

BİA MEDIA MONITORING

# A LOOK AT THE 20 YEARS OF MEDIA FREEDOM

2001-2021

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KARAN

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## Introduction

The discussion about the scope of the freedom of expression in Turkey over the last 20 years makes us feel like we are waking up to the same day every day. The data published by the European Court of Human Rights (ECtHR) at the beginning of 2022 shows that 418 (about 41%) of 1010 verdicts on the violation of freedom of expression caused by 47 states party of the European Convention of Human Rights (ECHR) between 1959 and 2021 involve applications against Turkey.<sup>2</sup> This together with the official statistics published by the government prove quantitatively at the very least the extent of the problem in Turkey. Adding to this the verdicts for violation of the freedom of expression in 663 applications from September 23, 2012 when the individual application mechanism took effect till the end of 2021, it can be seen that the problem is a chronic one rather than acute.<sup>3</sup> Reports

published by various civil society organizations at different national and international levels and progress reports published by the European Union point at the persistence of this problem, too. The fact that freedom of expression is such a common and relevant issue indicates that the uttered expressions are viewed as “objectionable” by public authorities or third parties. Yet freedom of expression is a right that emerged particularly for opinions viewed as “objectionable” by others.

There is a direct relationship between democracy and freedom of expression that encompasses several rights. As such, the existence of the right constitutes another indispensable condition in addition to the other conditions for democracy. The state of the freedom of expression in a country, in fact, serves as a litmus test for

the state of democracy. The ECtHR too views freedom of expression as a right closely related to democracy: “Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. [...], it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.”<sup>4</sup>

This study reviews the last 20 years of freedom of expression with regard to media outlets and journalists in Turkey in the light of BIA Media Monitoring Reports prepared by Erol Önderoğlu and published by bianet every three months and annually between 2001 and 2021.<sup>5</sup> While the reports were initially limited to traditional media outlets, following the advances in communication technologies, they started covering internet journalism too. Hence, these reports can be viewed also as a history study about the last 20 years of the media outlets in Turkey.

This current report focuses solely on media outlets and journalists, so it does not address several other issues concerning freedom of expression. Also, because it aims to provide the readers a brief review of the last 20 years, the study does not unfortunately include some cases and issues. This should not be interpreted as an indication that the excluded issues or cases are not cared about, that these issues are insignificant with regard to freedom of expression, or that the extents of the existing problems concerning freedom of expression are limited to the facts included in the report.

## I. Freedom of expression in general and scope of the report

First of all, it must be stated that discriminating beneficiaries of freedom of expression as natural and legal persons (association, foundation, political party, union, etc.) or as citizens and foreigners is impossible. Everyone has the right to freedom of expression. The properties of a person can matter only for the limitation of the right, not for having the right. Interfering with a person’s freedom to express and to disseminate their thoughts based only on their personality is deemed illegal.<sup>6</sup> For example, everyone including the convicts in a high-security prison<sup>7</sup>, prisoners<sup>8</sup>, soldiers<sup>9</sup>, civil servants<sup>10</sup>, the personnel of the Directorate of Religious Affairs<sup>11</sup> can exercise freedom of expression. Such properties that people have do not eliminate their entitlement to the right, these factor in only when limiting freedom of expression.

Accordingly, it is possible to limit some people’s freedom of expression more than others in certain situations. Within the scope of this report based on bianet’s Media Monitoring Reports, beneficiaries of freedom of expression are media outlets themselves, individuals or companies owning these outlets, journalists in the broadest sense, editors, and chief editors.

The concept of freedom of expression comprises three distinct freedoms, namely freedom to have an opinion, freedom to access information and thoughts, and freedom to disseminate information and thoughts. As such, freedom of expression means that people can freely access news and information, others’ opinions, they cannot be reprimanded for their thoughts and opinions, and they can freely express, explain, defend these,

communicate them to others and disseminate them in various ways individually or with others.<sup>12</sup>

Freedom to have an opinion comes up in situations where people are subjected to negative treatment because of the opinions that they have, but do not disclose, like when a public official is fired<sup>13</sup> or is not hired in civil service<sup>14</sup> because of being a member of a political party. Freedom to have an opinion is defined in Article 25 of the Constitution as a right distinct from freedom of expression defined in Article 26. Such a definition leads to a distinction between having a thought and expressing it.

Freedom to access information and thoughts encompasses particularly the access to the published, audio, video, etc. contents provided to the public by media outlets and journalists, the access to the content on the internet, the access to instruments like books, newspapers, magazines, radio, or television. This freedom is intended to provide the opportunity for the public to access the news and the ideas in discussions concerning the public, and ensuring the participation to discussions concerning the public is deemed indispensable

for democratic pluralism.<sup>15</sup>

The right to access information and thoughts is protected by Article 26 of the Constitution. It is worth noting here that the right to access information and thoughts and the right to obtain information are two different rights. While the former essentially involves the access to information and thoughts provided to the public by third parties, the latter concerns the access of a person to certain information about themselves or third parties that is held by governmental agencies. The right to obtain information is defined as a separate right in Article 74 of the Constitution. It should be noted that media outlets and journalists have a privileged position as compared to other people with regard to exercising the right to obtain information.

The most common prospect of freedom of expression is the right to disseminate information and thoughts. Article 26 of the Constitution defining the right to access information and thoughts also includes this right. Also related to this are Articles 27 and 28 of the Constitution securing academic and artistic expressions, and press freedom, respectively. Press freedom, which is a special prospect of the

right to disseminate, is considered to be of special importance, since it allows the individual and the public to be informed by conveying and circulating the thought.<sup>16</sup> That said, BIA Media Monitoring Reports indicate that practices contrasting the right to disseminate information and thoughts, and the privileged position of the media outlets and journalists with regard to this right exist and unfortunately occur in a persistent manner. It is observed that over a period of 20 years, interventions against media outlets and journalists did not decay; on the contrary, they increased and became harsher.

Freedom of expression protects all types of expression and there are no substantial limitations on the content of the right. All types of expression such as political, artistic, academic, commercial, religious, moral, etc. are under the protection of this right. Discriminating a disclosed and disseminated thought according to its content as “valuable-invaluable” or “useful-useless” for individuals and the public does not comply with freedom of expression. Trying to identify the expressions that can benefit from freedom of expression from such a subjective viewpoint leads to

discretionary limitations of this freedom. Freedom of expression also includes the freedom to express and to disseminate the thoughts viewed as “invaluable” or “useless” by others.<sup>17</sup> BIA Media Monitoring Reports show that there is no differentiation about expressions subjected to intervention as such.

In addition to this, it is currently agreed upon that certain expressions should not be under the protection of freedom of expression. Today, especially in Europe, the view that hate discourse such as fascism, glorification of the Nazi ideology, racism, xenophobia, anti-Semitism, Islamophobia, homophobia, discrimination, and war propaganda should not be protected by freedom of expression is increasingly more accepted. It is possible to view limitations concerning such expressions as “positive” limitations on freedom of expression. In Turkey’s law, some articles that form the basis for interventions in freedom of expression are applicable in situations involving the expression of opinions aligned with hate speech; however, it is impossible to come across any practices of blocking such opinions or imposing sanctions. It is observed that only a small number of investigations in such instances

turned into prosecutions, but even then ended up with acquittal.

The protection brought by freedom of expression also applies to all sorts of means through which information and thoughts are voiced, conveyed, and accessed. Expressions may be voiced through different channels including television, radio, internet, in any closed or open location, in any form such as in writing, as a petition, a hunger strike, a press release, a slogan, a book, a brochure, a painting, a movie, a poem, a musical piece, a statue, etc. Article 26 of the Constitution describes the means for the use of the freedom to express and disseminate a thought as “by speech, in writing or in pictures, or through other media” and the expression “through other media” states that every means of expression is under constitutional protection. As this report focuses on freedom of expression of media outlets and journalists, it considers mostly printed publications, internet publishing, radio and television publishing.

It is also worth noting that with respect to the means, press freedom has been considered to be of particular importance, and the internet that came into our

lives increasingly more in the last 25 years has started to be viewed as the most important channel where freedom of expression is used.<sup>18</sup> The situation concerning the means to voice an expression also holds for languages in which the expression is voiced. Blocking an expression in any language or imposing a sanction can lead to a violation of freedom of expression.<sup>19</sup>

Freedom of expression is generally thought of as a source of negative obligation for the State. Of course, the State has the negative obligation not to violate this right. The State has to maintain a “negative” attitude such as staying put, not getting involved, avoiding whenever freedom of expression is involved. Yet such an attitude is not sufficient in the sense of obligations implied by the right. Whenever these freedoms are involved, as part of positive obligations, the State needs to take a set of measures such as making legal regulations, taking administrative measures facilitating the use of these freedoms, protecting individuals against interventions in these freedoms by third parties. For example, when an individual gets fired from his work for filing a complaint to a governmental agency and voicing their opinion, there is

again a possibility of a violation with regard to freedom of expression.<sup>20</sup>

In Turkey, the fundamental assurance in terms of positive obligations is Article 5 of the Constitution stating “The fundamental aims and duties of the State are: ...; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social State governed by the rule of law; and to provide the conditions required for the development of the individual’s material and spiritual existence.” There are also other regulations about positive obligations with regard to freedom of expression. One of these is the regulation about press freedom in the second clause of Article 28 of the Constitution, which says “The State shall take the necessary measures to ensure the freedom of the Press and freedom of information.” Media Monitoring Reports show that the State did not take any measures in terms of carrying out the positive obligations, that media outlets and journalists exercising freedom of expression were often subjected

to violence by third parties, even killed or fired at times.

Potential interventions in the use of freedom of expression by public authorities can be considered as legitimate and lawful only when they comply with the stipulated limitation regime for this freedom. In this respect, an inspection method called “three-step test” is used. Accordingly, for an intervention to be considered lawful, it is expected to have a legal basis for sure (For Turkey, this must be a law), to have one of the objectives like protecting the social order, others’ reputation and rights (It is impossible to limit for any reason other than the limitation reasons listed in the corresponding articles of the Constitution); to be carried out as a response to some social need, to be the last resort at this point, and finally the means used in the intervention is expected to be proportional to the purpose.

Even though these seem like concrete principles, they are just some general criteria that can be used to determine if a concrete intervention in freedom of expression creates a violation or not, and they are far from being mathematical formulas. It is possible

to reach a different conclusion in each concrete incident where these principles are applied. The identity of the individual who voices the expression or who the expression concerns, the time and location where the expression is voiced, how overt the expression became, the content, the style, and the context of the expression can play an important role in determining the boundaries of freedom of expression. While freedom of expression covers all kinds of expressions except those listed above (racism, discrimination, war propaganda, hate speech, etc.), it is also worth noting that as far as people are concerned, every expression is not protected equally. For example, criticisms against politicians and public officials are associated with higher protection as compared to criticisms against simple citizens and judicial bodies.

Hence, the overall observation is that there is no one single legal formula available to be used in all situations to determine whether the right has been violated or not. Yet, this situation does not mean that there is an absolute arbitrariness with regard to freedom of expression, and it shows that limitation is possible only in exceptional cases. The legal precedents and the standards that

appeared in international law up until today are instructive about how abstract legal regulations should be applied in concrete situations, and emphasize the need for a very broad interpretation of freedom of expression. The essence is freedom of expression, limitation is exception. This applies a fortiori to media outlets and journalists.

## II. Main Actors in Limitation of Freedom of Expression

Interventions in freedom of expression are getting increasingly more diverse. Advances in communication technologies lead to other contemporary intervention forms in addition to the traditional ones. A similar observation holds with respect to the people who carry out the intervention. For example, before, interventions were mostly led by the State, but today, non-state actors' interventions can have important effects on freedom of expression. Besides, in the past, it was agreed upon that interventions led by non-state third parties did not cause any problems about freedom of expression, but now freedom of expression is considered to be a right that is valid also in relations between individuals outside the State. Since interventions in freedom of expression can be led by the State or non-state actors, it is crucial for legal regulations to protect the

right in order to assure complete protection in both situations.

A process of intervention can sometimes involve both the State and non-state actors. Examples of this situation include the claims for damages filed by private-law natural and legal persons against individuals exercising freedom of expression or the criminal cases filed by prosecution offices upon someone else's complaint in crimes subject to complaint. In such interventions, private-law natural and legal persons and judicial bodies implicitly act together and cause an intervention to take place. BIA Media Monitoring Reports show that all of the actors mentioned above are active in interventions in freedom of expression.

An important phenomenon caused by interventions led by the State or

non-state actors is self-censorship. Individuals who do not want to go through any enforcement or oppression cannot express themselves freely and prefer to carry out their work by remaining within the boundaries imposed on them.

## Legislation

State-led interventions in freedom of expression can be from legislative, executive or judicial bodies. The intervention of the legislative body considered as the first actor occurs by adopting certain legal regulations that form obstacles to using freedom of expression or by not making the necessary amendments on such legal regulations that are long known to be problematic in terms of freedom of expression. In other words, the intervention of the legislative body can be commissive or omissive.

One of the reasons for the existence of interventions in freedom of expression is the ambiguity in legal regulations. Ambiguity leaves a lot to the discretion of public authorities in particular and it becomes harder to subject the decisions made within this discretion to judicial review. Legal regulations concerning freedom of expression should be formulated in a clarity that allows

individuals to present their opinions in accordance with legal regulations, and they should be accessible to everybody. A similar clarity is necessary for judicial and executive bodies that have the power to interfere with freedom of expression. The sources of violations in freedom of expression of media outlets and journalists in Turkey include, but are not limited to, certain clauses of the Turkish Penal Code (TCK), several clauses of the Anti-Terror Law, almost all of the Law on Broadcast Regulations on the Internet and Suppression of Crimes Committed by Means of Such Publications, and the Law on the Establishment of Radio and Television Enterprises and Their Media Services.

In Turkey's legislation, there is a large number of regulations leading to the violation of freedom of expression, in particular the violation of press freedom. Some notable ones are:

- Press Law (No. 5187, 09/06/2004)
- Criminal Procedure Law (No. 5271, 04/12/2004)
- Law on the Regulation of Publications on the Internet

and Suppression of Crimes Committed by Means of Such Publications (No. 5651, 04/05/2007)

- Law on the Establishment of Radio and Television Enterprises and Their Media Services (No. 6112, 15/02/2011)<sup>21</sup>
- Anti-Terror Law (No. 3713, 12/04/1991)
- Law on Meetings and Demonstrations (No. 2911, 06/10/1983)
- Turkish Penal Code (No. 5237, 26/09/2004)

## Execution and Administration

The second actor of state-led interventions is the executive body or generally the administration. Although it is in charge of the application of the Constitution and the laws, it can cause significant interventions in freedom of expression to take place. The executive body can interfere with freedom of expression through general regulatory procedures such as the by-laws or individual procedures. These interventions

usually occur in an arbitrary manner. The administration's interventions can occur by way of directly going against the regulations or through the administration's arbitrariness caused by the failure of regulations to adequately protect freedom of expression or by the ambiguity of the regulations. This points to the need for a definition of legal regulations on freedom of expression in a concrete manner including effective sanctions securing the freedom in question.

Like the legislative body, the administration's interventions can be commissive or omissive. The administration's failure to provide adequate protection to the people exercising the freedom in question despite being aware of the interventions in freedom of expression by non-state actors or despite being capable of knowing (if not knowing already) is the most obvious example of the interventions. Examples of interventions of the executive body and the administration within the context of media outlets and journalists include:

- Threats or harassment by the executive body or the administration;

- Physical violence by the administration;
- Factual obstruction by the administration;
- Executive body's or administration's closure or confiscation decisions, broadcasting bans, demands from the Information and Communication Technologies Authority (BTK) to remove content and/or to deny access, factual obstruction;
- BTK's decision to deny access, to remove content, to issue an administrative fine;
- Sanctions by The Radio and Television Supreme Council (RTÜK) including warnings,

program suspension, administrative fines, temporary suspension, cancellation of the broadcasting licenses;<sup>22</sup>

- Press Advertisement Institution not placing ads or imposing ad cuts;<sup>23</sup>
- Directorate of Communications, an office of the Presidency, canceling journalists' press cards and not renewing them.<sup>24</sup>

## Jurisdiction

The last actor in state-led interventions consists of judicial bodies. A substantial part of the interventions in freedom of expression in Turkey are realized by judicial bodies. Because of these interventions, judicial bodies,

which are in charge of securing freedom of expression, turn out to be the primary figures causing violations of freedom of expression. Judicial bodies are accountable for being sensitive both to assure that potential interventions do not create dissuasive effects on people who wish to exercise freedom of expression, and to protect people from interventions by non-state actors.

Some examples of interventions by judicial bodies against media outlets or journalists are:

- Civil courts ruling on damages in claims for damages, reprimand decisions, deeming the termination of the employment contract lawful, issuing interlocutory injunctions to discourage similar discourses;
- Public prosecution office initiating an investigation, taking into custody, demanding arrest, demanding judicial control, decision to postpone the start of a civil lawsuit, decision to deny access, filing a criminal case;
- Decisions to deny access by criminal courts of peace, decisions on the removal of

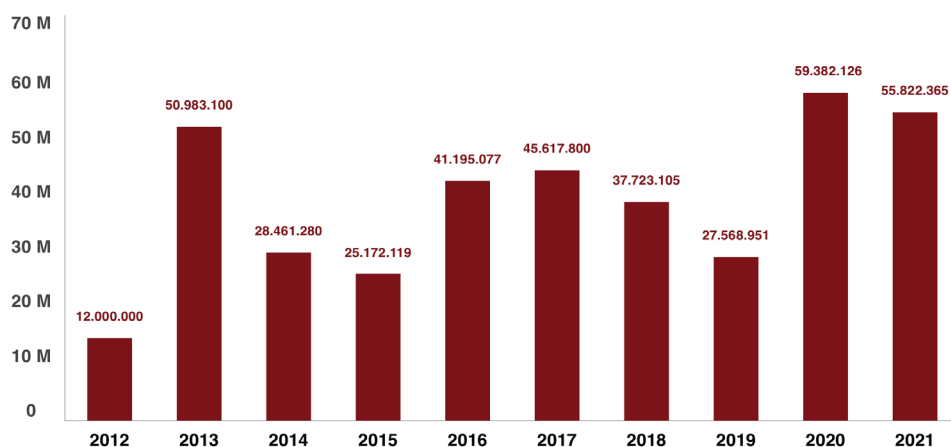
the content from publication, refutation decision, arrest decision, judicial control decision, decision to collect and confiscate, intercepting the communication;

- Criminal courts starting the trial upon the acceptance of the accusal, arrest or continued arrest decisions, imprisonment, judicial fines, deprivation of certain rights, postponement decisions, deferment of the announcement of the verdict, decisions to postpone prosecution, decisions to deny access.

It should be noted that even a mere investigation against someone exercising freedom of expression, even if it is not followed with a criminal lawsuit, is an intervention in freedom of expression, and can trigger exercising self-censorship or censorship.

Interventions of judicial bodies in the field of criminal law are among the harshest interventions in freedom of expression. Elaborating on these interventions a little further will make the report more understandable for readers not involved in law. The first one

Statistic on the administrative fines in the reports of RTÜK



These data were compiled from the Annual Reports of the Radio and Television Supreme Council



of the judicial interventions in freedom of expression in the field of criminal law is the opening of a criminal investigation by public prosecutors on the grounds that a crime was committed. Criminal investigation can be launched by the public prosecution office ex officio, following a denouncement or a complaint, as a result of learning, following a complaint from a foreign government, or upon the request of the minister of justice. A criminal lawsuit may be filed at the end of the investigation, or a lawsuit may not be filed based on the decision that there is no reason for prosecution. However, the opening of an investigation can be considered as an intervention in freedom of expression because it will most probably have a dissuasive effect on the person exercising this freedom.

Another form of intervention in freedom of expression by judicial bodies involves detention and arrest. Although the detention period is defined to be between 24 and 96 hours in the by-laws, the detainee is deprived of freedom. These practices are very likely to have dissuasive effects on people exercising freedom of expression. Detention of someone exercising freedom of expression is an intervention

in freedom of expression in addition to the individual's right to freedom and safety. As with all interventions in freedom of expression, such a measure should be taken as a last resort.

For example, in order to take a person's statement following the investigation against them, the best way is to first issue a call to the person and to request them to come. Arrest is not a punishment, it is a measure, which can be taken under certain circumstances. Arrest is the severest protection measure in the criminal procedure and leads to the person's deprivation of freedom until the judicial bodies reach a verdict. Long detention periods in Turkey turned arrest into a punishment tool rather than a measure. Arrests of this form come first in the list of the intervention forms with the largest dissuasive effect on freedom of expression. In fact, the use of freedom of expression during a trial under arrest may actually cease with the dissuasive effect. Beside the general problems about arrest in Turkey, trial under arrest and long detention periods especially in crimes involving "terrorism" are prevalent practices. In addition to this, in recent years, insulting the President (TCK,

Article 299) has become another type of crime for which the arrest measure is commonly used.

When the investigation launched by the public prosecution office turns into a trial, the criminal lawsuits begin. A threat concerning freedom or a threat of another punishment certainly has negative effects on people who want to use freedom of expression. The lawsuits conducted by judicial bodies are serious interventions in freedom of expression. Of course, there is a possibility that the defendant will be acquitted in the criminal lawsuit just like in the investigation launched by the public prosecution office. However, even the existence of an ongoing trial can create a dissuasive effect on the use of freedom of expression.

Criminal lawsuits involving people exercising freedom of expression can sometimes result in a sentence. Following the conviction, prison sentences are sometimes converted to fines. Another type of sanctions that come up consists of alternative sanctions. According to TCK Article 50, a short-term prison sentence can be converted to another sanction like a judicial fine or volunteer community

work, according to the personality of the convict, their social and economic status, their remorse during trial, and the characteristics of the commission of the crime.

Criminal lawsuits sometimes end up with the deferment of the announcement of the verdict (DAV) or the deferment of the sentence after convicting the individual. A probation period is determined for people with a DAV decision or deferred sentence. Deferment of the sentence involves conviction, but the convict is not penalized. With DAV, on the other hand, the verdict is not announced and the conviction decision is not made. However, in cases where the person intentionally commits a crime or insists on not fulfilling the requirements of the probation period despite the warnings of the judge, the verdict whose announcement is deferred is announced or a partial or total execution of the deferred sentence starts. Hence, both DAV or deferment of sentence involve some sanctions, too. Being required to act in a certain way during the probation period leads to self-censorship and creates a dissuasive effect on those who wish to use freedom of expression.

All the listed examples concern the

commissive interventions by judicial bodies. Judicial bodies, in particular the prosecution office can become directly or indirectly accountable for the violations of freedom of expression by staying put just like legislative and executive bodies, by not conducting an effective investigation about the interventions of non-state actors, or by dismissing them via nolle prosequi.

That is, judicial bodies' interventions can be omissive, too.

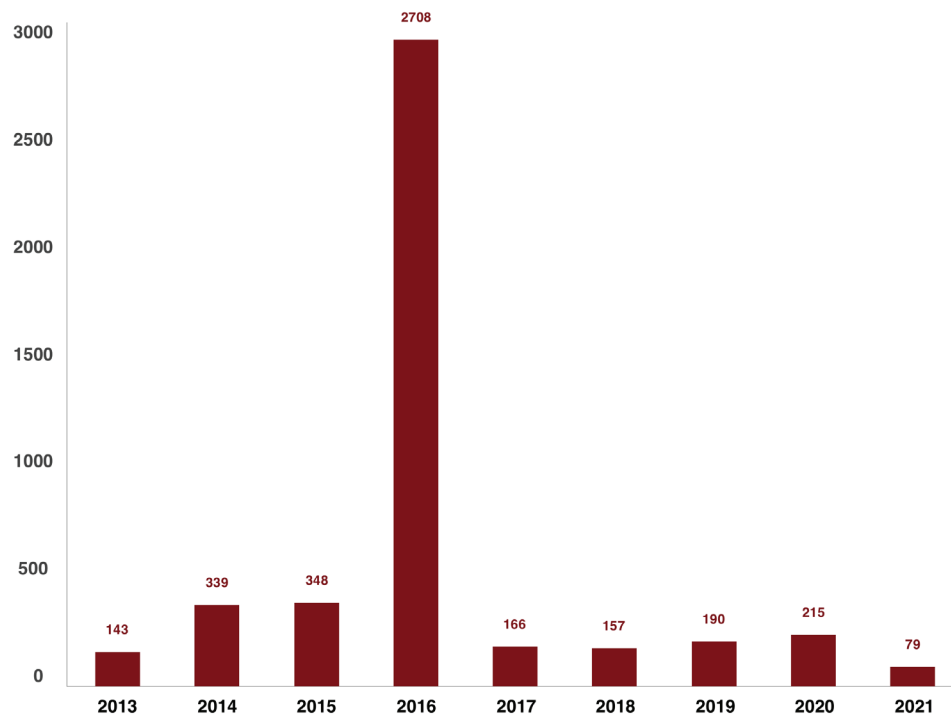
## Non-State Actors

Unlike the interventions of the State, non-state actors can be diverse. Media outlets, civil society organizations, individuals, and communities are among the non-state actors of interventions in freedom of expression. As stated above, protection of individuals exercising freedom of expression against the interventions of such actors is one of the fundamental obligations implied by freedom of

expression. Based on BiA Media Monitoring Reports, it can be said that the intervention forms listed below were often employed against media outlets or journalists in the last 20 years. Examples of interventions by non-state actors are:

- Physical interventions or violence to journalists;
- Threats against or harassment of journalists;
- Interfering with the content of the journalists' news or comments, making changes in the content of the news or comments without consent, not permitting the publication of the news or comments;
- Claims for damages filed by politicians or other people against journalists;
- De facto obstruction of the journalists from sharing the news or their comments with the public;
- Requests to deny access to the content produced by journalists;
- Firing journalists.

Number of journalists who lost their jobs over the years



*These data were compiled from BiA Media Monitoring Reports.*

### III. Patterns Appearing in Limitation of Freedom of Expression

#### Interventions within the Context of Criminal Law

##### “Counter-terrorism”

The concept appearing most commonly in limitations on freedom of expression in Turkey is “counter-terrorism.” In the last 20 years, “counter-terrorism” seems to be the most prevalent reason of limitation in Media Monitoring Reports. But regardless of the reason, the limitations on freedom of expression have to comply with the general limitation regime mentioned above. The concept of “counter-terrorism” should not be interpreted as a blank check that grants public authorities the power for limiting the freedom without any restriction, separately from the limitation regime. In criminal laws, concepts like “terror,” “terror organization,” “membership

to terror organization,” “propaganda for terror organization” should be defined as clearly and precisely as possible, and unnecessary or disproportionate interventions in freedom of expression within the scope of these concepts should not be enabled.<sup>25</sup> Legal regulations should be written out in such a way that discretionary practices are not allowed, and people can anticipate in which situations they may bear criminal responsibilities.

The main regulation about “counter-terrorism” in Turkey is the Anti-Terror Law (TMK). Since it went into effect in 1991, the law has been the target of serious and legitimate criticisms about human rights. Amendments reflect the changes in the approach to the relation between counter-terrorism and freedom of expression, and have significant positive and negative effects on the limitation

of freedom of expression. TMK changed 40 times over the 20 years covered in this report. This implies an average of two amendments per year. Moreover, a substantial part of these changes took place before or after the state of emergency in Turkey between 2016 and 2018. This suggests that the state of emergency did not actually last only two years, but a similar point of view prevailed for a long time in ordinary periods, too.

Article 1 of TMK defines a concept of terror that has not been defined in international law yet.<sup>26</sup> According to this definition, every criminal act carried out by member(s) of an organization by using force and violence with specified methods to realize specified goals is considered to be a terror act. On the other hand, Article 2 states that those who commit crime on behalf of the organization will be considered as terror criminals even if they are not members of a terror organization.

The regulation that comes up the most in the context of freedom of expression is “propaganda for terror organization” in Article 7/2 of TMK. The terms ‘justifying’, ‘praising’ and ‘encouraging’ in the article are rather ambiguous terms.

It is indeed possible for some element of an arbitrary expression to lead to an investigation on the grounds of propaganda for terror organization based on the claim that it ‘justifies’, ‘praises’ or ‘encourages’ the terror organization. This, in turn, entails harsh interventions in freedom of expression. This regulation makes the way for conviction on the grounds of this crime even for expressions without intent to propagandize, and it forms the foremost legal basis for the interventions in freedom of expression.<sup>27</sup>

Another crime that comes up within the scope of “counter-terrorism” is “committing a crime on behalf of the organization while not a member of the organization.” According to Article 220/6 of TMK, “The person who commits a crime on behalf of the organization while not a member of the organization is also punished for the crime of being a member of the organization. The punishment for the crime of being a member of the organization can be reduced to half.” With such a regulation, everyone can be tried for being “member to terror organization.”<sup>28</sup>

One facilitating reason for the concept of “counter-terrorism”

to often result in interventions in freedom of expression is the State’s view of the concept of “terror.” Cases included in Media Monitoring Reports show that this view is adopted by judicial bodies, too. But this view enables relating any expression to terror, and consequently, makes the notion of “counter-terrorism” meaningless and hands a black check over to the State for interfering with freedom of expression. This points to the necessity of clearly specifying which acts form terror crimes in the regulations defining “terror” crimes in the corresponding laws and precluding the treatment of expressions not provoking or encouraging violence as “terror crimes.” Otherwise, the

existence of regulations that are rather broadly interpreted in the legislation will continue to set ground for interventions in freedom of expression.

### “Insult”

Another justification for interventions in freedom of expression is insult. Today, insult is considered as an issue that can be subject to civil justice, and criminal laws are increasingly excluding such a crime. Insult being subject to civil justice means that the insulted person can file a claim for damages. Indeed, in Turkey, the insulted person has the right to file a claim for pecuniary and non-pecuniary damages in the framework of the

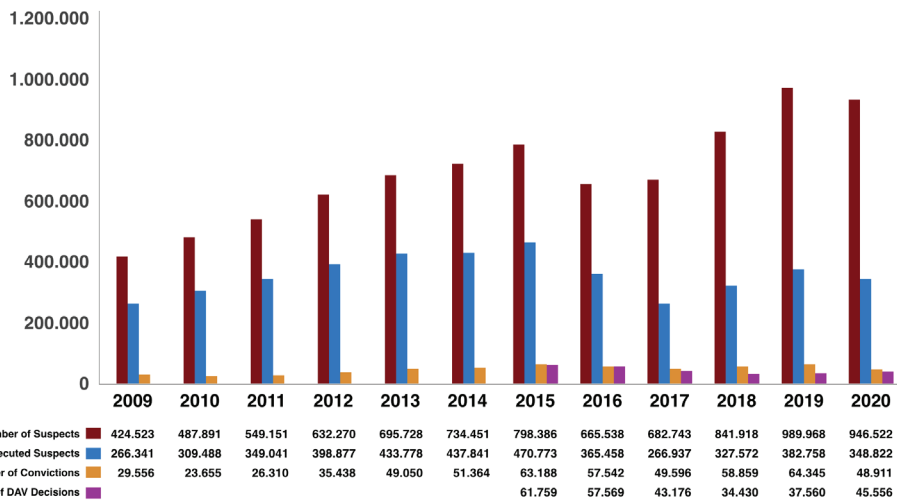
Turkish Code of Obligations. Still, insult is regulated as a crime also by Article 125 of TCK. In case the insult is directed to a public official based on their duty, the minimum penalty is one year. No data specific to the crime of insult is collected by the State. That’s why a quantitative evaluation about issues like the proportion of the interventions in media outlets and journalists within the context of TCK Article 125, and the main actors is impossible. That said, as seen below, the number of investigations and lawsuits due to crimes of insult has gradually increased. The information presented by BIA Media Monitoring Reports indicate that both the claims for damages on the grounds of insult against media outlets and press

members, and the criminal lawsuits filed again on the grounds of insult exhibit some continuity, and hold an important place among interventions in freedom of expression.

### “Provoking the Public to Hatred and Hostility”

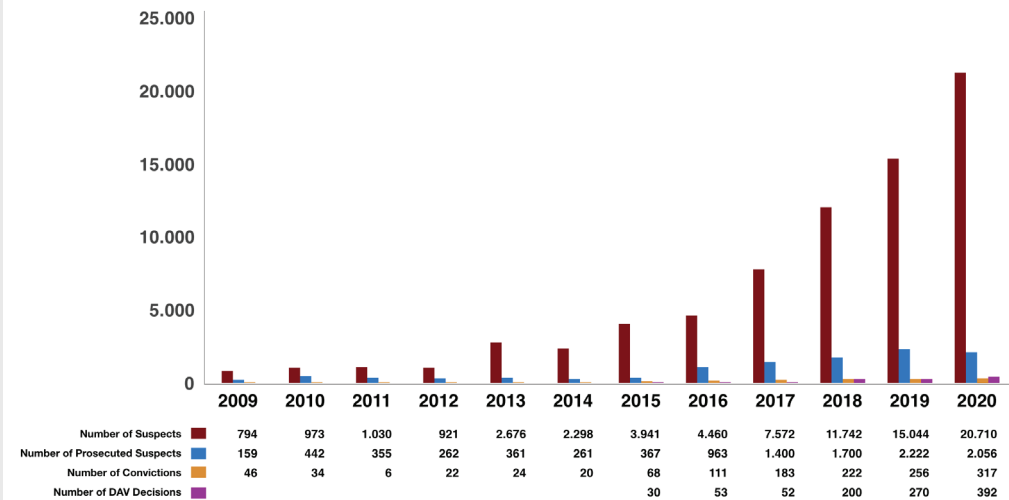
The crime to provoke the public to hatred and hostility regulated in Article 312 of former TCK and Article 216 of current TCK has been effective as one of the main regulations limiting freedom of expression for a long time. The article that was changed twice in the last 20 years frequently appeared in the first years, then its application decayed over a period, in 2011 only six people were convicted on the grounds of

Statistics on TCK Article 125 (Insult)



These data were compiled from Judicial Statistics published by the General Directorate of Criminal Records and Statistics, Ministry of Justice of the Republic of Turkey.

Statistics on TCK Article 216 (Provoking public to hatred and animosity)



These data are compiled from Judicial Statistics published by the General Directorate of Criminal Records and Statistics, Ministry of Justice of the Republic of Turkey.

this crime. However, as can be seen in the following figure, starting in 2015, the numbers drastically increased.<sup>29</sup> The number of people investigated in 2020 was almost 26 times the value in 2009, the number of convicted people in 2020 was almost 53 times the value in 2011. In the last 20 years, it is observed that the amendments of the article did not actually mean anything and did not lead to a positive impact while its execution increasingly worsened. Based on the information presented in BIA Media Monitoring Reports, the lawsuits filed on the grounds of provoking the public to hatred and hostility exhibit some continuity and the article holds an important place among interventions in freedom of expression.

### “Degrading the Turkish nation, the State, State organs and institutions”

The crime of degrading the Turkish nation, the State, state organs and institutions regulated in Article 159 of former TCK and Article 301 of current TCK is a regulation that media outlets and journalists have often been involved with since the past in the context of freedom of expression. This article that made a target of the Chief Editor of Agos Newspaper Hrant Dink just before his assassination at the beginning of 2007 was revised after the assassination, in 2008 and did not come up for a short while. In the same period, ECtHR decided that Article 301 of TCK is a violation of

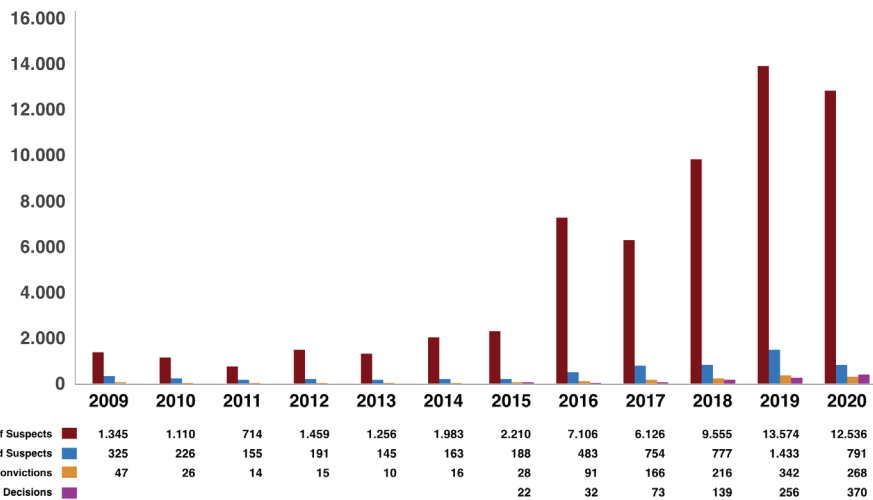
freedom of expression on its own as it failed to meet the criterion of legal predictability.<sup>30</sup> In that period, the lawsuits filed on the grounds of this article started being bound to the authorization of the Ministry of Justice and the number of authorizations granted by the ministry had decreased over time. Consequently,, the number of people on trial in 2013 decreased to 145 and the number of convictions decreased to 10.<sup>31</sup> However, starting in 2014, the numbers drastically increased and the numbers of investigated people in 2019 and 2020 reached almost 10 times the value in 2009. Although the article that is one of the biggest obstacles before the freedom of expression of media outlets and

journalists was changed four times in the last 20 years, it appears that these changes did not mean anything. As with Articles 125 and 216 of TCK, BIA Media Monitoring Reports show that the lawsuits filed on the grounds of Article 301 exhibit some continuity and the article took a more important place among interventions in freedom of expression as compared to before.

### “Insulting the President”

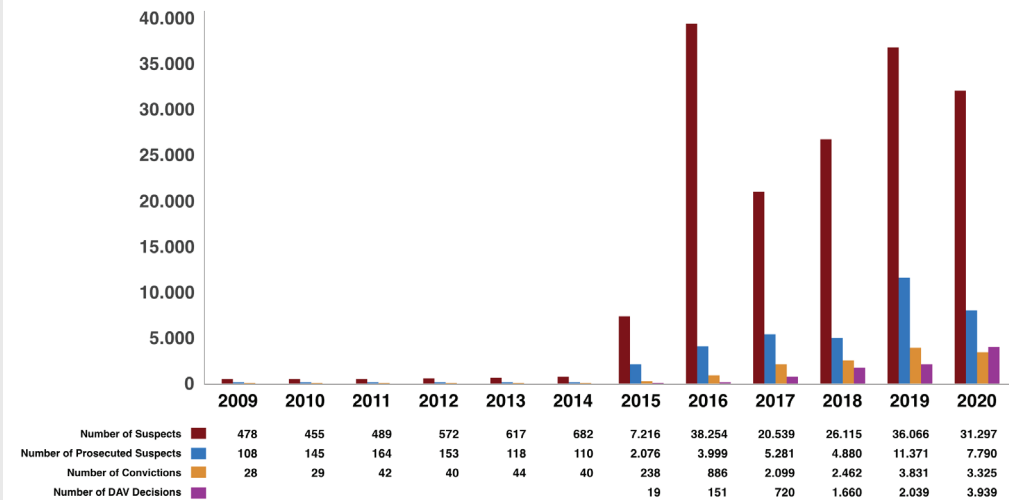
In the last eight years, the crime of insulting the President regulated by Article 299 of TCK turned out to be the most prevalent among the regulations related to freedom of expression. This article that was approved to be in compliance

Statistics on TCK Article 301 (Degrading the Turkish Nation, the State, state organs and institutions)



These data are compiled from Judicial Statistics published by the General Directorate of Criminal Records and Statistics, Ministry of Justice of the Republic of Turkey.

Statistics on TCK Article 299 (Insulting the President)



These data are compiled from Judicial Statistics published by the General Directorate of Criminal Records and Statistics, Ministry of Justice of the Republic of Turkey.

with the Constitution by the Constitutional Court<sup>32</sup> is the first in the list of the most criticized regulations both in Turkey and in the international arena.<sup>33</sup> Recently, ECtHR<sup>34</sup> and the Constitutional Court<sup>35</sup> decided on the violation of freedom of expression in some instances where the article was applied. The most important of the underlying causes for this is the very frequent application of the article after 2014 incomparably to before and its reduction to one of the biggest obstacles before freedom of expression. While the number of investigated people was 455 and the number of convicted people was 29 in 2010, these numbers increased to 36.066 and 31.297 in 2019, 3.831 and 3.325 in 2020.<sup>36</sup>

## Interventions in the Form of Broadcasting Bans

The Radio and Television Supreme Council (RTÜK) operating within the Law on the Establishment of Radio and Television Enterprises and Their Media Services can impose sanctions in the form of warning the radio and television channels, requesting defense, stopping the program, stopping broadcasting, and issuing an administrative fine in accordance with the related law. While it is not possible to obtain detailed information about these sanctions in RTÜK reports, it is possible to find information on sanctions imposed by RTÜK in BİA Media Monitoring Reports. Considering the last 20

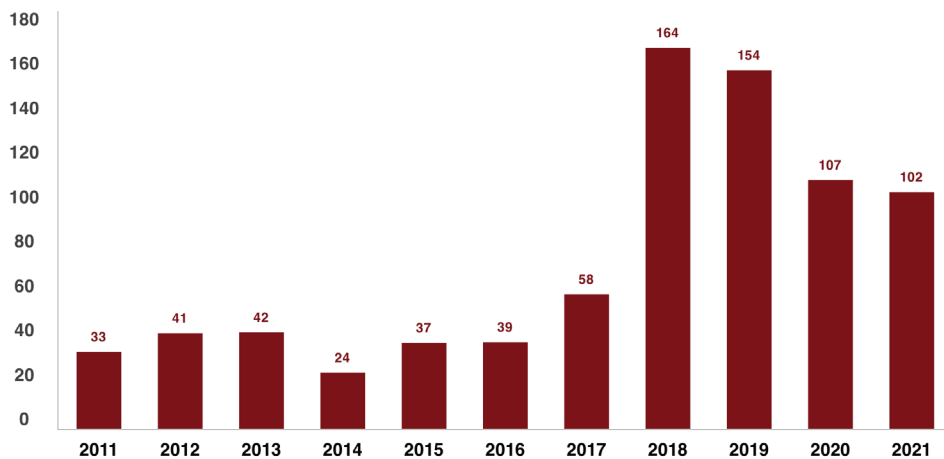
years, it can be seen that RTÜK's interventions of limiting nature in freedom of expression has some continuity. RTÜK also bears an inspection duty regarding whether the broadcasting bans imposed by different agencies and judicial bodies are obeyed or not, and based on the information collected from RTÜK Annual Reports, it appears that in the last 11 years, 801 broadcasting bans were issued for various reasons. Even though there is no detailed information on which agencies issued these bans and in what context, it seems that the number of broadcasting bans started increasing especially from 2017 onward. This situation represents a harsh intervention in the media outlets' and the journalists' freedom

of disseminating information and thoughts in addition to accessing information and thought as parts of freedom of expression.

## Interventions in the Form of Blocking Access

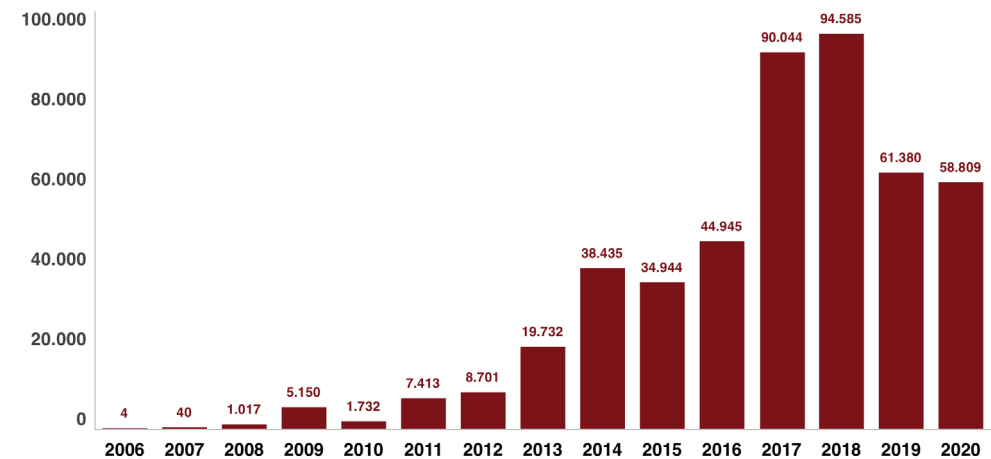
Turkey met with the notion of access block through Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications that became effective in 2007. While only four websites were issued an access in 2006, with this law, the number increased to a total of approximately 467.000 by the end of 2020. Decisions of blocking access are also commonly taken

Number of broadcasting bans over the years



These data were compiled from the Annual Reports of the Radio and Television Supreme Council.

Number of access-blocking decisions over the years



These data were obtained from Engelliweb 2020 Report (p.3) by Freedom of Expression Association.

for media outlets and journalists publishing on the internet. As such, a number of news websites suffered through several access blocks, pointing to a harsh and systematic intervention in freedom of expression that keeps taking place.

Currently, the bodies, the agencies, and the establishments endowed with the power to block access on the grounds of different laws in addition to Law No. 5651 consist of the Presidency and related ministries, the President of Information and Communication Technologies Authority, Access Providers Association, Ministry of Health - Turkish Medicines

and Medical Devices Agency, Capital Markets Board, Ministry of Agriculture and Forestry - Directorate of Tobacco and Alcohol, National Lottery Administration - Department of Games of Chance, Turkish Jockey Club, Spor Toto Organization Presidency, Directorate of Religious Affairs - Religious Affairs Supreme Council and Board of Inspection and Recitation of Qur'an, Radio and Television Supreme Council, Supreme Election Council, Ministry of Trade - Directorate General of Consumer Protection and Market Surveillance, Ministry of Treasury and Finance, all "authorised institutions" within the Law on Product Safety

and Technical Regulations, Governorates and Ministry of Internal Affairs, Banking Regulation and Supervision Agency.<sup>37</sup>

## Interventions Concerning Publishing in Languages Other Than Turkish

In Turkey, radio and television broadcasting in any language other than Turkish has been possible only since the mid-2000s. In the early 2000s, broadcasting in Kurdish was possible in a very limited way and by authorization. In that period, a number of TV and radio channels were sanctioned on the grounds of broadcasting in Kurdish. For example, at the beginning of 2000s, there were practices such as issuing fines to those broadcasting musical work (of Ahmet Kaya) forbidden for media outlets and journalists on the grounds of former Law No. 3257 on Cinema, Video, and Musical Artworks Article 11, and launching trials on the grounds of factionism propaganda (former Article 8 of TMK) and of insulting and invective statements against military forces (former TCK Article 159) because of broadcasting Kurdish music. Besides, printed publications were subjected to investigations filed

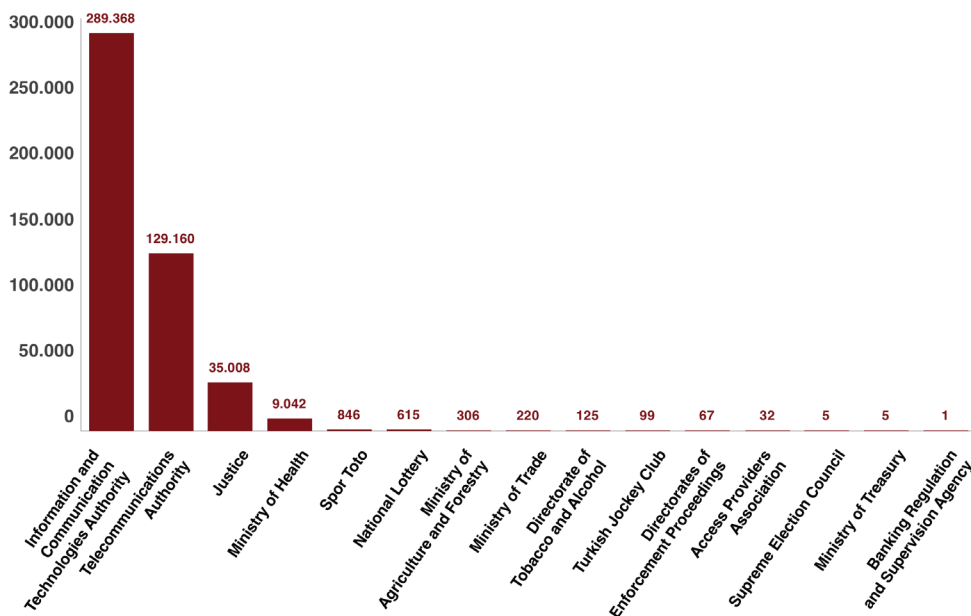
for using letters not included in Turkish alphabet, followed by the trials of especially journalists publishing in Kurdish for writing and publishing pieces including the letters q, w, x on the grounds of the crime to "disobey the bans imposed by the Law No. 1353 on the Acceptance and Utilization of Turkish Letters" in accordance with former Article 222 of TCK revoked in 2014. Presently, the number of national or local radio and television enterprises permitted by RTÜK to broadcast in languages other than Turkish, namely Kurmanji, Zazaki, Sorani, Uyghur, Albanian, Laz, Arabic, Bosnian, Armenian, Cherkes, Syriac, Russian, English, German is 33.<sup>38</sup>

## Other Interventions

It is impossible to provide an exhaustive list of all the regulations in the legislation, in particular in the TCK and TMK, which set a legal ground for interventions in freedom of expression. Notable examples include:

- Lawsuits on the grounds of defamation through publications filed against journalists who make news of some claims within the scope of TCK Article 267;

Distribution of blocked websites according to institutions issuing the decision



These data were obtained from Engelliweb 2020 Report (p.9) by Freedom of Expression Association.

- Trials of journalists because of their criticism of court decisions on the grounds of influencing those employed in jurisdiction, as regulated by TCK Article 277, or on the grounds of affecting fair trial, as regulated by TCK Article 288;
- Trials of journalists because they did not inform the judicial or administrative authorities of the slogans claimed to be criminal they heard while watching a meeting or demonstration on the grounds of not informing the judicial or administrative authorities of a crime that is being committed according to TCK Article 278;
- Trials of journalists because of their news about an ongoing investigation on the grounds of violating the confidentiality of the investigation in TCK Article 285;
- Trials of journalists because of publishing a public mandate or a document prepared by a public agency on the grounds of disclosing a state secret and violating confidentiality;
- Trials of journalists because of publishing anti-war opinions and statements of conscientious objectors on the grounds of turning people against the military service in accordance with TCK Article 318;
- Decisions to recall because of the news and comments in media outlets in accordance with Article 25 of Press Law No. 5187;
- Enforcement of media outlets to publish refutation based on court decision;
- Civil court decisions “to suspend the news, writings, and publications as interim injunction” on the grounds of attack on personal rights;
- Sanctions of Radio and Television Supreme Council in forms of warnings, defense requests, program or broadcast suspension, administrative fines issued to radio and television channels in accordance with the related law;
- Arrests and trials of journalists for referring to certain people that made history and for harshly criticizing certain practices of the State on the grounds of helping terror organizations (former TCK Article 169), degrading the State (former TCK Article 159), and provoking people to hatred and hostility (former TCK Article 312);
- Transfer of the ownership of media outlets to pro-government individuals by the Savings Deposit Insurance Fund of Turkey;
- Launching an investigation, filing a lawsuit, or imposing bureaucratic obstacles concerning unrelated issues (business license, debts to the municipality) outside the media legislation when the administration is disturbed by the content or publication of some news or when it tries to prevent some news from being published;
- Protection measures by the judicial members who are disturbed by the content or publication of some news or who try to prevent some news from being published.



## IV. The Aftermath

The early 2000s when BIA Media Monitoring Reports started to be published was a period over which several constitutional and legal steps were made within the context of Turkey's process of joining the European Union. For example, there were improvements concerning many rights including freedom of expression in the Constitution, afterwards many reform packages were accepted in the legal arena, and in the international arena, Turkey became a party of the International Contract on Civil and Political Rights in 2003. A substantial portion of the aforementioned laws were accepted in this period and mostly targeted compliance with the EU criteria.

However, the said criteria were not met neither in terms of content nor in terms of practice; at the same time, liabilities originating from international human rights contracts

were violated. Implemented reforms usually remained inadequate, and the practice kept contradicting the objective announced to the public. In the current situation, the findings of the national and international institutions about the violations of rights show that as far as freedom of expression is concerned, the violation of both the Constitution and the international contracts involving Turkey such as the International Contract on Civil and Political Rights, the International Contract on the Suppression of Any Type of Race Discrimination, and the European Human Rights Contract, is not only an opinion from a legal standpoint, but it is also a fact.

The 2004 Annual Report of International Reporters Without Borders (RSF) noted that the legal reforms in Turkey, which is in the way of joining the European Union,

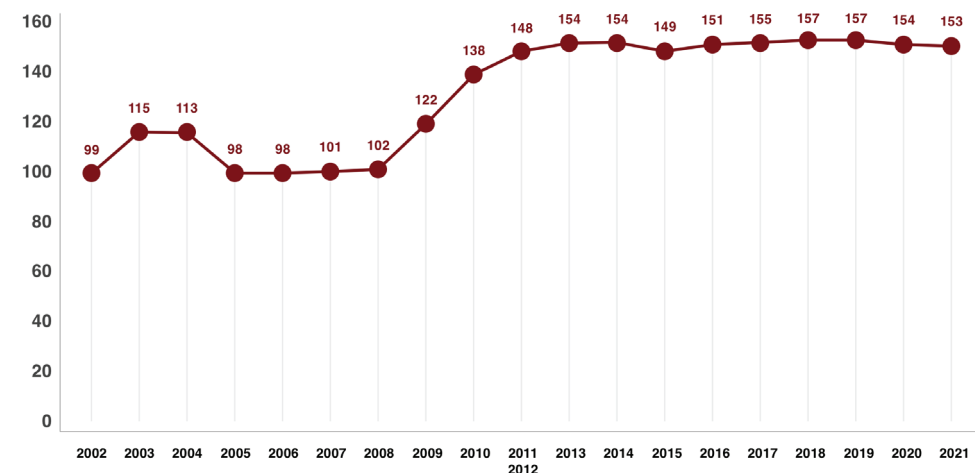
had not been put into practice yet. Now, even after 20 years, it can be seen that the changes in the legislation do not really qualify as reforms, and even the limited versions of these changes were not put into practice. For example, with respect to the World Press Freedom Index calculated by RSF annually for evaluating 180 countries, and based on seven fundamental headings, namely pluralism, independence of media outlets, self-censorship, legislation, transparency, infrastructure, and interventions, Turkey's position stayed put in the first years, quickly deteriorated after 2009, remained the same in the last ten years since 2011-2012, and it is observed there were no improvements

regarding press freedom.

Besides, the wide scope in terms of beneficiaries of freedom of expression is unfortunately highly neglected in practice in Turkey. BIA Media Monitoring Reports suggest that media outlets and journalists, holding the most privileged position with regard to freedom of expression, are first in the list of the groups subjected to the harshest intervention most frequently, and we are still far from the standards the international law when it comes to beneficiaries of freedom of expression.

A review and a comparison of before and after is rather unavoidable in a study that focuses on the last

Turkey's ranking with respect to Reporters Without Borders (RSF) World Press Freedom Index over the years



The rankings are retrieved from <https://rsf.org/en/world-press-freedom-index>

20 years of freedom of expression. Starting with a review of the previous period, the time when *bianet* started publishing the reports coincides with a period when Turkey was admitted as a candidate to the European Union and it took several steps towards the membership target. In the period before 2002, that is, before the publication of the first report, we observe that in the 90s, Turkish Armed Forces (TSK) had a very visible influence on politics and that the National Security Council took some steps leading to the oppression of many journalists. In that period, civilians including journalists could be tried in military courts, too. Hence, the 90s differ from the subsequent period in terms of both journalist deaths and oppression of journalists by TAF.

The 90s also stand out as a period when the media-oriented oppression involved media outlets of every point of view, and in this regard, it differs from the last 20 years as the requests about freedom of expression were more politically diverse as compared to the period covered by the reports that are considered in this study. In addition to this, the facts that the assassinations of the journalists including Uğur Mumcu, Musa Anter, and Ahmet Taner Kışlalı are not still

completely clarified even today, that the trials about these are still going on or were closed due to statute of limitation, that the trial about the journalist Hrant Dink assassinated in 2007 is still continuing, along with the assassination of the journalist Cihan Hayırsever in 2009 and of the journalist Güngör Arslan in 2022 point to the persistence of the issue. This situation applies also to the cases where journalists are subjected to gun-point or other types of assaults.

It is possible to say that in particular, the oppression and the interventions following Gezi Park Protests in the summer of 2013 and the state of emergency throughout the whole country following the coup attempt in 2016 mark two important turning points in the last 20 years. While oppression of media outlets and journalists prevailed in the former, in the latter, plenty of media outlets were confiscated by the State or shut down.

Also, examining the last 20 years in five-year intervals, it is observed that the first five years involved mostly cases of provoking the public to hatred and hostility (TCK Article 216). In the second five-year period, which is after 2005, the most common cases concerned degrading

the Turkish nation, the State, state organs and institutions (TCK Article 301). As observed in the third five-year period, the interventions against journalists which were much more at the individual level before 2010, involved collective journalist lawsuits where a number of journalists are simultaneously tried on the grounds of the same case. In the last five years, it seems that insulting the President is observed as the most common crime. That said, the criminal cases filed and the claims for damages on the grounds of insult, together with the criminal cases on the grounds of the Anti-Terror Law appear to be the unchanging incidents in the last twenty years. Not being able to get advertisement from the Press Advertisement Institution, ad bans, cancellation of press cards, not giving new ones, and severe financial sanctions are also common practices against radio and television channels in the last five years.

Since the early 2000s, interventions generally targeted local or opponent media outlets, but from time to time, interventions against journalists working at mainstream media outlets took place, too. Nevertheless, interventions against mainstream media outlets appear to have decreased because of the extent of

the monopolization in media today. The fact that critical news stories almost never appear in mainstream media outlets is among the main reasons for this situation. Another observation is that in the present situation, the mainstream media outlets turned into instruments of disinformation and manipulation rather than sources of news.

Considering the last 20 years of press freedom in Turkey, it can be said that interventions against media outlets and journalists mostly shifted from local to central as a consequence of the advances in internet publishing and the decrease of the share of the traditional media in the sector. For this reason, it appears that the local press gets weaker and weaker and hence becomes less of a target for interventions in freedom of expression. Also because of the intense oppression of media outlets and journalists, the journalists forced to leave or fired from their jobs at mainstream media outlets can continue journalism only on the internet. Another fact is that even though internet journalism became more prevalent as a result of this situation, journalists employed in these environments are not provided the same rights as those working at traditional media outlets.

While internet publishing was mentioned pretty little in the 2000s, today it replaced traditional broadcasting and the internet became the main platform of the interventions in freedom of expression. In particular, the access block imposed on Youtube in 2007, and Law No. 5651 following it became one of the main bases for current interventions against media outlets and journalists. The Radio and Television Supreme Council established in 1994 is observed to be the main source of violations of freedom of expression in radio and television broadcasting.

The increase in the number of investigations and prosecutions filed on the grounds of provoking the public to hatred and hostility, degrading the Turkish nation, the State, state organs and institutions, which were thought to have gone through some reforms in early 2000s, the explosion in the number of investigations and prosecutions on the grounds of insulting the President indicate the inadequacy of the studies focusing on legal regulations only. The rightfulness of the criticisms on some articles of TCK passed in 2004, raised by the press organizations like Turkish Journalists Society, Turkish

Journalists Union, and Press Council was shown by tens of thousands of investigations and prosecutions on the grounds of the criticized articles in the following years.

All the above-mentioned issues show that the violation of the legal regulations in the Constitution, in the international contracts involving Turkey and the legislation continues from time to time, and it quantitatively increases. Turkey does not fulfill its legal obligations emerging from this legal framework and systematically violates all aspects of freedom of expression protected by the Constitution. This situation, today just like 20 years ago, points to the urgent need for a comprehensive legal reform and change of mindset, focusing on both the legislation and the execution, encompassing all of printed publications, internet publishing, radio and television broadcasting, and viewing freedom of expression as essential and limitation as exceptional.

## Footnotes

1- Assoc. Prof., İstanbul Bilgi University Faculty of Law

2- ECtHR, Violations by Article and by State, 1959-2021, [https://echr.coe.int/Documents/Stats\\_violation\\_1959\\_2021\\_ENG.pdf](https://echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf) (retrieved on 11/11/2022)

3- Constitutional Court of the Republic of Turkey, Individual Application Statistics 021 - (23/9/2012 - 30/9/2022/3), [https://www.anayasa.gov.tr/media/8308/bb\\_2022-3\\_en.pdf](https://www.anayasa.gov.tr/media/8308/bb_2022-3_en.pdf) (retrieved on 11/11/2022)

4- ECtHR, Handyside v. United Kingdom, Appl. No. 5493/72, 7/12/1976, §49.

5- For accessing the reports, see <https://mediamonitoringdatabase.org/reports> or <https://bianet.org/english/diger/117328-bia-media-monitoring-reports> (retrieved on 11/11/2022).

6- e.g., Constitutional Court Decision, Ali Gürbüz and Hasan Bayar, Appl. No. 2013/568, 24/6/2015, §67.

7- e.g., Constitutional Court Decision, Özkan Kart, Appl. No. 2013/1821, 5/11/2014, §50.

8- e.g., Constitutional Court Decision, Erdener Demirel, Appl. No. 2013/1869, 2/12/2015, §34.

9- e.g., Constitutional Court Decision, Engin Kabadaş, Appl. No. 2014/18587, 6/7/2017, §36.

10- e.g., Constitutional Court Decision, Hasan Güngör, Appl. No. 2013/6152, 24/2/2016, §48.

11- Constitutional Court of the Republic of Turkey, Decision No. 2017/171, 13/12/2017, §19.

12- e.g., Constitutional Court Decision, Emin Aydın, Appl. No. 2013/2602, 23/1/2014, §40.

13- e.g., ECtHR, Vogt v. Germany, Appl. No. 17851/91, 26/9/1995.

14- e.g., ECtHR, Glasenapp v. Germany, Appl. No. 9228/80, 28/8/1986; Constitutional Court, Özgür Sevgi Göral v. Turkey, Appl. No. 2014/12112, 4/10/2017.

15- e.g., Constitutional Court Decision, Erdem Gül and Can Dündar, Appl. No. 2015/18567, 25/2/2015, §87.

16- e.g., Constitutional Court Decision, Fatih Taş, Appl. No. 2013/1461, 12/11/2014, §65.

17- e.g., Constitutional Court Decision, Bekir Coşkun, Appl. No. 2014/12151, 4/6/2015, §36.

18- e.g., ECtHR, Pedersen and Baadsgaard v. Denmark, Appl. No. 49017/99, 17/12/2004, §71; Times Newspapers Limited v. United Kingdom (No. 1 and 2), Appl. No. 3002/03, 23676/03, §27.

19- e.g., ECtHR, Education and Science Workers' Union v. Turkey, Appl. No. 20641/05, 25/9/2012, §73; Constitutional Court Decision, İsa Yağbasan et al., Appl. No. 2013/1481, 20/11/2014, §65.

20- e.g., Constitutional Court Decision, İlter Nur, Appl. No. 2013/6829, 14/4/2016, §24.

21- Former Law on Establishment and Publications of Radios and Televisions, No. 3984, 13/4/1994.

22- Exact information about the sanctions applied by RTÜK is not accessible. Only the information on administrative fines was obtained.

23- There is no published data on the annual sanctions of the Press Advertisement Institution.

24- After the change in the by-laws in 2018, the press cards of some journalists were canceled while others were not given new press cards. It has not been possible to obtain reliable information on this.

25- Human Rights Committee, General Comment No. 34, Article 19: Freedoms of Opinion and Expression, §46.

26- The article defines terrorism as “any kind of act attempted by one or more persons belonging to an organization 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 using pressure, force and violence with one of the methods such as terror, intimidation, oppression or threat.”

27- Currently available data includes the total number of investigations, prosecutions, and convictions within the scope of TMK. Because the State does not collect data specifically about Article 7/2 of TMK, it is not possible to provide data on how frequently it is used in practice.

28- The situation for Article 7/2 of TMK holds also for the data about this issue, so it is not possible to provide a general framework on the application of the article.

29- The data in the table includes not only journalists, but everyone who is investigated, prosecuted, and convicted. Because the Ministry of Justice removed the statistics about before 2009 from its website, it was not possible to obtain the data of the period 2001-2008. Also, the data on DAV decisions is available only for after 2014. Since in practice a DAV decision is preceded by a conviction, the actual number of convictions can be obtained by adding the number of DAV decisions to the number of convictions given in the table.

30- Altuğ Taner Akçam v. Turkey, Appl. No. 27520/07, 25/10/2011.

31- The data in the table includes not only journalists, but everyone who is investigated, prosecuted, and convicted. Because the Ministry of Justice removed the statistics about before 2009 from its website, it was not possible to obtain the data of the period 2001-2008. Also, the data on DAV decisions is available only for after 2014. Since in practice a DAV decision is preceded by a conviction, the actual number of convictions can be obtained by adding the number of DAV decisions to the number of convictions given in the table.

32- Constitutional Court, Decision No. 2016/186, 14/12/2016.

33- For a review of TCK Articles 216, 301, and 314 by Venice Commission, see Venice Commission, CDL-AD(2016)002-e, 15.03.2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

34- e.g., Vedat Şorli v. Turkey, Appl. No. 27520/07, 19/10/2021.

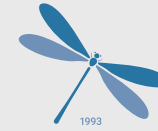
35- e.g., Constitutional Court, Yaşar Gökoğlu, Appl. No: 2017/6162, 8/6/2021; Diren Taşkıran, Appl. No: 2017/26466, 26/5/2021.

36- The data in the table includes not only journalists, but everyone who is investigated, prosecuted, and convicted. Because the Ministry of Justice removed the statistics about before 2009 from its website, it was not possible to obtain the data of the period 2001-2008.

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37- Yaman Akdeniz, Ozan Güven, Fahrenheit 5651: The Scorching Effect of Censorship, Engelliweb 2020, Freedom of Expression Association, İstanbul, 2021, p. 4-7.

38- RTÜK, The List of Press Enterprises Broadcasting in Different Languages and Dialects that Turkish Citizens Traditionally Use in Their Daily Lives (On-The-Air), RTÜK | Broadcasts in Different Languages and Dialects (rtuk.gov.tr) (retrieved on 11/11/2022).



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