

ARTICLE 19

State of Emergency in Turkey: the Impact on
Freedom of the Media
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Delegation Members

This publication was drafted by **ARTICLE 19**; and is supported by the members of the delegation, including:



State of emergency in Turkey: the impact on freedom of the media

This publication summarises findings from a three-day fact-finding mission to Istanbul, conducted by representatives of international media freedom and civil society organisations on 31 August – 2 September 2016, six weeks after the Turkish government invoked a state of emergency in response to the failed coup attempt of 15 July 2016.

The coup attempt, in which nearly 250 people were killed, traumatised Turkish society. Had those behind the coup attempt not been defeated, the consequences for Turkey's stability, prosperity and democratic development would have been dire. The government has the right and responsibility to bring those responsible for the coup attempt to account; and the imposition of a state of emergency may well be a legitimate response to a threat of this magnitude.

However, the government is now abusing the state of emergency to severely restrict the right to freedom of expression and media freedom, to stifle criticism and limit the diversity of views, perspectives and opinions available in the public sphere within Turkey. Restrictions on the media are not a new phenomenon in Turkey, but in response to the failed coup, the breadth and scope of the crackdown on media freedom has intensified dramatically, with measures of an unprecedented scale now being justified on the grounds of ensuring stability.

Media workers and other government critics are being arrested and harassed, and independent newspapers and broadcasters are being forced to close. Such measures have a disastrous chilling effect upon the free flow of information and ideas: even those that have not been directly silenced by the state are forced into self-censorship, with only a handful of beleaguered independent outlets continuing to express alternative viewpoints. In this environment, the government is able to almost entirely dominate Turkey's public discourse, while alternative viewpoints must be actively sought out.

In parallel to the right of the media to seek and impart information and ideas, the right of the public to receive information about current events and the actions of the public authorities - including in a critical perspective - is of utmost importance in times of emergency and disarray.

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1. Scope and abuse of the state of emergency

On 21 July, in response to the failed coup attempt, the Turkish President declared a state of emergency for a period of three months, in line with the procedure established in the Turkish Constitution. According to a notification sent by the Turkish authorities to the Council of Europe, the purpose of the state of emergency is to ensure a speedy and effective response to the threat posed by the 'Fethullah Terrorist Organisation' (FETÖ), enabling a swift return to normalcy.ⁱ

Since the imposition of the state of emergency, Turkey's Council of Ministers has issued three decrees, granting the Turkish authorities wide-ranging powers. A number of these affect the exercise of the right to freedom of expression, and have been used to facilitate the arrest and harassment of journalists and media workers, including:

1. An extension of the period during which an individual may be detained without charge, from 48 hours to 30 days; the decrees also restrict access to legal counsel for detainees and extend the period before a detainee must have access to a lawyer to five days
2. Empowering higher levels of administration to shut down any media organisation
3. Enabling the government to impose curfews, ban public meetings, gatherings and rallies, and restrict access to private and public spaces
4. Enabling the state to confiscate passports of anyone under investigation. On 1 September, an amendment to the decrees extended this power, enabling the authorities to confiscate the passports of spouses and partners of those under investigation.
5. Granting law enforcement agencies the power to stop and search people and vehicles without judicial authorisation and to confiscate suspicious materials.

Restrictions imposed under the state of emergency go beyond those permissible under international human rights law, including unjustifiable limitations on the right to freedom of expression. They have enabled the Turkish government to arrest journalists of diverse backgrounds for long periods, without charge, depriving them of basic rights such as access to legal counsel and the ability to challenge or seek redress for egregious human rights violations, including allegations of torture and other ill-treatment and fair trial.

During the first six weeks of the state of emergency, pursuant to the decrees outlined above, over **100** media outlets had been closedⁱⁱ, leaving over **2,300** journalists and media workers without jobsⁱⁱⁱ. At least **89** journalists have been arrested, bringing the total number of media workers detained on official charges, believed to be related to their exercise of the right to freedom of expression, to **121**^{iv}. These numbers exclude countless other journalists who are currently in detention in police holding cells, or have been detained and released without charge during the state of emergency, as well those for whom detention warrants have been issued but have not yet been detained. These measures deprive the population of the right to receive information about current events and to hold the government to account.

121 media workers in prison

- *32 arrested prior to state of emergency*
- *89 arrested during state of emergency*
- *74 cases reportedly related to coup*
- *47 cases unrelated to coup*

At almost every meeting during the 3-day fact-finding mission, the delegation was alerted to new cases of detentions or arrests; with several interviewees stressing that it was impossible to gain an accurate figure of those detained, due to the speed of arrests and a lack of official information.

The authorities have revoked the press accreditation of at least **330** journalists, removing protections afforded to journalists which are particularly important if arrested, and limiting their ability to cover

public interest stories by preventing them from attending official press conferences. Many other journalists reported their passports being cancelled and other restrictions on their movement in the country.

The scope of the crackdown encompasses almost any media outlet that does not take a pro-government editorial line, including:

- Media outlets allegedly affiliated with or funded by the Gülen movement, which is accused of being behind the coup, and journalists working, or having previously worked for such outlets;
- Journalists with perceived connections to the Gülen movement; and
- Independent, oppositional or minority media outlets and journalists, with no known affiliation to the Gülen movement. The Kurdish media and those covering news in the South East of Turkey – long a taboo topic for the authorities – have come under particular pressure.

Harassment of media with alleged links to the Gülen movement

On 25 July, the government issued Decree 668^v, under the state of emergency provisions. In addition to a list of military officials to be dismissed from their posts, the decree included numerous TV and radio stations, newspapers, periodicals and distribution companies to be closed, under the accusation that they belong to, are connected to or in contact with the ‘Fethullah Terrorist Organisation’ (FETÖ).

Among those closed by the decree was the national daily ‘Zaman’. Zaman had already been taken over by a government-appointed administrative board on 5 March 2016^{vi}, over the alleged links between the owner of its parent company – Feza Holdings – and Fethullah Gülen.

104 media outlets closed, including 102 in one day alone:

- 3 news agencies
- 16 TV channels
- 23 radio stations
- 47 newspaper
- 15 magazines

leaving 2300 media workers jobless

“There are real journalists in the Gülen community. The Gülen community provides job security. There is also a group that have been affiliated since childhood through the schools, they are serving the (Gülen) community and not ethical journalism.” - Meeting with Journalists Union of Turkey (TGS, TGC, Disk Basın-İş)

In addition to the decrees, prosecutors have issued arrest warrants for at least 150 journalists alleged to have been involved in the coup attempt. This included a warrant issued for 42 journalists on 25 July; and a warrant for a further 47 journalists and executives working with Zaman newspaper, on 27 July.

The Movement of Fethullah Gülen

Turkey has accused Muhammed Fethullah Gülen, an Islamic cleric and founder of the Gülen movement (known as Hizmet, meaning service, in Turkish), of being behind the failed coup attempt. The Gülen movement has long been active in Turkey, and figures within the movement cooperated with Erdoğan’s Justice and Development Party (AKP) government until 2013, when the government accused the movement of being behind the leaking of information about a series of damaging corruption scandals. On 26 May 2016, the National Security Council (MGK) included the movement on its list of official terrorist organisations, referring to them as the ‘Fethullah Terrorist Organisation’ (FETÖ); however, this has not yet been verified by judicial decision.

The media associated with the Gülen movement in Turkey is controversial and receives criticism from nearly all other media including pro-government, liberal opposition, leftist opposition and pro-Kurdish media. During the fact-finding mission, journalists working for opposition media outlets frequently raised issues of journalistic ethics when discussing pro-Gülen media; outlets such as Zaman are held

responsible for publishing pro-government rhetoric several years ago, which may have led to the arrests of critical journalists at the time.

Despite this, journalists and union representatives with whom the delegation met stressed the importance to distinguishing between individuals who may have participated in the organisation of the coup attempt (in which case, individualised evidence would be necessary); those who engaged in unethical journalism (who should not be subject to prosecution) and the many journalists who merely worked for Gülen-associated media and who performed journalism in the public interest. Contrary to this, the government is pursuing a policy where anyone with tenuous links to the Gülen movement can be considered a member of a terrorist organisation. International standards regarding membership of a terrorist organisation and the right to freedom of expression are explored further below.

The government's overly broad approach to defining involvement in the coup in is illustrated by the cases of two high profile imprisoned journalists, allegedly associated with the Gülen movement: Hidayet Karaca (*Samanyolu* TV) and Mehmet Baransu (*Taraf* Newspaper). Both Karaca and Baransu were arrested long before the coup attempt and the subsequent declaration of the state of emergency, but since then they have been investigated for their relationship to the Gülen movement and they are now also implicated in the coup attempt, despite the fact that they were in detention when the coup attempt took place.

“The government receives anonymous tips that a journalist is “Gülenist” or might be suspicious if a journalist was previously working with a newspaper funded by Gülen. But the logic isn’t really clear. The major challenge now is how to separate those involved in the coup from the broader members of the community. This must be done on the basis of evidence.” - Meeting with Journalists Union of Turkey (TGS, TGC, Disk Basın-İş)

Investigations into alleged involvement in the coup attempt have also relied on absurd accusations. Most recently, in early September, Ahmet and Mehmet Altan, two well-known intellectuals, were detained on the accusation of putting out “subliminal messages” in support of the coup on a TV talk show the day before the coup attempt. Such charges are extremely vague and it is highly doubtful they could ever be substantiated, reinforcing concerns about a lack of evidence and violations of the right to a fair trial. Ahmet Altan was already on trial in a separate case, which pre-dated the coup attempt, relating to his previous work as Editor-in-Chief of *Taraf* newspaper.

Taraf Trial

On 2 September, the delegation attended the first hearing of the trial of three former senior editors of *Taraf* daily newspaper, Ahmet Altan, Yasemin Çongar and Yıldırım Oğur; and two journalists, Mehmet Baransu and Tuncay Opçin. Free expression and media organisations represented in the international fact-finding mission had already expressed numerous concerns¹ regarding the case, including serious procedural problems, highlighting that large sections of the indictment had been copy-pasted from the separate, but well-known case against *Cumhuriyet* Editor, Can Dündar.

The hearing reinforced concerns about violations of the right to a fair trial, particularly with regard to inconsistencies and a lack of clarity in the indictment and the failure of the prosecution to fully serve evidence, rendering the defendants unable to fully understand the charges against them.

Believing the trial to be politically motivated, the organisations represented on the delegation continue to call on the government to drop all charges against the accused and to immediately and unconditionally release Mehmet Baransu, who has been held in arbitrary detention since his arrest on 2 March 2015.

Arrests and detentions of journalists and closure of media outlets during the state of emergency on grounds unrelated to the coup attempt

During the state of emergency, 17 more journalists have been arrested, pending trial, on charges unrelated to the coup attempt. These journalists did not work for the media outlets designated for closure in the Decree 668, nor did they feature on the arrest warrants issued as part of the investigation into the coup attempt. The charges against them are entirely unrelated to the proclaimed objectives of the state of emergency. Despite this, in most cases provisions included in the state of emergency decrees were invoked to detain them without charge for longer than the 48 hours usually permitted, indicating an abuse of the state of emergency provisions to prevent legitimate journalistic activity.

“On top of all of this, the Kurdish press always get beaten. No matter what happens they are repressed.” – Meeting with Journalists Union of Turkey (TGS, TGC, Disk Basın-İş)

All apart from one of these cases are from media outlets considered pro-Kurdish and most are being charged with terrorism propaganda for, or membership of, the Kurdistan Workers Party (PKK). These 17 cases include six from daily *Azadiya Welat*, four from daily *Özgür Gündem*, three from *DiHA* news agency, two from *Özgür Halk*, one from *Jinha* and one freelance US journalist.

Understanding legal guarantees before and after the state of emergency

- In Turkey, police must first obtain a detention warrant, they then detain the individual and take them to a police holding cell.
- Individuals can normally be held up to 48 hours before they must be taken to court, when the prosecutor seeks their formal arrest. The court then decides whether they should be released or formally arrested and charged.
- Alternatively, a prosecutor may open an investigation against an individual without detaining them. They would then be called in to give a statement, when they would be formally charged or the investigation could be closed. If charges are filed, they may be released pending trial or taken into custody if they are considered a flight risk.
- Under the state of emergency, individuals can be held without seeing their lawyer for five days and can be held in detention without charge for up to 30 days.
- After charges are issued, the individual is moved from a police holding cell to a prison. Conditions in holding cells are reportedly below international standards; holding cells are designed for temporary detention, but since the coup attempt individuals are being held for much longer periods, in very crowded conditions.

On 16 August, an Istanbul court issued a decision to temporarily close the national daily newspaper *Özgür Gündem*, without stating the duration of the closure, on the basis that they allegedly conducted terrorist propaganda and served as a broadcasting organ for an armed terrorist organization (PKK). On the same day, the paper’s headquarters in Istanbul were raided and 22 media workers were detained, including two reporters working for different media outlets, all of whom were then released without charge after three days in detention.

The media workers, who were in detention between 16-19 August, allege they were subject to torture and other ill-treatment, including beatings, subjected to racist and sexist insults and rape threats, both during the raid and while in detention^{vii}. The houses of *Özgür Gündem* columnists Filiz Koçali and Eren Keskin (a human rights defender and lawyer who served as co-editor of *Özgür Gündem*) were raided on the following day, while they were not at home.

In addition to those temporarily detained during the raid, four individuals were formally arrested, charged and remain in custody pending trial, including:

- Senior Editors **inan Kızılkaya** and **Zana Kaya** were detained during the raid on *Özgür Gündem*'s headquarters in Istanbul and held for six days before being formally charged on 22 August with membership of and propaganda for a terrorist organisation (PKK) and disrupting the unity and integrity of the state.
- **Aslı Erdoğan**, best-selling author, was detained on 16 August when her home in Istanbul was raided^{viii}, held for four days and then formally charged on 20 August with membership of a terrorist organisation in connection with her service on the editorial consultancy board of *Özgür Gündem*.
- **Necmiye Alpay**, prominent writer and linguist, was under investigation in the same case^{ix} and presented herself to the Public Prosecutor on 31 August, where she was arrested and formally charged with membership of a terrorist organisation, also in connection with her service on the editorial consultancy board of *Özgür Gündem*.

Both Erdoğan and Alpay are being charged in relation to the exercise of their right to freedom of expression. Additionally, their pre-trial detention is unusually cruel given the concerns about Erdoğan's health and Alpay's advanced age (she is 70 years old), and allegations of a lack of access to basic medicines and water.

Since its founding in 1992, *Özgür Gündem* has been subject to frequent state interference and has also won cases against Turkey at the European Court of Human Rights (ECtHR).^x In 2014, the ECtHR found that Turkey had violated the editor's and owner of the paper right to freedom of expression, after they were prosecuted for publishing statements of a PKK leader.^{xi}

On 28 August 2016^{xii} the central offices of **Azadiya Welat** in Diyarbakır, the only Kurdish language daily newspaper in Turkey, was raided by police and 23 employees were detained^{xiii}. On 2 September, after four days in detention without charge, 13 of those detained were released^{xiv}. Currently, six media workers from the daily are in custody and have been charged.

“You cannot report the news under the state of emergency”

Allegedly stated by the police who detained the Evrensel journalists, Cemil Uğur and Halil İbrahim Polat, who were covering a Kurdish protest at the time of their arrest. Several interviewees reported that this was the unofficial line under which the police were now operating when detaining journalists.

In addition to the journalists officially arrested and kept in custody (those included in the total number of 120 imprisoned journalists mentioned above) there have been high numbers of detentions and releases of journalists, sometimes with the closure of the investigation and at other times with charges being issued and the journalists released on probation. A key example is the detention of *Evrensel* journalists Cemil Uğur and Halil İbrahim Polat on 23 August, who were kept in custody for 16 days before finally being charged on 7 September with membership of a terrorist organisation (PKK) and released on probation. The journalists were not allowed family visits during their detention and their lawyer stated that they were subject to degrading treatment while in detention, being "exposed to insults and threats in prison."

2. International standards on freedom of expression during times of emergency

Under international law, states are permitted to derogate from certain international human rights commitments under the following conditions:

- Derogations are only admissible in **cases of public emergency which threaten the life of the nation**;
- Derogations must be **officially and lawfully proclaimed in accordance with both national and international law**;
- Restrictions on rights must be **exceptional** and **temporary**. The state's primary objective when derogating must be the restoration of a state of normalcy, as established by the UN Human Rights Committee^{xv}
- Certain fundamental rights cannot be affected by derogations, including the right to life; prohibition of torture and inhumane or degrading treatment or punishment; no punishment without law (arts 2, 3 and 7 of the ICCPR)
- Any restrictions on human rights must be **limited to the extent required by the exigencies of the situation**. Moreover, limitations of the right to freedom of expression must meet the conditions established under Article 19(3) of the ICCPR, meaning that they must be provided by law and be necessary and proportionate to the protection of a legitimate aim (in this case national security). Therefore, even if required by the exigencies of the situation, any restriction on freedom of expression must be **proportionate** and strictly **necessary** in the circumstances.

Ascertaining the extent to which the failed coup poses an ongoing threat to the life of the nation was beyond the scope of the mission; however, even if we accept that Turkey had legitimate grounds to invoke a state of emergency, Turkey's declaration of a state of emergency and the decrees issued under it nevertheless raise concerns regarding Turkey's compliance with its human rights commitments:

- **Turkey has not clearly stated the scope of additional restrictions during the state of emergency.** While Turkey did proclaim its derogations in accordance with procedures set out in national and international law, following the provisions for declaring a state of emergency set out in the Turkish Constitution and informing both the Council of Europe and the UN that it may derogate from some rights, including the right to freedom of expression,^{xvi} the scope of these derogations was not clearly delineated. The decrees issued are vaguely formulated, allowing for broad application, that may allow for overly broad restrictions on rights, beyond what is acceptable under international human rights law.^{xvii}
- **Unnecessary, disproportionate, illegitimate purpose:** Since the failed coup, the government's actions with regard to media freedom have not met the threshold of being necessary, proportionate and for a legitimate purpose. As explored above, during the last six weeks, the government has detained over a hundred journalists, reportedly with no evidence of their involvement in the coup. Combined with restrictions on the right to a fair trial, this has enabled a crackdown on media freedom that goes far beyond what is required by the exigencies of the situation. Moreover, the **emergency measures are being used for purposes other than those which were the basis of the declared state of emergency**, e.g. targeting journalists alleged to be members of the PKK, which has no link to the coup attempt.
- **The exercise of the right to freedom of expression extremely rarely, if ever, gives rise to the circumstances meeting the threshold for derogation.** Even where other circumstances permit emergency derogations, such as may be the case in Turkey following the failed coup, the possibility of restricting freedom of expression in accordance with the three-part test set out in

Article 19(3) of the ICCPR should be generally sufficient. No additional, further derogations to freedom of expression should be justified by the exigencies of the situation of emergency.

These issues are of particular concern given that Turkish constitutional law does not allow for judicial review of the decrees issued under the state of emergency – a fact criticised by the Venice Commission, which has raised concerns about insufficient safeguards to ensure the necessity and proportionality of measures taken by the authorities under states of emergency.^{xviii}

The right of everyone to seek and impart information and ideas and the ability of the media to report about the threats on the existence of nation, and the correlated right of the public to receive such information, is of even increased importance in times of disarray where the population is in shock and anxiety. The public needs accurate information about the public authorities' reaction, including critical perspectives and a diversity of viewpoints.

The Turkish government has sought to invoke international and national law to provide a veneer of legitimacy to its actions; however, the arrests of journalists and closures of media outlets, accompanied by other forms of pressure and harassment, must be condemned as an unjustifiable restriction on freedom of expression.

3. Freedom of expression and the fight against terrorism

It is well understood that freedom of expression may be restricted in order to protect public order and national security and recognised that the State has a duty to protect its people from terrorist threats. However, international law also mandates that human rights must be respected in the fight against terrorism, and must not be arbitrarily limited.^{xix} The UN Human Rights Commission (predecessor of the Human Rights Council) has explicitly warned against arbitrarily limiting freedom of expression in these circumstances, issuing resolutions reminding nations to “refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways which are contrary to their obligations under international law.”^{xx} While States must act to protect their citizens from public order and terrorist threats, their actions must be appropriate and without excess.^{xxi} This implies that the relevant criminal offences should be narrowly defined and applied with due restraint. It also implies that the offence of ‘terrorism’, which triggers the most severe restrictions on the enjoyment of rights, is particularly narrowly defined and employed only in circumstances when the accompanying serious restrictions on rights are truly “necessary”.

Despite this, counterterrorism provisions in the Turkish Penal Code and Turkey’s anti-terror law have long been abused to restrict freedom of expression.

“This is the complication: in Turkey the terrorist label is not put on the guilty person, but the person who reveals the guilt”- Erk Acar, *Birgün*

Erk Acar, a journalist at *Birgün*, faces a potential 47-year jail sentence and was reportedly charged under the anti-terror law for revealing the name of a government worker in an article.^{xxii} He had written an article investigating the policeman who fired a gas canister at a minor, resulting in his death, during the Gezi Park protests in Istanbul in 2013.

Charges frequently invoked against journalists and others exercising their right to freedom of expression include:

- Article 314 of the Penal Code, which prescribes a prison sentence of 10-15 years for establishing or commanding an armed organisation and 5-10 years for becoming a member of such an organisation.
- Article 220/7 of the Penal Code, which states that “any person who commits an offence on behalf of a (criminal) organisation, although he is not a member of that organisation, shall also be sentenced for the offence of being a member of that organisation” (referring to Article 314 of the Penal Code, listed above).
- Article 220/8 of the Penal Code, which states that “a person who makes propaganda for an organisation in a manner which would legitimise or praise the terror organization’s methods including force, violence or threats or in a manner which would incite use of these methods shall be sentenced to a penalty of imprisonment for a term of one to three years.” The penalty under this article increases by half if the “terrorist propaganda” is published through press or broadcasting.

Numerous journalists detained since the coup attempt have had charges brought on these grounds. The charges are highly problematic with regard to international human rights standards, particularly on freedom of expression.

First, Article 220/8 (“propaganda of a terrorist organisation”) relies on such broad definitions, in particular the concept of “legitimising” or “praising” terrorism, that it allows for broad and abusive prosecution (see, for example, the *Evrensel* case above).

For a restriction on freedom of speech in the name of national security to be found compatible with international standards, the causal link between an act of speech and its violent, illegal consequences needs to be much stronger than a mere possibility. In other words, there needs to be an **intentional, direct and immediate connection between the expression and the likelihood of such violence**.

As established in the *Johannesburg Principles on Freedom of Expression and National Security*^{xxiii}, a set of principles developed by global experts and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression, expression may only be punished as a threat to national security if a government can demonstrate that:

- A. the expression is intended to incite imminent violence;
- B. it is likely to incite such violence; and
- C. there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

The broad terminology included in the Turkish offences is so vague as to fail the requirement that restrictions on freedom of expression should be provided by law. The interpretation of terms such as “legitimises” or “praises” is likely to be highly subjective. We believe that they must be distinguished from the term “incite” as outlined above.

We also recall that Principle 8 of the Johannesburg Principles specifically states that:

‘Expression may not be prevented or punished merely because it transmits information issued by or about an organisation that a government has declared threatens national security or a related interest.’

We are thus concerned that these provisions are likely to lay unnecessary obstacles for journalists to cover news related to allegedly terrorist activities, or to convey critical views of the government's attitude towards such activities. It would impact negatively upon the public's right to receive information and ideas – including controversial ideas – on such topics. As detailed above, **speech related to activities defined as terrorism should be penalised only when it intentionally, directly and imminently incites to acts of violence**.

Moreover, despite amendments to the Turkish Penal Code and the Anti-Terror Law in 2013, Turkish legislation still allows for individuals to be accused of “aiding and abetting a terrorist organisation”, purely on the grounds of an act of expression. This in turn allows them to be prosecuted for membership in a terrorist organisation, even if no clear relationship between them and the organisation has been established.

This means that an individual can be charged as a member of a terrorist organisation for their expression alone, without having to prove any involvement in a violent act. This undermines international standards on freedom of expression and national security. Indeed, these provisions have been criticised by the Venice Commission, as having the potential for abusive application. The Commission has stated:

‘Any allegation of membership to an armed organisation must be established with convincing evidence and beyond any reasonable doubt... Where the only evidence consists of forms of expression, the conviction for being a member of an armed organisation, would constitute an interference with the right of the defendants to freedom of expression... The necessity of this interference on the basis of the criteria as set forth in the case-law of the ECtHR, in particular the criteria of “incitement to violence”, should be examined in the concrete circumstances of each case.’^{xxiv}

Consequently, in responding to the coup attempt, the Turkish government must ensure that no one is detained or arrested purely on the grounds of an act of expression, or affiliation with a media group or outlet known to be associated with, or funded by, the Gülen movement, or any other terrorist group. The government has the obligation to provide convincing evidence, beyond any reasonable doubt, of involvement in a violent act or in incitement to violence, when bringing terror charges against journalists and others exercising the right to freedom of expression. If incitement to violence can be proved, any sanction responding to this must be necessary and proportionate, in line with international standards on freedom of expression, as explored above.

4. A media landscape long under pressure

Pressure on media freedom in Turkey is not new. Media freedom in Turkey was already in crisis prior to the coup attempt, including significant issues regarding media ownership, financial pressure, blocking of websites, broadcasting bans on terrorist attacks, criminal defamation, closure of critical media outlets and broad use of anti-terror legislation against journalists. The key ongoing media freedom issues are summarised here:

Turkey's media sector is highly dominated by the government, leaving a small number of newspapers who maintain an oppositional editorial line. The broadcasting sector is the least free media sector; television broadcasting is an expensive industry, leaving critical television channels vulnerable to financial pressures. In a meeting with the delegation, executives from İMC-TV, an independent TV channel known for its focus on human rights, equality, democracy, and freedom of religious belief, claimed that *Türksat*, Turkey's main satellite channel, has a monopoly in Turkey, and implements government censorship through cancelling contracts, without the option of redress for unfair cancellation. In February 2016, İMC-TV lost 40-50% of its viewers, and therefore a significant amount of revenue, when its contract was cancelled with *Türksat*.

“We know what our job requires of us and we are not afraid. We're here to speak out.” Murat Sabancı, *Cumhuriyet*

The largest media outlets in Turkey are owned by corporate holding companies, which also have business interests in construction, transport and logistics. This leaves the media outlets owned by those companies vulnerable to government pressure since the parent companies are dependent on government contracts for their other areas of work.^{xxv}

Media outlets can also be subject to financial pressures through high penalties and withdrawal of advertising. A source of income for some newspapers is the publishing of official announcements and this can be withdrawn if the newspaper is charged with defamation of the president. During a meeting with the fact-finding delegation, *Evrinsel* newspaper claimed that they are asked to comply with more stringent requirements than pro-government newspapers, for example they are asked to keep a record of the name and address of every subscriber and then are fined if they fail to comply. They added that they lost income when the Press Announcement Authority banned official announcements in their paper for two days due to “insult of the president”. The fines do not only affect the more radical newspapers; in 2009, *Hürriyet* - a more mainstream newspaper with a large readership - received a fine of two billion Lira, which was nearly their entire yearly income.

Internet news sites and individual social media accounts have been routinely subject to blocking orders. During the state of emergency this has increased, with Twitter reportedly complying with requests to withhold Kurdish media twitter accounts in Turkey, including the Twitter account of pro-Kurdish daily newspaper *Özgür Gündem*. Blocking orders are issued by courts, and site owners are usually not informed of the order, meaning that frequently the owner of the site is only aware that a news story has been blocked when they notice that no-one is accessing a particular page. The orders frequently order the blanket blocking of an entire website without specifying the offending content.

It has become habitual for the Turkish government to immediately request a broadcasting ban from the courts after a terrorist attack. Broadcasting bans were issued after the suicide bombings in Süruç on 20 July 2015, in Ankara on 10 October 2015 and 13 March 2016 and in Istanbul on 12 January and 29 June 2016. The speed at which the broadcasting ban was issued after the terrorist bomb in Istanbul led the leader of the opposition, Kemal Kılıçdaroğlu, to say that “the broadcasting bans arrive faster than the ambulances in Turkey”. Under the state of emergency, broadcasting bans have continued. After a suicide bomb attack on a wedding party in Van on 12 September 2016, a ban was immediately ordered.^{xxvi}

Nowhere has the impact of blocking of social media and news sites, broadcasting bans and restrictions on journalists been felt more keenly than in coverage of the conflict of the South-East. At times, these restrictions have amounted to a complete media blackout on coverage of the conflict, severely restricting the public's right to access information about issues of public interest.

Criminal defamation laws have been used to silence journalists and criticism of the President by the public through social media. Many criminal defamation cases are initiated by high-level officials in Turkey, including the President, who personally brings hundred of cases to court every year. After the coup attempt President Erdoğan announced that he would drop the hundreds of cases of criminal defamation he had taken out, apart from the cases involving members of the pro-Kurdish political party, the HDP.

“We are currently under a lot of pressure – public media is in a state of emergency. Recently, the unions held an awards ceremony for public interest media. After the awards, we were heavily criticised by a pro-government media outlet for supporting “criminal” journalists; and they called for us to be shut down.” - *Meeting with Journalists Union of Turkey (TGS, TGC, Disk Basın-İş)*

Prior to the coup attempt, media allegedly affiliated with the Gülen movement had been subject to forced closures. Just days prior to the national election in October 2015, the television station *BügünTV* live-broadcasted its own raid and closure by police.^{xxvii} The channel was owned by *Koza İpek* holding, which allegedly had links to the Gülen movement, and was under investigation for terrorism propaganda and financing terrorism. Turkey's most widely circulated national daily, *Zaman*, was taken over by state appointed trustees in March 2016.

Journalists have also historically been subject to pressures related to the issuing and withholding of press cards for political reasons. Press cards are issued by Press Card Commission, at the Directorate General of Press and Information, which is made up of representatives from the government and from the journalist unions. When the government changed the structure so that the government dominated the commission, journalist unions withdrew from the commission. In a meeting with the fact-finding delegation, the unions stated that they had been pressured to revoke the press cards of three prominent journalists associated with the Gülen movement and they had refused.

5. Impact on freedom of expression and the future of independent journalism

In addition to silencing the media, the result of the crackdown on dissenting voices is pervasive self-censorship. Even where critical newspapers or media outlets have not been forcibly taken over by pro-government figures, the majority now refrain from criticism of the government. The few independent newspapers and channels that continue to do so face legislative and administrative pressure from the authorities, and abuse and harassment from the pro-government media. Given previous failures by the Turkish government to address attacks against journalists, the growing public rhetoric against dissenting voices is of particular concern.

In this environment, the government is able to almost entirely dominate Turkey's public discourse, while alternative viewpoints must be actively sought out, often with recourse to anonymising technology in order to circumnavigate the government's prolific blocking of web content. Given the complexities of the current context in Turkey, there is an essential need for high quality, investigative journalism, accompanied by diverse and pluralistic debate, in order to help the public to understand what is happening and to hold the government to account in responding to the many legitimate security threats currently faced in the country.

“Before journalists met in cafes; now we meet in prisons and courthouses.” - Murat Subancu, *Cumhuriyet*

Turkey's media landscape has long been characterised by high levels of polarisation among journalists and media outlets of different political, social and religious backgrounds and affiliations. This is exacerbated by high levels of polarisation within society, and popular demonisation of, and smear campaigns against, journalists, often encouraged by the rhetoric of high level politicians, who accuse journalists of terrorism and seeking to undermine the Turkish state. This is increasingly playing out on social media, where journalists are subject to verbal abuse aimed at silencing them.

During the visit, the delegation therefore welcomed comments by independent and opposition journalists that, despite not agreeing with other journalists' opinions and positions, there was growing evidence of solidarity among those under pressure from the state and broader society. Some initiatives included:

- Demonstrations and rallies outside prisons where journalist are held for exercising the right to freedom of expression.
- Re-publication of stories written by journalists in jail, or newspapers that have been shut down. For example, the weekly newspaper *Atilim* published special supplements by *Özgür Gündem* contributors, after that publication was closed.
- The launch of a campaign, “*I am a journalist*” (*Ben Gazeteciyim*), in which journalists around the country used this tagline on social media and in articles, to demonstrate their support for arrested colleagues.

Their efforts are supported by a core group of human rights defenders and media freedom advocates, implementing innovative and often brave campaigns and initiatives to promote media freedom. However, several interviewees were concerned that those working on media freedom constitute an extremely small group - with the same journalists and activists well-known for espousing solidarity and challenging government violations of the right to freedom of expression. While there may be some support for freedom of expression in Turkey among the broader population, as demonstrated by the popular outcry following the brutal police repression of peaceful protests in Istanbul's Gezi Park in 2013; people are growing increasingly scared to speak out. There is a critical need to build support for independent journalism among the broader population.

6. Perceptions of the international community

The coup has negatively affected perceptions in Turkey of the international community, in particular the EU and US, a fact that must be borne in mind when responding to the current situation. Criticism can be divided into two broad categories.

First, several interviewees during the mission referred to a widely-held perception that the West failed to adequately respond to the coup attempt, with pro-democracy journalists and human rights groups echoing opinions articulated in pro-government media that the EU and US had underestimated the magnitude of the threat posed by the coup attempt to Turkish democracy, and had failed to respond accordingly.

Much of this criticism stems from the fact that states did not send high-level delegations in the immediate aftermath of coup. While such accusations may be unfair, given the proliferation of statements expressing support of the government and subsequent reassurances of this, such accusations have since been propagated by the pro-government media, entrenching its perception among the broader population.

Moreover, pro-government media has seized this opportunity to generate an argument that the EU and US support Gülen. This argument is now being used to weaken any statements by international actors on democracy or media freedom, portraying them as efforts to undermine the integrity of the Turkish state.

Despite this, many Turkish human rights defenders and journalists stressed the important role of Turkey's international partners, especially the EU and the US, in pushing Turkey's government to respect and uphold fundamental human rights. The government remains sensitive to international criticism, and still wishes to be perceived as adhering to international human rights standards, as demonstrated by its efforts to justify its restrictions on human rights using international law.

“I understand that governments have their own interests, that they should have security policies for their own populations. But European leaders are working closely with the Turkish government – just to relieve themselves of the refugees. Why is Europe failing to uphold European values in responding to the refugee crisis?” - *Murat Sabuncu, Cumhuriyet*

However, a second category of criticism, voiced by human rights defenders and journalists during the mission, concerns the perception that heads of states in Europe and the US are prepared to waive human rights concerns in order to guarantee Turkey's support in addressing both the ongoing refugee crisis and instability in Syria and Iraq.

Taken together, the two groups of criticisms weaken the position of European states in responding to the current crisis. There is a risk that any statements or criticism of the Turkish government's record on democracy and human rights is perceived as double standards, aimed at undermining the Turkish state.

On the other hand, a failure to speak out can be seen as tacit acceptance of human rights violations in exchange for self-interested values that undermine democratic principles on which the European community, and the US, claim to base their foreign policies.

It is therefore imperative that in their engagement with the Turkish government, the international community takes a consistent and principled approach, both condemning the coup while pressing Turkey's government to meet its human rights commitments under international law. Any concessions made with regard to the refugee crisis or on national security must be part of a strategy designed to

ensure Turkey upholds its commitments. This must be demonstrated to the broader public through coherent and clear messaging that democracy and rule of law in Turkey remains of utmost concern.

7. Recommendations

To the Turkish government:

- Immediately and unconditionally release all journalists, media workers and others arrested for exercising their right to freedom of expression, without any individualised evidence of involvement in a crime, whether this is on allegations related to the coup attempt, or other offences that constitute crimes under international law, including terrorism-related charges.
- Guarantee that any restrictions on the right to freedom of expression during the state of emergency are strictly proportionate to the exigencies of the situation, as required under international human rights law. This includes:
 - Instating prior judicial authorisation of any restrictions, in line with recommendations of the Venice Commission in its Opinion on the Legal Framework governing Curfews (June 2016), to ensure that any restriction is necessary, legitimate and proportionate.^{xxviii}
 - Refraining from applying state of emergency provisions for other purposes than those stated in the official proclamations of derogations and restrictions on rights;
 - Clearly defining the grounds on which an individual or media outlet may be the subject of emergency measures, including arrest, temporary detention or closure, making clear that an act of expression is insufficient for this purpose.
- Refrain from extending the current state of emergency after its expiration on 21 October 2016, unless able to demonstrate that the domestic situation still constitutes a public emergency that threatens the life of the nation and that emergency measures are strictly required to confront that situation.
- In the unlikely event that the Government demonstrates the need for extraordinary emergency measures, it must reduce the scope for their arbitrary application, including through the introduction of prior judicial authorisation of any restriction (as referenced above).
- Ensure that any prosecutions of journalists, human rights defenders or others for membership of a terrorist group proceed on the basis of convincing evidence and beyond any reasonable doubt of involvement in, or incitement to, a violent act. To this end, implement recommendations of the Venice Commission in its Opinion on article 216, 299, 301 and 314 of the Penal Code of Turkey (March 2016), including by repealing provisions in Article 220 (7), that allows for individuals to be accused of “aiding and abetting a terrorist organisation” and “membership in a terrorist organisation”, purely on the grounds of an act of expression^{xxix}
- Amend Article 220/8 of the Penal Code, which includes overly broad definitions of “terrorist propaganda”, and replace with language in line with international law, outlawing incitement to violence.
- Ensure transparency of legal proceedings concerning those being tried on charges related to involvement in the coup attempt, including by:
 - Accepting the standing offer of the OSCE [Office for Democratic Institutions and Human Rights](#) to send trial monitors, and cooperating fully with the Office on this initiative.
 - Ensuring public access to information on all matters regarding the trials, including indictments, evidence and open hearings, unless able to demonstrate that such information may be legitimately restricted in line with international standards.

To the international community:

- While continuing to condemn the coup attempt, simultaneously condemn the crackdown on independent media and press the Turkish government to uphold its commitments to respect

and uphold international human rights standards, including freedom of expression – even during the state of emergency. In particular, call for:

- o The immediate and unconditional release of wrongfully imprisoned journalists and other media workers
- o The reopening of media outlets closed on spurious charges
- o Reform of Turkey's problematic Anti-terrorism legislation
- Ensure that messages of condemnation of both the coup attempt and the ensuing crackdown on independent media are openly and publicly transmitted to the broader public in Turkey, including through direct engagement with Turkish media.
- International human rights bodies, in particular the UN Human Rights Council and the Council of Europe, should launch an urgent inquiry into the state of emergency in Turkey to ascertain the extent to which restrictions on rights are required by the exigencies of the situation.
- Encourage Turkey to accept the standing offer of the OSCE [Office for Democratic Institutions and Human Rights](#) to send trial monitors to follow legal proceedings into those being tried on charges related to involvement in the coup attempt, on the grounds that this will build confidence and strengthen the rule of law.
- Demonstrate solidarity with journalists, writers, human rights defenders, activists and others expressing dissenting or diverging viewpoints, including by:
 - o Frequent visits by high-level delegations to Turkey to meet with independent media representatives, writers and human rights defenders
 - o Contact with and visits to journalists, writers, and other critical voices in prison on trumped up charges; and with their families
 - o Attendance of trials where those expressing dissent are being charged on spurious grounds, because of their professional journalistic activities
- Ensure mechanisms are available and sufficiently resourced to provide urgent assistance to independent media representatives, writers and human rights defenders; and support initiatives aimed at promoting independent journalism.
- Support local initiatives aimed at promoting freedom of expression, strengthening journalistic ethics, and generating solidarity among media outlets, particularly where these involve the younger generation and outreach to the broader public.
- Ensure that any concessions granted in connection with resolution of the ongoing refugee crisis are made consistent with a long-term strategy specifically designed to encourage Turkey to comply with its commitments to uphold international human rights standards.

ⁱ Notification of Communication transmitted by the Permanent Representative of Turkey and registered by the Secretariat General on 24 July 2016, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2930083&SecMode=1&DocId=2380796&Usage=2>

ⁱⁱ <https://www.cpj.org/blog/2016/07/turkey-crackdown-chronicle-week-of-july-24.php>

ⁱⁱⁱ According to interviews with Turkish Journalist Unions during fact-finding mission, and reported here: <http://www.hurriyet.com.tr/tgc-tgs-disk-basin-is-gazeteciler-ohalin-magd-40220138>

^{iv} Ibid

^v <http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf> (Turkish version in Official Gazette), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069788a> (English translation submitted to Council of Europe)

vi <http://www.bbc.co.uk/news/world-europe-35739547>

vii <https://www.cpj.org/blog/2016/08/turkey-crackdown-chronicle-week-of-august-14.php>

viii <http://bianet.org/english/human-rights/177883-novelist-asli-erdogan-detained>

ix <http://www.pen-international.org/newsitems/turkey-writer-and-linguist-necmiye-alpay-held-on-terror-charges/>

x <https://www.article19.org/resources.php/resource/2614/en/ozgur-gundem-v.-turkey>

xi <http://bianet.org/english/human-rights/162010-echr-finds-kurdish-newspaper-right-after-10-years>

xii <http://bianet.org/english/media/178229-police-raid-on-azadiya-welat>

xiii <https://www.theguardian.com/media/greenslade/2016/aug/30/turkish-police-raid-kurdish-language-newspaper-office>

xiv <http://www.imctv.com.tr/gozaltina-alinan-24-azadiya-welat-calisanindan-13u-serbest/>

xv Human Rights Committee General Comment 29 (2001), paras. 1, 2. UN Doc. CCPR/C/21/Rev.1/Add.11.

xvi On 21 July, Turkey declared a state of emergency for a period of three months, in accordance with Turkey's Constitution (Articles 119 to 121), which sets out clear conditions, rules and procedures for the formal declaration of a state of emergency and the general principles by which the authorities must abide during the state of emergency. Following this announcement, Turkey sent official notifications to both the ECtHR and the UN notifying of its decision to derogate from the ECHR and ICCPR respectively.

xvii In previous instances the ECtHR has criticized derogations to the ECHR by Turkey on these grounds. In one case because of the non-respect of geographical delineation (i.e., there was no need to derogate from human rights in a zone where there was no rebellion activity). Relevant cases include *Sakik et autres c. Turquie* du 26 novembre 1997 *Aksoy c. Turquie* du 18 décembre 1996; *arrêt Demir et autres c. Turquie* du 23 septembre 1998.

xviii OPINION ON THE LEGAL FRAMEWORK GOVERNING CURFEWS Adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010-e)

xix For example, the UN Security Council Resolution 1456 (2003) states that: 'States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.' (Resolution 1456 (2003), para 6. See also General Assembly resolution 60/288 of 20 September 2006 on Global Counter-Terrorism Strategy).

xx Commission on Human Rights Resolution 2003/42; Commission on Human Rights Resolution, 2004/42; The right to freedom of opinion and expression; or Human Rights Resolution 2005/38.)

xxi See, e.g. the European Court, *Incal v. Turkey*, application no. 22678/93, 18 May 1998, para. 54.

xxii According to interview at *Birgün Newspaper* during fact-finding mission

^{xxiii} Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted October 1995

^{xxiv} [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

^{xxv} <https://freedomhouse.org/article/future-turkish-democracy>

^{xxvi} <http://t24.com.tr/haber/vandaki-teror-saldirisina-iliskin-yayin-yasagi.359540>

^{xxvii} <https://www.article19.org/join-the-debate.php/222/view/>

^{xxviii} OPINION ON THE LEGAL FRAMEWORK GOVERNING CURFEWS Adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016)
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010-e)

^{xxix} OPINION ON ARTICLES 216, 299, 301 AND 314 OF THE PENAL CODE OF TURKEY Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) (314 is member of a terrorist group) [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)