

Excerpt from the Turkey 2010 Progress Report: Freedom of Expression and freedom of the press

2. POLITICAL CRITERIA

(...)

2.2. Human rights and the protection of minorities

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As regards *freedom of expression*, an increasingly open and free debate continued on a wide scale in the media and public on topics perceived as sensitive, such as the Kurdish issue, minority rights, the Armenian issue and the role of the military.

There are few cases initiated on the basis of Article 301 of the Turkish Criminal Code (TCC), after it was amended in May 2008 (15).

However, a high number of violations of freedom of expression by Turkey are still being submitted to the ECtHR.

Defamation is a criminal offence under Turkish law. Article 125 of the TCC provides that defamation is punishable by either a prison sentence or a fine. There are many ongoing cases and convictions under this provision. Insults against the Turkish nation are still criminalised under Article 301 of the TCC. Other provisions of the TCC (16), the Anti-Terror Law and the Press Law are also used to restrict freedom of expression.

The high number of cases initiated against journalists who have reported on the Ergenekon case is a cause for concern (17). They face prosecutions and trials for violating the principle of confidentiality of an ongoing judicial process. This could result in self-censorship.

Pressure on newspapers discussing the Kurdish question or publishing in Kurdish increased. In the course of the year, publication of the *Azadiya Welat* newspaper in Diyarbakır was banned several times and its journalists were sentenced in prison under terrorism propaganda charges. In its ruling on the *Ürper and others v. Turkey* case, the ECtHR ruled that Turkey should revise Article 6(5) of the Anti-Terror Law.

The review carried out by the Ministry of Justice on the legal framework on freedom of expression was not finalised.

Regarding hate speech, the Council of Europe (18) recommended Turkey to encourage the media to develop a code of ethics on respect for religious minorities and to prosecute incitement to hatred passed on by the media.

In October, the Court of Cassation ruled that Nobel Prize winner Orhan Pamuk can be sued for remarks made in 2005, when he was quoted in a Swiss magazine commenting on the Kurdish and Armenian issues.

The interpretation of certain articles of the broadcasting law and the sanctions imposed on broadcasters raised concerns (*See Chapter 10 – Information society and media*).

There are frequent website bans, which are disproportionate in scope and duration. Youtube was officially inaccessible in Turkey from May 2008 to November 2010, after publication of videos which allegedly violated the Law on crimes against Atatürk. Other court cases are still ongoing against the video sharing website and other mainstream web portals have been banned for several years. Law n°5651 on the Internet limits freedom of expression and restricts citizens' right to access information.

As regards freedom of the press, concerns remain as regards political attacks against the press. The court case on the tax fine ordered in 2009 against Dogan Media Group, critical of the government, continues. The press exercises self restraint when reporting following the initiation of this case.

Court cases have been opened against journalists about their work by politicians and highlevel authorities, including military authorities.

Overall, open and free debate has continued and expanded. However, the high number of legal suits against journalists and undue pressure on the media undermine freedom of the press in practice. Turkish law does not sufficiently guarantee freedom of expression in line with the ECHR and the ECtHR case law. The frequent website bans are a cause for concern.

(15) According to the Ministry of Justice, since the amendment to Article 301 of the Turkish Penal Code, a decrease in the number of cases opened has been observed. The figures below cover examinations concluded between 1 January 2010 and 31 July 2010: 369 files examined, 270 files for which permission was denied, 10 files for which permission was granted, 3.57% files for which permission was granted

(16) Examples include offences against public order (Articles 214, 216, 217, 218 and 220 of the TCC), State security (Article 305) or the constitutional order (Articles 312 and 314) and obscenity (Article 226). In addition, prosecutions and convictions are continuing on the basis of Article 318 of the TCC (on discouraging people from military service).

(17) 4,091 investigations have been initiated against journalists for breaches of the confidentiality of investigations or attempts to influence a fair trial (Articles 285 and 288 of the Turkish Criminal Code), following their reporting on the Ergenekon case.

(18) CoE Resolution 1704 (2010).