«A BOOK IS NOT A BOMB !»

MEDIA AND JUSTICE IN TURKEY,
MISTRUST AND REPRESSION

INVESTIGATION REPORT - JUNE 2011

A fact-finding mission by Johann Bihr and Jean-François Julliard

REPORTERS WITHOUT BORDERS
FOR PRESS FREEDOM

Reporters Without Borders visited Turkey between 11 and 19 April 2011 to investigate media freedom there. The team met media representatives from all sides (including *Milliyet*, *Radikal*, *IMC*, *Yeni Safak* and *Zaman*), journalist and press freedom associations (such as Friends of Ahmet Sik and Nedim Sener, IPI Turkey, the Journalists and Writers Foundation, the Press Council, Medya Dernegi and the Journalists Association of Turkey) and lawyers, colleagues and relatives of murdered or imprisoned journalists.

The team held a press conference in Istanbul on 19 April, attended by Reporters Without Borders secretary-general Jean-François Julliard, to present its preliminary conclusions and its recommendations to the authorities.

A representative of the organisation returned to Istanbul on 3 May at the invitation of the Freedom for Journalists platform of Turkish journalist organisations for a congress on media freedom in Turkey and the plight of imprisoned journalists.

Reporters Without Borders will visit the country again in the next few months to attend major hearings in trials of journalists and hopefully, have talks with the authorities and the country's legal institutions.

This report describes the legal hounding the Turkish media is subjected to.

Two of Turkey's best-known investigative journalists, Ahmet Sik and Nedim Sener, respected for their independence and serious work, were accused on 3 March 2011 of belonging to a "terrorist" organisation, despite having long fought it, and thrown in prison. The state prosecutor charged them without proof and journalists throughout the country rose up in protest at a time when media freedom was becoming an important issue in the run-up to the 12 June parliamentary elections.

TURKEY IS CHANGING BUT JOURNALISTS ARE STILL UNDER PRESSURE

Apart from the growing politicisation of the case, the arrest of Sik and Sener shone a harsh light on the well-known plight of journalists in Turkey and the zeal with which the authorities prosecute rather than defend them, whatever region they come from or whatever their views. Haci Bogatekin, editor of the local fortnightly *Gerger Firat*, in southeastern Turkey, has been prosecuted 135 times and imprisoned on several occasions. Büsra Erdal, legal affairs reporter for the pro- government *Zaman*, faces 62 trials. Helin Sahin, of the conservative daily *Star*, Ergülen Toprak (the daily *Taraf*), Aysegül Usta (the Kemalist daily *Hürriyet*) are also being heavily prosecuted.

Turkey is going through major changes, with the nationalist, military and secular ideas decreed nearly a century ago by Kemal Atatürk starting to crumble before a very active and diverse civil society. The role of the armed forces in public life is much smaller. Other political forces, including an Islamist movement that is socially conservative but institutionally reformist, have moved to the fore. Long-taboo subjects, such as the place of the armed forces, national minorities, social battles and recent Turkish history, are starting to be discussed. Democracy and media freedom have progressed considerably over the past decade.

But some institutions, notably the legal system, are having trouble dropping their repressive reflexes inherited from the time, not so long ago, when the army was a major force in state institutions, and a fierce power struggle is raging around this big social change. Human rights activists were optimistic at first about attacks on the military establishment, but the country's new elites are now quick to use the methods of their enemies to maintain their power.

So threats to media freedom are numerous – physical attacks, media polarisation and economic pressures that encourage self-censorship. The Internet is also censored and those who murder journalists are not punished. But legal pressures and hounding are the main and most pressing problem. The many prosecutions of journalists under way and the number of them in prison are major obstacles to true media freedom, discouraging investigative journalism and imposing new taboos.

Media and justice are key contradictions in Turkey's present growth. All over the world, the two are often rivals and have a complicated relationship – legal confidentiality vs the duty to keep people informed, the need for investigation vs the right to privacy of sources, and so on. But several factors make the legal system an overwhelming threat to media freedom in today's Turkey.

Legal affairs are still too often dominated by an obsession with "security," where the state is defended rather than its citizens and where very repressive and vaguely-termed laws leave some prosecutors and judges great freedom. Despite some progress, the judiciary is still not very independent and is easily manipulated.

THE ERGENEKON CASE

These structural flaws are aggravated by the current political setup, which is largely polarised around the Ergenekon case. The supposed underground network Ergenekon is suspected of wanting to overthrow the government and since 2007 senior military figures and civil servants, politicians and a increasing number of journalists have been put on trial. The investigation of the plot was at first praised as a sign of democratic maturity, by clearly spotlighting at last the criminal activities of the "deep state." But it quickly became a big political weapon in the hands of the government to silence critics and mount new resistance to the old secular-military elite.

The case is now at the centre of Turkish political life and until very recently the two main political parties presented themselves as accuser (the ruling Justice and Development Party – JDP/AKP) and accused (the Kemalist Republican People's Party – RPP/CHP). It has also given undue power to judges and prosecutors. The law and politics have become so entangled that impartial justice is doubtful. The case has become the main topic of conversation and divides Turkish society. But all independent investigation continues to come up against a legal system jealous of its prerogatives. Even when journalists mention documents already in the public domain, they are accused of revealing confidential material, influencing trials or disrespecting the judiciary. And if defendants are spoken to, of collaborating with them and belonging to a "terrorist" organisation.

CRÉDIT : © AFP

A European Commission report in late 2009 said about 5,000 prosecutions of journalists had been conducted as part of the case and that some 250 were still being tried.

The human rights news website Bianet, a partner of Reporters Without Borders, said 62 journalists were tried in media freedom and freedom of expression cases in the first quarter of 2011 alone.

About 60 journalists are in prison, Turkish journalist associations say, many in temporary detention without trial. At least five are being held for simply doing their job of informing the public, according to Reporters Without Borders. The figure is almost certainly higher but the foggy legal system makes it impossible to be sure.

"THE DEEP STATE"

This is defined as collusion between the armed forces and the state, also involving ultra-nationalist and organised crime. This "state within a state," which defends the most nationalist and repressive version of Kemalism, has long been the backbone of the Turkish government. Many journalists compare it to the secret "Gladio" operation NATO set up in Italy during the Cold War to fight communism and the far left. It was associated with secret operations against Kurdish guerrillas in the 1990s, with the murder of Turkish-Armenian journalist Hrant Dink in 2007 and with a plot to overthrow the JDP government by the Ergenekon network (see box).

Arrests in the Ergenekon case and the JDP government's hiring of new civil servants have dealt a serious blow to the "deep state." But it has not disappeared, as shown by the clear inability of the judiciary to find and try those who ordered Dink's murder. Many journalists told Reporters Without Borders there was now another "deep state," with a different structure. Ahmet Sik has written a book about this, The Imam's Army, and the authorities have seized the manuscript.

THE SIK AND SENER CASE: REVEALS WIDESPREAD LEGAL SYSTEM PRACTICES

TWO PIONEER INVESTIGATIVE JOURNALISTS VS "THE DEEP STATE"

Ahmet Sik and Nedim Sener are pioneer investigative journalists reporting on the "deep state" and the Ergenekon network. Sik is one of a group of journalists from the magazine *Nokta* who revealed the Ergenekon military plot and set off the legal investigation of it. He wrote a two-volume book with journalist Ertugrul Mavioglu which is considered the authority on the case. His latest (unpublished) book, the Imam's Army, describes all the research done into the "deep state" and offers a new interpretation of it. The controversial book triggered the uproar.

Nedim Sener, a reporter with the daily paper *Milliyet*, made his name investigating financial corruption before becoming an expert on the Hrant Dink murder. In his articles and two books, he detailed all the serious errors of the police and intelligence services who allowed the murder to go ahead even though they knew it was being planned. Sener's revelations were accepted by the judiciary, which prosecuted civil servants involved for "negligence." Prosecutors are also looking seriously at his main claim, that Dink was killed as part of the Ergenekon plot.

The determination of the two journalists has been much praised. Sener's investigation of Dink's murder has brought him threats and prosecution in Turkey but also international acclaim. He was declared a "world press freedom hero" by the International Press Institute in 2010 and won the PEN International prize in 2011.

"ERGENEKON" Described variously as an informal network or a "terrorist" group, Ergenekon is a shadowy underground organisation of mainly military figures and ultra-Kemalist civil servants who see the ruling JDP party as a mortal danger for Turkey. It was revealed to the world in April 2007, when *Nokta* magazine published extracts from the diaries of Admiral Özden Örnek mentioning attempted coup d'états. Legal investigations have since uncovered plans for a huge destabilisation plan, including bomb attacks and the murder of national minority representatives that would help the plotters seize power.

The investigation highlighted the great tension at the top of the government and the risk of the conflict between orthodox Kemalists and Conservative Islamic democrats getting out of control. The arrest of many senior military officers was praised at first as a long-awaited assertion of civil power over the military and a boost to democratisation. For once, the army and ultra-nationalists stood accused and people began to talk about their abuses over the years.

But after four years and more than 500 arrests, the results seem meagre. Journalists say politics has dominated the search for the truth and the whole case has become a weapon for the government to criminalise all opposition. The initial investigation seems to have come to a halt while other more controversial avenues have been opened and the number of suspects has been exaggerated.

The 18th wave of arrests, which included Sik and Sener, was a turning-point and many democrats regret that it has discredited a necessary investigation and risks playing into the hands of the "deep state." ■

SURPRISE RAIDS

Istanbul's anti-terrorist police raided the homes of a dozen journalists, writers and academics, including Sik and Sener, in a huge pre-dawn operation on 3 March 2011 on the orders of prosecutor Zekerya Öz, then in charge of the Ergenekon case. Homes were searched, computers and notebooks seized and hard-drives copied – a serious violation of privacy of sources, especially for journalists involved in sensitive cases. Sik and Sener were among those arrested.

Sik's wife Yonca told Reporters Without Borders: "I heard our dog barking at about 7 am, which he never does. Then knocks at the door. It was the police. Ahmet got up, in his underwear, to open the door a little and ask the police if he could first get dressed. They refused and were very nervous. So Ahmet opened the door and 11 police burst in and frantically searched the house. Their warrant said they were to search the house and arrest my husband. They stayed for six and a half hours. They were paranoid and followed us everywhere. I couldn't even go to the toilet without an officer standing outside the door. I wasn't allowed to phone anyone. They finally left, with everything turned upside-down and taking away all our CDs – music, data, holiday photos – and copied the hard-drives of our computers and memories of other electronic devices. Even my personal emails were copied and my address book seized."

Ahmet Sik

At the Freedom for Journalists congress in Istanbul on 3 May, Sener's wife Necide said she too was surprised at the paranoia of the police: "All kinds of documents were read and confiscated, including one of my diaries mostly about my pregnancy, and our child's colouring-book. They planted listening devices in a neighbour's house. It was only six weeks later, on 22 April, that the police came to give me a warrant for my husband's arrest signed by prosecutor Öz."

SPECIAL PROCEDURES

When their detention for questioning expired on 6 March, the two journalists were formally charged and sent to the Silivri top-security prison, where all Ergenekon prisoners are held. Their request for provisional release was refused on 17 March on grounds that they might "flee, conceal or damage evidence, or apply pressure to witnesses" (article 100-3 of the Code of Penal Procedure). One wonders what witnesses and what evidence this could be, since all journalistic data had been seized. Deputy prime minister Bülent Arinç even said publicly on 3 May that the journalists "would not've fled if they hadn't been arrested. An arrest is something exceptional. Provisional release [pending trial] should be the main rule[1]."

The warrant issued by "special prosecutor" Öz did not mention any reason for the search and in fact the charges remain extremely vague. The first one, "inciting hatred," was dropped during formal indictment, leaving only "belonging to the presumed terrorist organisation Ergenekon," but no details have been given to the journalist's lawyers or their families. One of Sik's lawyers told Reporters Without Borders he had no access to the case-file: "We don't even know what article of the law the charge is based on. All we know for sure is that my client was initially accused of 'inciting hatred.' For the rest, all we know is what is 'leaked' to the media." The case continues and the prosecution is slow to produce any evidence.

[1] *Hürriyet Daily News*, 4 mai 2011, « Jailing journalists pointless, says Arinç ».

A CRIME OF OPINION, ARBITRARILY ATTACHED TO "TERRORISM"

The main thing leaked to the media was the transcription of the interrogation of the two journalists at the prosecutor's office. It revealed the shakiness of the charges and shows the absurd paranoia of the officials and their apparent ignorance of what journalism is about. The security obsession of the Turkish judiciary overrides the issue of freedom of expression and the privacy of sources.
The interrogation was mainly about documents seized by police during a raid on the offices of the radical opposition online TV station *OdaTV* on 18 February. Three of its journalists, including director Soner Yalçin, were arrested during the raid and another, Sait Kiliç, was picked up on 3 May, at the same time as Sik and Sener.

Nedim Sener

Several Ergenekon documents were reportedly seized, including details of a planned media campaign to discredit the Ergenekon trial and turn public opinion in favour of the accused. According to this, "information, documents and technical support should be provided to well-known members of the 'establishment' who support our ideas and activities to persuade them to say Ergenekon and similar cases are put-up jobs." A copy of the manuscript of The Imam's Army was also reportedly seized from Yalçin's computer as well as another document said to mention, in very vague terms, the names "Ahmet" and "Nedim." This was all the evidence the prosecutor's office needed – since both journalists had already publicly expressed their doubts about the Ergenekon case and The Imam's Army criticised political manipulation of the case – that both men were obviously members of the extremist organisation.

It did not count that neither Sik nor Sener had ever had any relationship with *OdaTV*, that they were ideologically opposed to Ergenekon, as shown in their articles and opinions, and that they had even helped expose sections of the ultra-nationalist network. The independent-minded Sik had also left all the media outlets he had worked for. Yet his interrogators kept on asking him who ordered him to write The Imam's Army and why, and who told him to make this or that change in the manuscript.

ACCUSATIONS AND EVIDENCE

Sik is suspected of writing The Imam's Army on the orders of Ergenekon and under the supervision of Sener as a way to discredit the investigation. He is also alleged to have been in contact with former policeman Hanefi Avci, currently on trial, who last year published a book saying the Ergenekon trial was being manipulated by the Gülen community (see box).

Sener is suspected of helping Sik write The Imam's Army on Ergenekon's orders and also of writing the second part of Avci's book, The Simons of the Golden Horn. The interrogators focused on material found at *OdaTV* and what they saw as other suspicious signs, including occasional contacts with Ergenekon figures (necessary for writing a book about them) and

wild interpretations of tapped phone conversations. Sener's interrogators also gave major importance to an anonymous email sent to police accusing him of belonging to Ergenekon. To "prove" he wrote the second half of Avci's book, the prosecutors pointed to contradictions between different chapters and to a positive review of the book by Sener when it came out (which he denies doing). The book also contains views on some issues, such as the Hrant Dink murder, that Sener disagrees with, though he does agree with Avci that the Ergenekon trial is extensively manipulated, especially by the Gülen community. This is the crime, for the prosecutors, and the two men's shared view on this cancels out all disagreements between them.

FIRST "CRIME": WORKING AS A JOURNALIST

Despite many official statements (by prosecutor Öz, the prime minister and others) saying the arrest of Sik and ➤

Sener was nothing at all to do with their work as journalists, the interrogation of them focused on what they had written and their sources for it. Very detailed questions about the process of writing were asked, such as the annotations made by Sik when he reread the text, which were examined and interpreted as if they came from a mysterious mastermind. "Who wrote these notes? What kind of work was done in connection with the amendments at the place the notes were made? Who did it? What was your part in that?" and so on.
After the raid at *OdaTV*, the media said a copy of Sik's manuscript had been found. Sik had an incentive to publish it quickly to kill rumours spreading widely about it. But the prosecutor's office said Sik had received orders to publish it quickly in time to influence the elections, and asked him "Who demanded that you get it out as quickly as possible?" Many phone conversations between the two journalists and their sources, their family and colleagues were also cited, and the prosecutor wanted to know why such and such a question was asked and who ordered it to be asked, even though the conversations were obviously part of the work of writing the book.

SECOND "CRIME": TALKING TO THE ERGENEKON DEFENDANTS

The presumed "links" between the two journalists and those charged in the Ergenekon investigation were the prosecution's main interest. The many phone recordings showed they had both been bugged for a long time. These phone conversations were analysed and commented on, to the point that sometimes the meaning was twisted or an imaginary hidden meaning given to them. But nothing in the mass of evidence backed up the prosecution's theories. In fact, some of the recordings showed Sik's amazement at finding his name associated with the investigation into *OdaTV*. In one extract, Sener curtly refuses an offer from *OdaTV* to work for it, yet the prosecution insisted they had "warm relations."

The interpretation of these conversations confirms that simply being interested in the details of the Ergenekon case is to the authorities suspicious in itself. Showing that the legal process is sadly not impartial in the case is suspicious. Talking to those being tried is suspect, even if they are in no way associates but simply sources. But the idea of privacy of journalistic sources seems totally alien to the prosecutor's office, which does not realise that its questions and phone-tapping are serious violations of it.

The investigation raises serious questions that have not been taken into account – why was the draft of Sik's book in Yalçin's computer, when it had never been sent to him and the author had never sent it to anyone except close friends for re-reading and comment? The court should consider this point.
The bizarre nature of the motives cited raises questions about the real reason for the arrest of Sik and Sener. Did the prosecutor's office feel the journalists had got further in their own investigation and so wanted to seize the information they had gathered? The representatives of Reporters Without Borders were told: "They don't know what they're looking for. They're targeting Ahmet to find out what's happening in this milieu [the activist left not linked with political parties], what the ties are between the far-left and the military. It's their usual method, investigating suspicious circles."

FOCUS ON THE PROOFS OF AN UNPUBLISHED BOOK

The judiciary sprung another surprise when it seized and destroyed all known copies of The Imam's Army on 24 March.

Istanbul police first raided three places they thought copies might be – the offices of the publisher Ithaki, the daily paper *Radikal* and lawyer Fikret Ilkiz. They did not just search the computers there and copy the manuscript files, but illegally deleted them. Oktay Huduti, secretary-general of Turkey's Press Council, told Reporters Without Borders that "Turkish law allows search and seizure but never destruction of documents. The person searched must also be given a copy of the document seized, and this was not done here. It's very hard to see the legal grounds for this action, since it was not even a published book but just a manuscript."

In this legal limbo, rules are broken. Police have ordered Sik's family, colleagues and lawyers to hand over any copies of the manuscript they have or face being prosecuted for collaborating with Ergenekon. Simple possession of a computer file as justification for being charged with complicity with "terrorists" is an extremely dangerous precedent. In the warrant issued for prosecutor Öz, The Imam's Army is described as "propaganda of a terrorist organisation" but also itself having "criminal' content.

The move against The Imam's Army only made it better known and increased interest in what it said. A few days after the raids, the manuscript was posted online and has circulated very widely despite the ban. Hundreds of thousands of copies were downloaded in just a couple of days. But the ban on reading the book has not been lifted and anybody found with a copy is liable to be charged.
Prosecutor Öz was taken off the Ergenekon case on 30 March. Officially, the High Council of Judges promoted him to head the prosecutor's office in Istanbul, but so soon after the raids, the move had every appearance of a punishment. For the politicians, Ôz had gone a little too far and the Sik and Sener case had become an embarrassment two months before the June parliamentary elections. ■

A CLOUD OVER JOURNALISM
"THIS CAN HAPPEN TO ANYONE"

No major developments in the case have occurred since Öz' transfer and everything was put on hold until the elections.
But the Ergenekon investigation has deeply marked Turkey's journalists. Shock and mistrust were evident during the Reporters Without Borders fact-finding mission to Istanbul in mid-April. The feeling was that if such well-known and above-board journalists and Sik and Sener could be accused of "terrorism" and thrown in prison, anything was possible and it could happen to anyone. Their arrest confirms a trend that legal hounding of journalists is no longer confined to militant Kurdish or far-left journalists and that now everyone is a potential target. The old taboos have become blurred and repression is broader and less targeted. Both Kemalists and correspondents for the pro-government daily *Zaman* are likely to be victims.

Experienced investigative reporter Ertugrul Mavioglu told Reporters Without Borders that "many more people are defending media freedom today because it's not just fringe journalists being threatened any more but those from the mainstream media. Before, only Kurdish nationalists and the far-left were targeted, but the spectre of repression has grown and become more visible.

"Economic investigative reporting, the person of the prime minister, religion, the police wars and reorganisation of the state are new taboos, often decreed by media owners themselves," he said.

THE GÜLEN MOVEMENT

Founded in the 1970s by Fethullah Gülen, the movement has expanded rapidly from its origins in Erzurum province (eastern Anatolia) to become an influential worldwide network. Gülen preaches a moderate version of Islam, borrowing from Sufism and promoting dialogue with other monotheistic religions. He has also become known for promoting education and free enterprise, and his movement is thus in tune with some of the social changes in modern Turkey. Its values broadly reflect those of the "new elite" from rural Anatolia eager for social and political recognition after succeeding in business. Its ideas also correspond to those of the ruling JDP party.

Gülen, in self-imposed exile in the US, is an important public figure who adds greatly to Turkey's prestige abroad, mainly through business networks and ecumenical Turkish-speaking "Gülen" schools.

The movement stands for social change that clashes with the old urban Kemalist elite. It draws criticism and rumours but its most serious critics say it lacks openness and has a cult of secrecy. Its organisation is totally decentralised and it has no list of members, which makes it hard to measure its influence.

Gülen has long played a political role and his followers are increasingly visible in senior public positions, which makes the movement often suspected of being a secret arm of the JDP to infiltrate the civil service in the present intense power struggle. Sik says some of this in The Imam's Army, which talks about unjustified sackings in the police force.

CRÉDIT : © AFP

OUT-OF-DATE AND REPRESSIVE LAWS

Many laws are vague and repressive and can be used to prosecute journalists without good reason. Guarantees that journalists do have on paper are general and often not very realistic because how they apply and the exceptions to them are not defined.

"ANTI-TERRORIST" LAWS

Application of the Anti-Terror Law (3713) (TMY) is at the core of the European Court of Human Rights (ECHR) condemnation of Turkey. In 2010, 33 people were sentenced to a total of 365 years and three months in prison and fined €24,500 under it, according to the human rights news website Bianet.

The 1991[2] law, aimed at a Kurdish rebellion in southeastern Turkey, severely punishes broadly-defined "terrorist" threats[3]. Sentences are increased by half if the crimes are committed through the media, and "owners and those in charge" of the publication involved are liable to heavy fines.

Subsequent amendments, the latest on 29 June 2006, slightly softened the law but where the media was concerned, the law only increased the image of repression as the number of media trials based on it grew considerably.

THE LAW'S MOST DAMAGING ATTACK on media freedom is its ban on "propaganda for a terrorist organisation" and revealing information about it:

The provision most often used against journalists is article 6, which provides for between one and three

[2] Anti-Terror Law (3713), published in the government gazette on 12 April 1991 and amended by Law 5532.

[3] "Article 1 (1): "Terrorism is any kind of act done by one or more persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat."

years imprisonment for:

- "Those who announce that the crimes of a terrorist organization are aimed at certain persons, whether or not such persons are named, or who disclose or publish the identity of officials on anti-terrorist duties, or who identify such persons as targets."

- "Those who print or publish leaflets and declarations of terrorist organisations."

Also used are clauses saying that:

- Publications inciting people to commit crimes, glorifying them and those responsible and making propaganda for a "terrorist" organisation can be suspended for between two and four weeks.

- Article 7 provides between one and five years imprisonment for anyone "making propaganda" for a "terrorist organisation."

The word "propaganda" is not defined, so journalists are at the mercy of prosecutors and judges. The provisions are freely used against pro-Kurdish media outlets but also more widely, against any journalist interested in the Kurdish issue. To interview a leader of the Kurdistan Workers' Party (PKK) and quote him or print what he said, even if only to criticise him, is often seen as making propaganda for it. People are tried for this several times a month, including journalists little suspected of separatist sympathies.

Ertugrul Mavioglu

Ertugrul Mavioglu, of the daily paper *Radikal*, is currently on trial for printing a three-part interview with a PKK leader, Murat Karayilan, in Mount Kandil (Iraqi Kurdistan) between 28 and 30 October 2010. He is accused of propaganda in favour of the PKK and faces seven years in prison. Two other journalists, Hakan Tahmaz (columnist) and Ibrahim Cesmecioglu (editor), of the newspaper Birgün, were convicted on 24 March 2011 for quoting Karayilan and thus "repeating a declaration or statement from a terrorist organisation." Tahmaz was sentenced to 10 months imprisonment and Cesmecioglu fined 16,600 Turkish pounds (€1,600).

The Kurdish newspapers *Günlük* and *Özgür Ortam* regularly have to change their names to escape legal orders to suspend publication. The ECHR ordered the government in 2010 to compensate 26 of their staff. The trials continue despite the government's easing of pressure on the Kurds in 2009 and 2010 and it is feared the great new tension over the issue will lead to many more prosecutions.

APART FROM BEING SUSPECTED of making propaganda, many journalists are prosecuted under the Anti-Terror Law for "belonging to a terrorist organisation," which is worse than being charged with 'belonging to an illegal organisation" under article 314 of the Penal Code.

This was a charge long made against Kurdish and far-left journalists who criticised government policy or reported on demonstrations. All the successive editors of the only Kurdish-language paper, *Azadiya Welat*, have been sentenced to lengthy prison terms for presumed membership of the PKK. Most of those whose sentence was confirmed on appeal have managed to flee the country but one of them, Vedat Kursun, was sent to prison for 22 years in January 2009.

Lawyer Özcan Kiliç told Reporters Without Borders: "There's a regional bias. If a journalist films a protest in eastern Turkey, he's immediately accused of belonging to the PKK and tried for 'belonging to a terrorist organisation.'"

These routine suspects have recently been joined by a new category - "presumed terrorists," who are journalists suspected of ties with the "terrorist" organisation Ergenekon. Twelve journalists are currently in prison for this reason, many of them in temporary detention and having to wait a year or even longer to see their case-files, which often makes it hard to judge the accusations. But the case of Sik and Sener, arrested on 3 March 2011, shows that some of the charges are extremely dubious.

CRIMES prosecuted under the Anti-Terror Law are, like organised crime, tried under emergency law, as under the former military dictatorship. Recent reforms abolished military tribunals known as "state security courts." But under articles 250-53 of the Code of Penal Procedure, some prosecutors and courts have "special jurisdiction" for the most

serious crimes - prosecutors such as Zekerya Öz and Istanbul's 13th court of assizes, which is in charge of the Ergenekon investigation. Like Sik and Sener, journalists accused of "terrorism" are tried this way.

In the name of fighting "terrorism," this special jurisdiction is exempt from basic principles such as the right to a fair trial within a reasonable period of time. In reality, the backlog and complexity of cases before these emergency courts greatly slows down processing of them. Many journalists (and others) languish in prison for many months before their cases come to court. Journalist Mustafa Balbay, arrested in the Ergenekon case, has been in prison for two and a half years. He is expected to be released soon as a result of his election to parliament for the opposition RPP.

The Anti-Terror Law directly contravenes article 10 of the European Convention on Human Rights through the interpretation it has been given by the courts[4]: "Freedom of expression constitutes one of the essential foundations of a democratic society and is applicable not only to 'information' or 'ideas' that were favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offended, shocked or disturbed."

All journalists and lawyers the Reporters Without Borders team met in Istanbul said the reform or abolition of this law was a priority, and this was stressed in the final declaration of the Freedom for Journalists congress there on 3 May which Reporters Without Borders attended.

OTHER LAWS OFTEN USED AGAINST THE MEDIA

Despite successive reforms of the Penal Code, accusations against journalists are changing but the number of prosecutions is rising.

The notorious article 301, long a symbol of legal abuses and official nationalism, has been amended, with "denigrating Turkishness" replaced by "denigrating the Turkish nation," maximum penalties reduced and all formal investigations requiring approval by the justice ministry. Such convictions are now rare, even though accusations are still a means of intimidation. Journalist Temel Demirer is still being prosecuted under this article however for saying that Hrant Dink "was not murdered because he was Armenian but because he recignised the Armenian genocide."

But the expanding Ergenekon case has made the prosecutor's office more active. Most prosecutions of journalists are now based on the Penal Code's article 285 (legal confidentiality) and 288 (trying to influence the result of a trial). "Reform of these articles are priorities if the right to be informed is to be guaranteed", says Press Council secretary-general Huduti.

- Article 285 (legal confidentiality): between one and three years imprisonment for "anyone who violates the confidentiality of an investigation" including journalists. Most of the 62 prosecutions of *Zaman* journalist Büsra Erdal are under this article.

- Article 288 (trying to influence the result of a trial): between six months and three years imprisonment for the very vaguely-defined crime of "making verbal or written statements in public in order to influence a prosecutor, judge, court, expert or witnesses before an investigation and prosecution has concluded with a legally binding verdict." The nature of the "influence" is not defined, which allows judges to freely interpret it. In practice, revealing or publishing details of the prosecution or defence – even (and especially) in the public interest, as in the Ergenekon case – or simply commenting on the conduct of the investigation or decisions taken, comes under this article.

- Article 334 (obtaining confidential information) and 336 (revealing it) are also frequently used against investigative journalists or those covering legal cases. They are also used against journalists who simply report news already made public through leaks or by other publications.

- Journalists criticising institutions or simply the behaviour of police can be imprisoned under article 125 (insults, with heavier penalties when it concerns a representative of the state), 299 (defaming the president) and 300 (insulting symbols of the state). Criticism of the armed forces can bring prosecution under article 305 (undermining basic national interests) or 318 (discouraging people from doing military service), and is punishable by between six months and two years in prison.

[4] Thoma vs. Luxembourg, 1997

Article 314 (belonging to an illegal organisation), and more seriously under Anti-Terror Law clauses about "terrorist organisations," is applied to many Kurdish journalists..

Lawyer Özcan Kiliç notes that journalists mentioning jailed PKK leader Abdullah Öcalan can be prosecuted for showing respect for him and thus indirectly 'praising a criminal' (article 215) if they use the expression "sayin" (Mr) instead of his official denomination of "terrorist and separatist leader." The penalty is up to three years imprisonment.

Law 5816 (1951) punishes those who insult the founder of the Turkish republic, Mustafa Kemal Atatürk and article 130 of the Penal Code provides between three months and two years in prison for "defaming the memory of a deceased person."

Article 134 (violation of personal privacy) and 267 (defaming a person) are punishable by imprisonment and very broadly interpreted, which greatly hampers journalists. Also article 216 (inciting hatred), whose frequent use punishes simple criticism with between a year and three years imprisonment. A correspondent for *Milliyet*, Devrim Sevimay, was prosecuted in late 2009 for interviewing singer Hülya Avsar, who said the government's opening-up policy should not "underestimate or ignore the rights of the Kurds" and that it would be "hard to convince the PKK separatist terrorists to lay down their weapons."

This legal arsenal makes it far too easy to prosecute journalists and is a way of seriously intimidating them, especially when punishment for most of these crimes is increased by half if they are committed through the media.

MEDIA FREEDOM GUARANTEES UNCERTAIN

Media freedom is governed by three laws – one each for the print media, broadcast media and the Internet (Law 5651). Few journalists object to the first one but they criticise the last two, especially the Internet law, which is repressive and allows broad censorship and blocking access to websites disliked by the authorities.

Public interest and the right to be informed does not figure anywhere in Turkish law. No "public interest" exceptions are allowed in articles 285 and 288 of the Penal Code. But as a key principle in international conventions signed by Turkey (notably the European Convention on Human Rights), the public's right to be informed is slowly entering jurisprudence through the supreme court, though its application is left to the judge's discretion and it does not stop prosecutors bringing all manner of cases.

Privacy of journalistic sources is guaranteed by article 12 of the 2004 Press Law, but the article is very general and mentions no exceptions, which paradoxically prevents their legal protection. No recourse is allowed in case of violation. So in practice privacy of sources is very widely ignored in the name of the fight against "terrorism" or protecting the personal security of representatives of the state.

This absence of clear guarantees allowing journalists to report on matters of public interest means that all the repressive laws mentioned so far hit the media very hard.

But most Turkish journalists think the problem is as much in the interpretation of the laws as in the text of them. A columnist with *Milliyet* who asked to remain anonymous said that "the definition of a crime in a judge's mind is not the same as in the text of the law."

REPRESSIVE LEGAL ATMOSPHERE

Journalist Büsra Erdal told *Today's Zaman*[5] last October that "the number of court cases against journalists in relation to Ergenekon and Sledgehammer (Balyoz) is estimated to be close to 5,000. This is not something a normal prosecutor would do. About 80 percent of these cases were opened just because prosecutors automatically file cases against journalists. This rush to open cases against journalists is out of control."

Journalists fall foul of the disorganised judicial system which affects all Turks, including great legal interference in social life, repressive tendencies, long investigations (especially in "anti-terrorist" cases), as well as overused and over-lengthy temporary detention. These are not so much media freedom problems but signs of the legal system's difficulty in meeting international standards. However, some factors do lead to heavy legal persecution of journalists.

THE MEDIA NOT SEEN AS INDEPENDENT AND CONSIDERED TO BE ALL THE SAME

One of the main slogans in demonstrations in April 2011 for media freedom that Reporters Without Borders took part in was "A book is not a bomb." It refers to Prime Minister Recep Tayyip Erdogan's response to critics of the seizure of The Imam's Army before the Council of Europe's Parliamentary Assembly on 14 April. He likened the book to a bomb, saying that "it is a crime to use a bomb, but it is also a crime to use materials from which a bomb is made." This unfortunate remark has since become a symbol of the twisted view of journalism among part of Turkey's ruling class, which is still unable to accept the idea of an independent media[6]. Prosecutors and judges still too often treat the journalists who appear before them as politicians or "terrorists", which obviously leads to a kind of censorship.

Aziz Özer, director of the socialist cultural monthly *Güney*, was convicted on 31 March of "propaganda for a terrorist organisation" for printing a cartoon from a German publication showing a gravestone with the words "Died for nothing" on it. "The notion of 'insulting the Turkish army' has turned a question about military operations in the east of the country into deliberate propaganda in favour of the enemy." This is nonsense, as *Güney* is firmly anti-PKK, said lawyer Kiliç. The case has been sent to the supreme court.

VISCERAL MISTRUST OF THE MEDIA

This attitude is largely a remnant of statist militaristic thinking based on the idea of a united national community in which there is no place for a "fourth estate" (the media). But it also stems from a deep mistrust of the media, which in Turkey is certainly extremely polarised and part of it unfortunately discredited because of long collaboration between some journalists and the military coup leaders.

This is what Alper Görmüs, founder of the investigative newspaper *Nokta* (which revealed the recent coup plot), says in his book "Ergenekon Journalism." In a recent editorial, journalist Mehmet Ali Birand calls on his colleagues in "the secular central media" to recognise that "yes we did have pro-coup thoughts in our genes."

"For our generation," he said, "the state has always been the priority and very reasonable. And the state was represented by the military. (...) The military had the right to oversee politicians. (...) And this was quite normal. This was the way we were raised."[7] He recalled that the mainstream media was initially wary about *Nokta's* revelations.

Journalist Hilmi Hacaloglu told Reporters Without Borders that "*Sizinti*, the Gülen movement's first publication, took a clear stand in favour of the army rulers. The movement is always very loyal to whoever is in power." ➲

[5] *Today's Zaman*, 25 October 2010: "Journalist Erdal: Some articles of penal code interpreted to punish journalists." http://www.todaysZaman.com/news-225310-journalist-erdal-some-articles-of-penal-code-interpreted-to-punish-journalists.html

[6] To show he is a defender of media freedom, Erdogan likes to tell how he spent four months in prison under the military dictatorship for reciting a poem. At a time when he thinks Sik's book is a bomb, journalists recall with a smile that his famous poem was much more subversive. "Minarets are our bayonets, mosques are our barracks," it said.

The well-known cartoonist Salih Memecan, head of the Medya Dernegi media association, points out how easily some media outlets can still be manipulated and are thus partly responsible for the witch-hunt catching up with them now: "In 1997, the media printed lists of journalists suspected of links with the PKK. Then it was lists of journalists involved in Ergenekon and now it's the turn of the followers of Fethullah Gülen." He regretted that "so many journalists put out mostly political propaganda and some indulge in blackmail. It's only right that some of them should be tried but of course far too many are tried in an arbitrary way and thrown in prison for just doing their job."

The media does not escape the sharp polarisation of Turkish society that has emerged in the poisonous atmosphere of the Ergenekon case and this has only increased the prejudice of the judiciary against journalists.

Ismail Saymaz

One could also argue that the mutual distrust is fed by lack of openness in the justice system which often drives journalists to get information from unofficial sources and make use of leaks. Journalists are often frustrated at a prosecutor's office which has little independence and is inefficient. The media revealed the Ergenekon plot to the judiciary and it is also the media that is worried at how the scandal is being used politically.

JUDICIARY TAKES LITTLE NOTICE OF JOURNALISTIC PRINCIPLES

Even though things are starting to change, the legal system is largely dominated by the desire to protect the state. Ali Bayramoglu, a friend of Hrant Dink now working for *Yeni Safak*, says there is a "failure to take account of basic freedoms when applying the law. A police mentality reigns." The Sik and Sener case, like the persecution of journalists mentioning the Kurdish question, shows the absurd persistence of this repressive reflex in the judiciary.
The legal system is deliberately opaque, too often neglecting the idea of "in the public interest" and choosing instead to protect such things as legal confidentiality or the right to privacy. The difficulty of getting access to case-files makes it harder for human rights lawyers to examine the cases of journalists currently in prison and also prevents the defence lawyers from doing their job. Investigation and legal preparation is a closed-shop and, like the police and the armed forces, the judiciary allows very little comment or interference. "Anything to do with the legal system and the police is an extremely sensitive topic for journalists," says Bayramoglu. Sik's wife Yonca adds that "the job of a journalist is just not taken into account by the legal system." The present multiple summonses for questioning for 'violating legal confidentiality' is evidence of this.

But the judiciary is extremely intrusive when it wants information it needs, usually ignoring the right to privacy of sources, though this is guaranteed by article 12 of the Press Law and by jurisprudence linked to the European Convention on Human Rights. The Sik and Sener case shows that seizure of property and phone-tapping are routine.

Radikal journalist Ismail Saymaz, who is facing 16 trials, said: "When my first book on the Erzincan trial was being printed, the justice ministry asked me to reveal my sources. When I refused, the printers were hit with a tax inspection. For my second book, I always took all my notes and lists of contacts to the office, never leaving anything at home when I wasn't there." Ankara Bar Association president Metin Feyzioglu told the Freedom for Journalists congress on 3 May that "mobile phones, computers and notebooks are the daily tools of journalists but they're also the main things used against them when they go on trial."

This is probably partly because few judges are experts in media law. The Bakirköy and Kadiköy courts in Istanbul handle most of the media cases but also hear common law cases. Freedom of expression is obviously not a priority in "special jurisdiction courts" such as the one handling the Ergenekon case.

[7] *Hürriyet*, 18 May 2011, translated by Turquie européenne: http://turquieeuropeenne.eu/article4815.html
"Yes, we did have pro-coup-thoughts in our genes."

THE ERGENEKON CASE, A MAJOR AGGRAVATING FACTOR

The Ergenekon investigation is key to Turkey's democratisation and new leadership so it goes far beyond a simple legal case and legal institutions. The prominence of the suspects and the political manipulation of the case places judges and prosecutors at the centre of the political scene and sharply divides the society. So it is quite normal for it to be a major topic for journalists.

But the judiciary has taken this sudden media spotlight very badly. Instead of recognising the right of journalists to report on a matter of public interest, it has become even more bad-tempered and is trying by every means to regain control of all information about the case. Journalist Ismail Saymaz, whose six trials are linked to his coverage of the case, said that since the start of the investigation, prosecutions of journalists reporting on it have soared. "Before, it was mainly Kurds and socialists being tried, now it's journalists targeted by legal officials or police who complain they're mentioned in books and articles. Most of the complaints against me have been filed by a prosecutor."

In her interview with *Today's Zaman*, Büsra Erdal said that after the first big wave of Ergenekon arrests in January 2008, "each of my stories started to be a reason to open a court case against me."

The often-cited figure[8] of 4,139 investigations and 2,500 prosecutions of journalists covering the case is from November 2009. One can imagine the much higher figure now, especially with the new Balyoz (Sledgehammer) aspect of the case since 2010.

Media coverage of the Ergenekon case is especially risky because the plot involved replacing the current elite, including the judiciary and the police, so the trial is very much a government matter. Those who dare to criticise the political manipulation of the case, stress the political or religious connections of those involved or question decisions – such as Erdal's mention of the release of all suspects by a new judge or Sik's report (based on Gülen sources) of the unexplained sackings in the police – are breaking another taboo.

In some cases, police, judges and prosecutors are both judges and interested parties. Bayramoglu emphasises that Turkey is undergoing "a very conflicting process of change and judges, like journalists, are both actors and targets of this change. Unlike other countries that suddenly emerge from military dictatorships, in Turkey it's a lengthy process. Judges are both leading the change but are also victims of it."

This partly explains the legal hounding of the media. Journalists stressed to Reporters Without Borders that the context was a huge struggle for power involving the judiciary, the police (being infiltrated by the new pro-JDP elite and Gülen) and the armed forces (a fortress of Kemalism). Sik's description of what is happening in The Imam's Army pours salt in the wound. Bayramoglu says the power struggle intensified with the Balyoz (Sledgehammer) case in 2010: "Gülenists in the police began purging members of the Kemalist establishment, in a fierce battle between different police factions and power centres. Sik and Sener are hostages in this struggle."

LEGAL HOUNDING RESULTS IN SELF-CENSORSHIP AND INTIMIDATED JOURNALISTS

Appearing before a court has become routine for Turkish journalists. The more militant among them, who were toughened under the military dictatorship, say they get used to it. "Nothing has changed for me," says Ertugrul Mavioglu, who faces 10 trials. "The tone of my writing and my positions have not softened. The trials are just annoying because they take up a lot of my time. I spent eight years in prison when I was younger, so I'm not afraid."

But journalists feel constantly under threat. "I do feel under pressure," says Ismail Saymaz. "I don't change anything essential in what I write, but I now try to avoid giving them a pretext to accuse me. I try to predict how they'll react. For my second book, about Hanefi Avci,I've just taken out the names of the prosecutors and police involved."

Erdal told *Today's Zaman*: "This is a big risk for me. (...)

[8] Source: Turkish justice ministry. Cited in the European Commission Progress Report, 2010.

Let's say I am acquitted in court; what if my case is taken to the Supreme Court of Appeals. It is hard to trust the judicial system. Following my graduation from the faculty, if I were told that this is what was going to happen to me if I became a journalist, I don't think I would have chosen this path even though I love my profession, journalism. I wish I had a normal life doing my job." ■

CONCLUSIONS AND RECOMMENDATIONS

Turkey has made important reforms over the past decade and the military's influence on the media is now much less. Genuine progress has been made but a legislative straitjacket continues to stifle journalists. Reporting of some topics is still routinely punished by the courts. Journalists are arrested and tried for doing their job or expressing an opinion, their documents seized and their sources tracked down. This is especially happening in the present fierce struggle for control of all state institutions.

The prosecution of Ahmet Sik and Nedim Sener has exasperated Turkey's very energetic civil society, which has protested. The international community has also made media freedom a central issue of its relations with Turkey.

Arbitrary arrests of journalists discredit the Ergenekon investigation that everyone at first agreed was necessary. If the authorities do not want to spoil the movement towards democracy they claim to support, they must stop this.

REPORTERS WITHOUT BORDERS

ASKS THE TURKISH AUTHORITIES TO:

■ Boost the status of journalistic principles in the law, notably entrenching the right to be informed about matters of public interest, so as to counterbalance the need for legal confidentiality, state security and personal privacy. Also to greatly strengthen guarantees for the protection of journalistic sources.

■ Abolish the Anti-Terror Law (3713) or amend it to comply with democratic standards, and especially abolish articles punishing "propaganda for a terrorist organisation" and reporting of "terrorist" activities.

■ Abolish or thoroughly revise articles of the Penal Code that undermine freedom of expression, such as those banning denigration of the memory of Atatürk, the insulting of representatives of the state, attempts to influence the courts and discouraging people from doing military service. The articles retained should state the conditions and exceptions of their application to journalists so as not to restrict media freedom. Imprisonment of journalists must be abolished and replaced by fines proportional to the offence and which do not financially ruin the media outlet involved. Clauses in the Anti-Terror Law and the Penal Code imposing harsher sentences when crimes are committed through the media must also be abolished.

■ Decriminalise media offences.

■ Apply strict rules for searches of premises and seizure of journalistic equipment, in line with European Convention on Human Rights jurisprudence, stating clearly the special circumstances and conditions in which they can be done.

■ Continue institutional reforms to strengthen the independence of the judiciary, especially the prosecutor's office.

■ Encourage the self-regulation of journalism and see that the judiciary changes its attitude to journalists. Investigations, and especially the arrest and detention of journalists, must be the exception, not the rule.

■ Show a good example by no longer lumping together in political discourse journalists, "terrorists," and demonstrators. A book is not a bomb.

ASKS THE JUDICIARY TO:

■ Study urgently the lists of imprisoned journalists complied by the Freedom for Journalists platform and the Organisation for Security and Cooperation in Europe (OSCE) and release immediately and unconditionally all those only jailed for doing their job, such as Ahmet Sik, Nedim Sener, Vedat Kursun, Özcan Kilinç and Bedri Adanir.

■ Comply with international norms contained in international treaties ratified by Turkey concerning the right to a fair trial, including a substantial reduction in temporary detentions, quicker final verdicts and reform of "special jurisdiction courts."

- Introduce a concerted policy of judicial openness and accountability, take account of the right to be informed about matters of public interest and set up a routine flow of legal information so as to discourage "leaks."

- Continue making judges and prosecutors' offices aware of the nature of journalistic work, media law and international agreements. Most media cases should be handled by specialist judges.

ASKS JOURNALISTS AND EDITORS TO:

- Strengthen self-regulation of the profession through compliance with existing codes of conduct and to beware of political polarisation and self-censorship.

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