his pre-trial detention. Under Article 46 of the European Convention on Human Rights, Turkey must abide by judgments of the ECtHR, yet on 13 December 2018 the Ankara 19th High Criminal Court ordered Selahattin Demirtaş' continued detention, on the basis that the ECtHR judgement was not final because it had not been pronounced by the Grand Chamber.

News editor and reporter Nedim Türfent was arrested on 12 May 2016 after covering clashes between the Turkish army and the armed Kurdistan Workers' Party (PKK) in the predominantly Kurdish southeast of Turkey.⁷ He spent nearly two years in solidarity confinement in harrowing detention conditions. He was formally charged with 'membership of a terrorist organisation' and 'spreading terrorist propaganda' 10 months after his arrest. He was denied the right to appear physically in court seven times, and instead testified via the judicial conferencing system SEGBIS, experiencing severe connection and interpretation issues. Out of the 20 witnesses called, 19 retracted their statements, saying they had been extracted under torture. Despite such clear evidence of flagrant fair trial violations, Nedim Türfent was sentenced to eight years and nine months in prison for 'membership of a terrorist organisation' and 'spreading terrorist propaganda' on 15 December 2017. On 19 June 2018, the Erzurum Regional Appeals Court upheld his conviction. His lawyers lodged an appeal before Turkey's Constitutional Court on 3 September 2018.

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)

The Turkish authorities have failed to follow recommendations to ensure the protection of freedom of expression in Turkey. While the 24-month state of emergency formally ended on 18 July 2018 (despite the fact that the Turkish constitution limits the application of a state of emergency to six months), the measures imposed under the state of emergency have been largely preserved in new legislation. The extension of these laws, which place major limitations on free expression, demonstrate the authorities continuing campaign to silence dissent (see below).

Media pluralism continues to be gravely undermined. At least 160 journalists and writers are in prison⁸ and more than 190 media outlets and publishing houses have been closed down.⁹ Elections held under the state of emergency placed heavy restrictions on freedom of expression. The lead up to the 16 April 2017 referendum on constitutional reforms was marred by threats, arrests and prosecutions of those

⁶ See PEN International joint statement, 'Turkey: Cumhuriyet convictions a further blow to the rule of law', 20 February 2019. Available at: <http://pen-international.org/news/turkey-cumhuriyet-convictions-a-further-blow-to-the-rule-of-law>

⁷ See PEN International, 'Turkey: Free Nedim Türfent', 17 December 2018. Available at: <http://pen-international.org/news/turkey-free-nedim-turfent>

⁸ See Platform 24, 'Freedom of Expression and the Press in Turkey', 12 February. Available at: <http://platform24.org/en/articles/720/freedom-of-expression-and-the-press-in-turkey--177>

⁹ See Platform 24, available at: https://docs.google.com/spreadsheets/d/1PivON2OISzQbOjvwqXJHzkX215r_kOOQheM0viPPLWg/edit#gid=1805616076

who voiced criticism of the proposed amendments.¹⁰ Several members of the opposition were arrested on terror charges. Outspoken ‘No’ campaigners were detained, adding to the overall climate of suspicion and fear. Although the Organisation for Security and Co-operation in Europe (OSCE) election observation mission expressed concerns over the ‘uneveled playing field’¹¹ in the lead up to the vote, the Turkish authorities rejected the OSCE’s findings.

Presidential and parliamentary elections on 24 June 2018 were free but not fair.¹² Political pluralism is essential in providing a real choice to voters yet HDP members have been held in pre-trial detention since November 2016 on terrorism charges. Selahattin Demirtaş ran for president from his prison cell. Enis Berberoğlu, a journalist for over 30 years and an MP for the opposition People’s Republican Party (CHP), was sentenced to a 25-year prison sentence for ‘leaking state secrets’.¹³ The forced replacement of elected local officials in the southeast has deprived millions of voters of their elected representatives in parliament and local government.¹⁴

The imposition of the above measures demonstrates the Turkish authorities’ continuing efforts to limit individuals’ and groups’ ability to speak openly about public issues and inform opinion. This has enabled them to persecute certain individuals and public officials on the basis of charges first introduced in the period of emergency, and to continue to impose serious restrictions on press freedom

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)

Restrictions on the operation of media outlets in Turkey have continued since the Special Rapporteur’s visit to the country. In 2016, three executive decrees passed under Turkey’s state of emergency – Nos. 668, 675 and 677 – were used to shut down 177 media organisations.¹⁵ In July 2018, decree No. 701 further ordered the closure of three newspapers and one television station as well as the dismissal of more than 18,000 civil servants and nearly 200 academics.¹⁶

Of those closed media organisations, local reports suggest that by the end of 2016 only 11 had been allowed to reopen: *Kurtuluş Gazetesi*, *Lider Gazetesi*, *İşçehisar Durum Gazetesi*, *Bingöl Olay Gazetesi*, *Ege’de Son Söz Gazetesi*, *Hakikat Gazetesi*, SRT Televizyonu, Umut FM and Yağmur FM. The decision to close Radio and Zarok TV was also reversed on 26 October 2016.¹⁷

More recently, the pro-Kurdish daily newspapers *Özgürlükçü Demokrasi* and *Halkın Nabzı* and the Kurdish-language newspaper *Welat* have been targeted by the Turkish authorities. *Özgürlükçü Demokrasi* was seized by the Turkish authorities on 28 March 2018 and a government appointee put in charge. The decree ordered the liquidation of the newspapers’ assets, which were then transferred to

¹⁰ See PEN International, ‘Joint Oral Statement on the Deterioration of Freedom of Expression and Media Freedom in Turkey’, 15 March 2017. Available at: <http://pen-international.org/news/joint-oral-statement-on-the-deterioration-of-freedom-of-expression-and-media-freedom-in-turkey>

¹¹ See OSCE, ‘International referendum observation mission Republic of Turkey – Constitutional Referendum, 16 April 2017 Statement of preliminary findings and conclusions’ Available at: <https://www.osce.org/odihr/elections/turkey/311721?download=true>

¹² See OSCE, ‘Turkey, Early Presidential and Parliamentary Elections, 24 June 2018: Statement of Preliminary Findings and Conclusions’ 25 June 2018. Available at: <https://www.osce.org/odihr/elections/turkey/385671>

¹³ See PEN International, ‘Turkey: Critical Test for Freedom of Expression’, 27 June 2017. Available at: <http://pen-international.org/news/turkey-critical-test-for-freedom-of-expression>

¹⁴ See PEN International, ‘Turkey: The repression of Kurdish Language and Culture Must Stop’, 21 February 2018. Available at: <http://pen-international.org/news/turkey-the-repression-of-kurdish-language-and-culture-must-stop>

¹⁵ See Bianet, ‘Olağanüstü Hal’in Basın Bilançosu’, 7 December 2016. Available at: http://bianet.org/bianet/ifade-ozgurlugu/181480-olaganustu-hal-in-basin-bilancosu?bia_source=rss

¹⁶ See Free Turkey Journalists, ‘Assault on Press to Outlive Turkey’s State of Emergency’, 11 July 2018. Available at: <https://freeturkeyjournalists.ipi.media/assault-on-press-to-outlive-turkeys-state-of-emergency/>

¹⁷ See Bianet, ‘Olağanüstü Hal’in Basın Bilançosu’, 7 December 2016. Available at: http://bianet.org/bianet/ifade-ozgurlugu/181480-olaganustu-hal-in-basin-bilancosu?bia_source=rss

the Treasury. The authorities went on to take over the newspaper's printing press and as many as 20 people were arrested, eight of whom remain in pre-trial detention.¹⁸

The imposition of fines and punishments on news outlets expressing critical views has also continued. On 26 December 2018, the High Council for Broadcasting (RTÜK) imposed heavy fines and programme suspensions¹⁹ on two Turkish TV channels, Halk TV and Turkey's Fox TV after they broadcasted criticism of the government. Fox TV was fined 1 million Turkish lira (165,000 euros) and its main news programme was temporarily suspended for a period of three days. These kind of sanctions heavily restrict the independence and freedom of Turkey's broadcasting media.

Finally, major media mergers and acquisitions have undermined media pluralism and further asserted the dominance of the Turkish authorities' official narrative in the media. On 22 March 2018 it was announced that Doğan Media Company, Turkey's largest media organisation and newspaper distributor, was to be sold to a pro-government conglomerate, Demirören Holding.²⁰ Its sale underlines increasing governmental influence over broadcast media and risks further silencing independent voices.

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)

Some changes have been made to Turkey's Internet Law since November 2016. However, amendments have tended to tighten regulations surrounding internet provision and use rather than to relax repressive rules.

In recent years, outspoken Turkish news websites have been blocked, as well as content from Twitter and YouTube. On 29 April 2017, Turkey blocked access to Wikipedia.²¹ Referring to the decision to block access to the website, Turkey's Information and Communication Technologies Authority stated that: 'After technical analysis and legal consideration based on the Law Nr. 5651 [governing the internet], an administrative measure has been taken for this website'.²² These measures suggest that the authorities are interpreting and administering the law on a strict basis, and are using the legislation to block access to commonly used websites.

In September 2017, Turkey's Supreme Court ruled that the installation of ByLock, a mobile messaging application, on an individual's mobile phone was sufficient evidence to convict a suspect as being a member of 'Fethullah Gülen Terrorist Organisation' (FETÖ).²³ Since previous amendments to the law in 2015, national security has also been used as grounds for enforcing broad access bans.²⁴

In 2018, the Turkish parliament amended the Internet Law to give national broadcast media regulator the High Council for Broadcasting (RTÜK) the sole authority to monitor and regulate internet services.²⁵ The law requires online video and streaming services to apply for a license to broadcast to Turkish internet users. The RTÜK has become increasingly politicized in recent years: its members are

¹⁸ See PEN International, 'Turkey: Statement on Today's Raid at Özgürlükçü Demokrasi', 29 March 2018. Available at: <http://pen-international.org/news/turkey-statement-on-todays-raid-at-ozgurlukcu-demokrasi>

¹⁹ See Reporters Without Borders, 'Turkey's Last Two Critical TV Channels Hounded', December 28 2018. Available at: <https://rsf.org/en/news/turkeys-last-two-critical-tv-channels-hounded>

²⁰ See PEN International, 'Turkey: Statement on Today's Raid at Özgürlükçü Demokrasi', 29 March 2018. Available at: <http://pen-international.org/news/turkey-statement-on-todays-raid-at-ozgurlukcu-demokrasi>

²¹ See Reuters, 'Turkey Blocks Access to Wikipedia', April 29 2018. Available at:

<https://www.reuters.com/article/us-turkey-security-internet-wikipedia-idUSKBN17V06Q>

²² See BBC, 'Turkish Authorities Block Wikipedia Without Giving Reason', April 29 2017. Available at:

<https://www.bbc.co.uk/news/world-europe-39754909>

²³ See Hurriyet Daily News, 'ByLock can be Considered Sole Evidence of Gülen Network Membership: Supreme Court' September 26 2017. Available at: <http://www.hurriyetdailynews.com/bylock-can-be-considered-sole-evidence-of-gulen-network-membership-supreme-court-118430>

²⁴ 'National security as legal basis for broad access bans. internationallawoffice.com. ELIGLaw Firm. September 22, 2015. Retrieved April 20, 2017.

²⁵ See Reporters Without Borders, 'New Law Reinforces Turkish Government's Control of the Internet', March 27 2018. Available at: <https://rsf.org/en/news/new-law-reinforces-turkish-governments-control-internet>

appointed by parliament, and are now dominated by the ruling Justice and Development Party (AKP) and the Nationalist Movement Party (MHP).

On 16 March 2018, the Turkish authorities introduced measures to heighten internet censorship by blocking access to services that are commonly used to circumvent the restrictions. The authorities targeted several VPN providers under the new measures, as well as Proton Mail, which provides encrypted email services.²⁶ A week later, the Information Technologies Board released a statement suggesting that a major technical update was underway that could block access to many VPN providers collectively, but did not elaborate on the scope of the anticipated policies. On 16 November 2018, the Turkish authorities blocked BunnyCDN, a European content delivery network, preventing access to around 14,000 websites.²⁷

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)

There is little evidence that this is the case. Although decisions resulting in a website being blocked can be appealed, this is allowed usually only after the block has been enforced on a website. Until recently, access to blocked major and mainstream websites has been enabled through the use of proxies or by changing DNS servers, but new restrictions on the use of VPNs has further limited access to websites blocked by the authorities (see above).

That the Turkish authorities continue to implement restrictions suggests that they have not refrained from excessive blocking and filtering of content. The blocking of mainstream websites such as Wikipedia and major news outlets demonstrates the continuing restriction of freedom of expression and information online. The Turkish authorities have also continued to file requests to remove critical content from Twitter.

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)

On 31 July 2018, Law no. 7145 was enacted with the primary objective of continuing the fight against terrorism after the lifting of the state of emergency.²⁸ The law covers a range of powers that previously only existed under the state of emergency. It is valid for three years and enacts amendments to a number of relevant legislative provisions, including the anti-terror law. Among other things, these laws enable the government to impose curfews, ban public meetings, gatherings and rallies, and restrict access to private and public spaces. The three-year extension of emergency measures has also provided for an extension of powers to police online content, representing closer control over the internet. Executive powers to dismiss public officials on the basis of affiliation to a terrorist organisation (the definition of such an affiliation has often previously been vague) have also now been renewed. The permanent imposition of such measures enables the continuation of persecution of certain categories of professionals on the basis of the same charges first introduced during the state of emergency.

²⁶ See Stockholm Centre for Freedom, 'Turkish Government Blocks Encrypted Email Service ProtonMail, VPNs', March 16 2018. Available at: <https://stockholmcf.org/turkish-govt-blocks-encrypted-email-service-protonmail/>

²⁷ See BunnyCDN, 'BunnyCDN Domain b-cdn.net Has Been Blocked in Turkey' November 17 2018. Available at: <https://bunnycdn.com/blog/bunnycdn-domain-b-cdn-net-has-been-blocked-in-turkey/>

²⁸ See 'Bazi kanun ve kanun hükmünde kararnamelede değişiklik yapılmasına dair kanun', 25 July 2018. Available at: <https://www.tbmm.gov.tr/kanunlar/k7145.html>

Those charged under emergency measures have recourse to appeals courts, the Council of State (Turkey's highest administrative court), the Constitutional Court (TCC) and the ECtHR, and several high profile cases have been through this appeals process.²⁹ While the principle of subsidiarity requires exhaustion of domestic remedies, the effectiveness of domestic remedies in Turkey is questioned by many, pointing towards the even more crucial role played by the ECtHR.

On 11 January 2018, the TCC, in its first decision since the coup attempt of 15 July 2016, ruled that journalists Mehmet Altan and Şahin Alpay should be freed from pre-trial detention on the grounds that their detention was disproportionate and infringed their rights to liberty, freedom of expression and freedom of the media. However, a High Criminal Court of Istanbul defied the ruling, saying that it was a 'usurpation of authority' and therefore could not be accepted. A further appeal to the TCC against the non-implementation of the first ruling was successful but, again, the trial court refused to implement it. Under Article 153 of the Turkish Constitution's, all Constitutional Court rulings should enter into force immediately and are binding for the legislative, executive and judicial organs, including the administration and officials. The rejection of the court's ruling is an important demonstration of the failure of Turkey's domestic courts to offer defendants the option to remedy violations of their rights.

The case was referred to the ECtHR, which on 20 March 2018 found violations of Article 10 (the right to freedom of expression) and Article 5(1) of the European Convention on Human Rights, and ruled the journalists' detention to be unlawful.³⁰ The judgment sharply criticized the lower courts for refusing to carry out the TCC's decision.

The Turkish judiciary's willingness to reject the findings of the TCC and refusal to implement decisions of the higher court represent a dangerous trend towards politically-motivated legal judgements and a failure to provide opportunity for legal remedy to those unjustly detained by the authorities.

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)

As mentioned above, several cases have been taken to the TCC and ECtHR. While judgements so far, in determining the unlawfulness of journalists' detention and criticizing the lower courts' refusal to implement the TCC's decision, set an important precedent, there are still major obstacles to Turkish citizens' ability to review and remedy their unlawful arrest, detention or dismissal.

Between July 2016 and January 2017, dismissed public sector workers did not have any recourse against their dismissal as they had no access to ordinary administrative or legal channels in Turkey. This remained the case despite the fact that observers have strongly argued that Turkey's 1983 Law on the State of Emergency does not provide for the dismissal of public servants.³¹ Following considerable domestic and international pressure, the Turkish authorities passed an emergency decree in January 2017 setting up a State of Emergency Inquiry Commission to review decisions taken by the emergency decrees, including the appeals of purged media workers.

The Venice Commission of the Council of Europe highlighted concerns about the Inquiry Commission's makeup from the outset.³² In an October 2018 report, Amnesty International found that

²⁹ See PEN International, 'Free Expression Organisations Intervene on Cases of Detained Turkish Journalists Before the European Court of Human Rights', 27 October 2017. Available at: <http://pen-international.org/news/free-expression-organisations-intervene-on-cases-of-detained-turkish-journalists-before-the-european-court-of-human-rights>

³⁰ See European Court of Human Rights Case of Mehmet Hasan Altan vs. Turkey. Available at: http://questionegiustizia.it/doc/case_mehmet_hasan_altan_v_turkey.pdf

³¹ See p. 17 of The Venice Commission, 'European Commission for democracy through law (Venice Commission) Turkey', 12 December 2016. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

³² See p. 17 of The Venice Commission, 'European Commission for democracy through law (Venice Commission) Turkey', 12 December 2016. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2017\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2017)006-e)

the Commission was not set up to provide an effective remedy to the thousands of public sector workers dismissed from their jobs by emergency decrees.³³ As of November 2018, the Commission had received 125,000 applications, 40,000 of which have been reviewed and 2700 of which have resulted in reinstatements for those who were dismissed.³⁴

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)

Over 130,000 civil servants, including teachers, academics, lawyers and judges have been dismissed under emergency decrees since July 2016. Research by Amnesty International³⁵ found that applicants were often unaware of the reasons for their dismissal, meaning that they struggled to argue against action taken against them. As such, appeals to the State of Emergency Inquiry Commission have been made in broad terms, or applicants have relied on guesswork to persuade the Commission that their dismissal was unlawful. The Commission lacks in genuine institutional independence, and fails to offer applicants the opportunity to effectively rebut allegations against them. The implementation of emergency powers through *ad hominem* legislation was highlighted by the Venice Commission as particularly concerning – public servants were dismissed by means of lists (often including tens of thousands of names) appended to emergency decrees meaning that dismissals were not made on an individual basis and therefore did not refer to specific evidence.³⁶

Amnesty International's research outlines the failure of the Commission to offer a genuine process of appeal or investigation. In addition, the appeals process once applications are rejected by the Commission is likely to take years, and involve considerable legal fees, thus impeding on applicants' right to an effective remedy. The publication of the names of dismissed employees in executive decrees has resulted in public shaming and difficulty with finding alternative employment in the private sector – treatment amounting to a 'civil death'. For those whose dismissals have been overturned, inadequate compensation packages and demotion upon reinstatement for previously managerial positions are common and have a profoundly damaging financial and civil impact on those affected.³⁷ The Council of Europe's Parliamentary Assembly further underscored these findings, stating that 'this situation will have a dramatic and detrimental long-term effect on Turkish society, which will need to find the means and mechanisms to overcome this trauma'.³⁸

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)

³³ See Amnesty International, 'Purged Beyond Return'. Available at:

<https://www.amnesty.org/en/latest/campaigns/2018/10/turkey-purged-beyond-return/>

³⁴ See Hurriyet Daily News, 'Turkey's state of emergency commission reinstated 2,700 people over 125,000 appeals', 8 November 2018. Available at: <http://www.hurriyetdailynews.com/turkeys-state-of-emergency-commission-reinstated-2-700-people-over-125-000-appeals-138700>

³⁵ See Amnesty International, 'Purged Beyond Return', October 2018. Available at:

<https://www.amnesty.org/en/latest/campaigns/2018/10/turkey-purged-beyond-return/> and 'European Commission for democracy through law (Venice Commission) Turkey'. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

³⁶ See p. 48 of The Venice Commission, 'European Commission for democracy through law (Venice Commission) Turkey', 12 December 2016. Available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

³⁷ See Amnesty International, 'Purged Beyond Return', October 2018. Available at:

<https://www.amnesty.org/en/latest/campaigns/2018/10/turkey-purged-beyond-return/>

³⁸ See Council of Europe Parliamentary Assembly, 25 April 2017. Available at:

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23665&lang=en>

Changes to the antiterrorism law with a view to ensuring that counter-terrorism measures are compatible with Article 19(3) of the ICCPR have not been made. However, several amendments enacted since 2016 alter its provision.

Law no. 7145 (see above) makes significant amendments to the anti-terrorism law. Significantly, Article 13 strengthens the authorities' power to detain suspects and impose public order, allowing them to control entry to and exit from an area for 15 days for security reasons, and to hold suspects without charges for 48 hours (or up to four days in the instance of multiple offences). These detention periods can be extended on two occasions if it is deemed necessary. The law also allows the authorities to dismiss public officials who are found to be linked to a terror organisation as well as giving the provinces' governors the power to restrict freedom of assembly. Article 12 of Law no. 7145 imposes further restrictions on those accused of terrorist activity. The amendment states that those dismissed in relation to association with organisations that threaten national security will have their 'gun carrying' permission certificate cancelled and weapons they own will also be confiscated.

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)

To date, no significant steps have been taken to repeal of Articles 125(3) and 299 of Turkey's Penal Code. Recent charges against individuals who have criticized the President under Article 299 suggest these provisions continue to be important legal weapons to prevent criticism of the government or its policies.

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?

Several laws, regulations, policies, administrative decisions and other measures affecting the right to freedom of opinion and expression have been implemented following the Special Rapporteur's visit. Although some have been mentioned in the answers provided above, they also include the following:

Turkey's judicial system has come under attack since the failed coup. More than 4,000 judges and prosecutors have been permanently dismissed. New constitutional changes, approved by referendum on 16 April 2017, fully entered into force following Turkey's presidential and parliamentary elections on 24 June 2018.³⁹ They grant wide-reaching centralised new powers to the president, including the right to rule by decree, to solely appoint or dismiss ministers, to abolish parliament and to call elections at any time. The new constitution also removes the authority of parliament to monitor the executive branch and debate budget bills, while also making it harder to impeach the president for criminal behaviour. It gives greater political control over the judiciary, with the President notably able to exert control over most appointments to the Council of Judges and Prosecutors, thereby further undermining the rule of law in Turkey.

Scores of municipalities in the southeast have been taken over by the government and their democratically elected mayors and officials removed or jailed. Several Kurdish journalists are incarcerated and most pro-Kurdish media outlets closed.⁴⁰ The crackdown on Kurdish language intensified following the coup attempt, resulting in the closure of most pro-Kurdish and Kurdish

³⁹ See PEN International, 'Turkey: Fundamental freedoms must be fully restored', 25 June 2018. Available at: <http://pen-international.org/news/turkey-fundamental-freedoms-must-be-fully-restored>

⁴⁰ See PEN International joint statement, 'Turkey: UN Human Rights Council should address continuous deterioration of freedom of expression and other human rights', 16 May 2017. Available at: <http://pen-international.org/news/turkey-un-human-rights-council-should-address-continuous-deterioration-of-expression-and-other-human-rights>

language media outlets.⁴¹ On 1 January 2017, the Turkish Press and Advertisement Council declared that ‘all font and text except advertisements on any print press has to be in Turkish’. Dozens of journalists of Kurdish or pro-Kurdish outlets have been jailed. Renewed violence since the breakdown of the peace process between the Turkish authorities and the PKK in July 2015 has seen thousands killed and wounded. Historical sites and buildings have been destroyed. Meanwhile, the Turkish authorities have taken to persecuting those who call for peace, including Academics for Peace, a diverse group who signed a declaration calling for peace in Turkey’s southeast in January 2016. Some members have been convicted of spreading terrorism propaganda, others remain on trial.

Emergency decrees have authorized the confiscation of passports of all individuals under investigation or prosecution as well as those of their spouses. Dismissed civil servants have also had their passports cancelled by decree, while Decree 673 of 24 October 2016 further allowed confiscation of that of their spouses. Following the lifting of the state of emergency in July 2018, the Turkish authorities announced that passports would be returned. According to information provided by the Ministry of Interior, 155,000 individuals out of 181,500 have had their passports returned.⁴² Among those still waiting is producer and economist Dilek Dündar,⁴³ whose passport was confiscated on 16 September 2016 on national security grounds. To date, there is no court case against her. Dilek Dündar is the wife of former *Cumhuriyet* editor Can Dündar, who is in exile following an assassination attempt and facing jail on trumped-up charges.

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

⁴¹ See PEN International, ‘Turkey: Destruction of Kurdish Culture In The Southeast Two Years On From Collapse of Ceasefire, 2 August 2017’, available at: <http://pen-international.org/news/turkey-destruction-of-kurdish-culture-in-the-southeast-two-years-on-from-collapse-of-ceasefire>

⁴² Figures available here: <https://www.dw.com/tr/ohal-kalkt%C4%B1-yurt-d%C4%B1-C5%9F%C4%B1-va%C4%9F%C4%B1-kalkmad%C4%B1/a-46551851>

⁴³ For more information see: <https://www.youtube.com/watch?feature=youtu.be&v=VJZPU2rkjvc&app=desktop>