



# THE GEZI PARK PROTESTS

THE IMPACT  
ON FREEDOM  
OF EXPRESSION  
IN TURKEY

BY ALEV YAMAN

English PEN is the founding centre of a global literary network. We work to defend and promote free expression, and to remove barriers to literature. From defending the rights of persecuted writers to promoting literature in translation and running writing workshops in schools and prisons, English PEN seeks to advocate literature as a means of intercultural understanding, encouraging the friendly co-operation of writers and free exchange of ideas. English PEN is supported by our active membership of literary professionals, as well as by the generosity of individual donors, corporate sponsors and grants from trusts and foundations.

For more information, please visit the English PEN website [www.englishpen.org](http://www.englishpen.org) or follow us on Twitter @englishpen

English PEN is a registered charity in England and Wales, registration number 1125610.

English PEN  
Free Word Centre  
60 Farringdon Road  
London  
EC1R 3GA  
Tel: +44 (0)20 7324 2535

PEN International promotes literature and freedom of expression and is governed by the PEN Charter and the principles it embodies: unhampered transmission of thought within each nation and between all nations. Founded in London in 1921, PEN International – PEN's Secretariat – connects an international community of writers. It is a forum where writers meet freely to discuss their work; it is also a voice speaking out for writers silenced in their own countries. Through Centres in over 100 countries, PEN operates on five continents. PEN International is a non-political organisation which holds Special Consultative Status at the UN and Associate Status at UNESCO.

PEN International is a registered charity in England and Wales, registration number 1117088.

For more information, please visit the PEN International website [www.pen-international.org](http://www.pen-international.org)

Brownlow House  
50-51 High Holborn  
London, WC1V 6ER  
Tel: +44 (0)20 7405 0338

**Alev Yaman**, writer and researcher of the report, is a human rights advocate who has worked for London-based organisations specialising in freedom of expression, migration studies and the rule of law. She is currently working as a researcher on Turkey for English PEN and as a consultant for PEN International.

With thanks to the Fritt Ord Foundation, Anthony Julius and Leyla Linton at Mishcon de Reya, Norwegian PEN and the Sigrid Rausing Trust for their support.



<b>INTRODUCTION</b>	<b>2</b>
<b>BACKGROUND</b>	<b>3</b>
<b>HUMAN RIGHTS VIOLATIONS</b>	<b>4</b>
<b>JOURNALISM UNDER ATTACK</b>	<b>11</b>
<b>JOURNALISM UNDER ATTACK CASE STUDY: CAN DÜNDAR</b>	<b>18</b>
<b>SOCIAL MEDIA AND THE PROTESTS</b>	<b>20</b>
<b>SOCIAL MEDIA CASE STUDY: İHSAN ELİAÇIK</b>	<b>25</b>
<b>CONCLUSION AND RECOMMENDATIONS</b>	<b>28</b>
<b>ENDNOTES</b>	<b>30</b>



# INTRODUCTION

When a small group of environmental campaigners began a sit-in in Gezi Park, Istanbul, last May, few could have predicted that their protest against the construction of a shopping mall would escalate into an unprecedented demonstration against the state. The authoritarian manner in which the ruling party enforced its plans for the park – from the lack of public consultation to the draconian tactics of the police – triggered a nationwide response. By the end of July, according to official government estimates, 3,545,000 people across 80 of Turkey's 81 provinces<sup>1</sup> had taken to the streets in solidarity with the Gezi Park protesters.

The protests encapsulated the tension between the conservative mainstream and a wide variety of disenfranchised groups in Turkey in the battle over public space, the struggle of minority groups to express their identities and the resistance to the growing authoritarianism of the democratically elected Justice and Development Party (AKP) government. The excessive use of police force, as well as widespread media censorship and reprisals against journalists and users of social media, starkly illustrated the shortcomings of Turkish democracy in its lack of pluralism and disregard for fundamental rights and freedoms.

In this report, PEN assesses the violations of the right to freedom of expression and to freedom of assembly. PEN has a long history of supporting writers at risk and campaigning for the protection of freedom of speech in Turkey. The intense and exceptional nature of the protests, the response of the authorities and the media, and the lack of an overarching official inquiry into police violence offer a unique opportunity to examine the threats to freedom of expression and the need for reform.

PEN has gathered first-hand evidence for the report, interviewing journalists and editors in broadcast, print and online media; researchers at think tanks and civil society organisations who specialise in human rights work; trade unionists; members of parliament; lawyers; protesters; artists; and representatives of international social media companies.

The report examines primary and secondary Turkish legislation concerning freedom of assembly, the right to peaceful protest, freedom of expression and freedom of the press alongside international standards set out by inter-governmental organisations and treaties to which Turkey is a party. Our research identifies not only the necessity for addressing the violations of human rights that took place during the protests, but for both legislative and media reform.

At its best, the Gezi Park protests involved the peaceful coming together of myriad opposition groups in a creative public forum. A culture of protest and dissent has been established amongst a previously politically disenfranchised younger generation. The emergence of social media and its enormous impact as a vehicle of news and commentary has also done much to challenge the traditional print and broadcast media's self-censorship, but is now threatened by a controversial internet law. PEN calls on all political actors in Turkey to work towards a revised framework that respects the rights of protesters and journalists during peaceful demonstrations, including more robust protection for freedom of expression both in the law and in the regulation of the media.



# BACKGROUND

Bulldozers began work on the Gezi Park site at approximately 23:30 on 27 May 2013. A call to action was issued on Twitter at 23:47. A group of 20 environmentalists responded, travelling immediately to Gezi Park, halting the demolition work and taking the decision to initiate a sit-in until the bulldozers left the park.

During the daytime on 28 May, when the protests were still limited to environmentalists occupying the park peacefully, police attempted to clear the site for the first time using excessive force, tear gas and pepper spray. The image of a woman in a red dress being showered with tear gas during this attempted dispersal was shared across social media, galvanising the protests as more people came to the park the following day in defiance of the police's heavy-handed tactics.

Seeking to break the resolve of the protesters occupying the park, the police launched a raid in the early hours of 30 May, using pepper spray and water cannon to disperse them while municipal authorities set fire to their tents. Once again, images of police violence spread on social media, leading to yet more protesters pouring into the park and the surrounding areas in Istanbul. This defiance was met with police aggression in the early hours of 31 May.

By 1 June, the police were unable to handle the enormous number of protesters flooding into neighbouring Taksim Square and withdrew at 17:00. At this point, the protests had exploded into a nationwide phenomenon, as millions of people across Turkey took to the streets. The square remained peacefully occupied for ten days, although police continued to clash with protesters in other parts of Istanbul and across the country during this period.

During the first 20 days of the protests, the Turkish police indiscriminately deployed tear gas, depleting 130,000 of their annual stock of 150,000 canisters. One hundred thousand further canisters, as well as 60 armoured police vehicles, were hastily ordered<sup>2</sup> as the authorities sought to maintain their arsenal in what had already become, by mid-June, an escalating war of attrition against the protesters at the order of a prime minister who claimed to be 'at the end of his tether'.<sup>3</sup>

The tough government response was not limited to the suppression of freedom of assembly on the streets. Large scale investigations into the use of Twitter during the protests led to the arrest of scores of users in the cities of Izmir<sup>4</sup>, Antakya<sup>5</sup> and Mersin<sup>6</sup>; while defamation cases were brought against outspoken voices on social media.<sup>7</sup> Investigations into playwrights, actors<sup>8</sup> and caricaturists<sup>9</sup> had a chilling effect in the aftermath of the protests, while those television stations audacious enough to show live footage of events faced heavy fines for contravening broadcast regulations.<sup>10</sup> According to the Journalists Union of Turkey, 845 journalists lost their jobs during the protests.<sup>11</sup>

Although Taksim Square was cleared of protesters in mid-June, periodic demonstrations flared up all over the country during the rest of the summer. The eight dead and 8,163<sup>12</sup> injured over the course of the protests reflect the fierce intensity of clashes between police and protesters as the demonstrations spread across Turkey: 5,300 individuals were arrested and 160 were kept in long-term detention,<sup>13</sup> with many arbitrarily detained without charge for hours on end. By 30 September, 153 journalists had been attacked and 39 taken into police custody.<sup>14</sup>



THE GEZI PARK PROTESTS THE IMPACT ON FREEDOM OF EXPRESSION IN TURKEY

# HUMAN RIGHTS VIOLATIONS



The Gezi Park protests represented a major test for Turkey's democratic maturity and its commitment to upholding fundamental human rights. As popular discontent engulfed the country in late May and early June, the state and its security forces were faced with a duty to protect the safety of those taking part, as well as those observing or reporting on the protests, and to ensure that their rights to life, to peaceful assembly, to freedom of association and freedom of expression were properly safeguarded.

The tactics employed by the police across Turkey, particularly the indiscriminate and excessive use of force and tear gas, were a repudiation of these responsibilities. Protesters<sup>15</sup> and journalists<sup>16</sup> in the field were subjected to brutal and, in certain instances, lethal force by the authorities, with thousands arbitrarily arrested and detained without charge for hours on end. More than 90 social media users were arrested for their tweets as part of ongoing investigations in Izmir, Antakya and Mersin,<sup>17</sup> while writers and actors were questioned over the content of their artistic work.<sup>18</sup> Caricaturists and artists have faced investigations for defamation,<sup>19</sup> as have social media users critical of the government's stance during this period.<sup>20</sup> Organisers of peaceful protests<sup>21</sup> and lawyers<sup>22</sup> have been accused of forming or taking part in 'illegal organisations', while participants in the protests have faced charges based on flimsy evidence.<sup>23</sup>

The government and the pro-government media's reaction to the protests attempted both to delegitimise those taking part and to justify the harsh response. Protesters were at various times referred to as 'provocateurs', 'vandals', 'looters', 'terrorists' and 'agents of the interest rate lobby'.<sup>24</sup> Rarely was reference made to the peaceful nature of the overwhelming majority of protesters or their right to make themselves heard. The protests were variously dismissed as illegal or lacking in prior notification.<sup>25</sup> All of this was done with scant regard for international human rights standards, leaving a legacy of violence and repression in subsequent protests in Turkey.<sup>26</sup>

## Freedom of assembly

The right to freedom of peaceful assembly is widely recognised as a fundamental human right within international law. It plays a crucial role in the fostering of a vibrant, democratic society, and is paramount to the enjoyment of a number of other key human rights.

The right is enshrined in Article 34 of the Constitution of the Republic of Turkey and Article 20 of the Universal Declaration of Human Rights, as well as a number of international treaties to which Turkey is a state party, including Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (often referred to as the European Convention on Human Rights or ECHR).

International law dictates that it is only possible to restrict the right to peaceful assembly under certain conditions and for specific reasons. Article 21 of the ICCPR sets these limitations out as follows:

No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Detailed guidance is provided in the Organization for Security and Cooperation in Europe Guidelines on Freedom of Peaceful Assembly (OSCE Guidelines); the reports of the UN Special Rapporteur on the rights of peaceful assembly and of association; the UN Code of Conduct for Law Enforcement Officials and the judgments of the European Court of Human Rights.

## VIOLATIONS DURING THE GEZI PARK PROTESTS

### Dispersal of peaceful protests

The draconian tactics employed by security forces across Turkey during the Gezi Park protests, especially the arbitrary dispersal of peaceful protests through indiscriminate and excessive use of tear gas and force, were an unlawful restriction on, and a glaring violation of, the right to freedom of assembly and peaceful protest. Notable examples of this include:

- On 28 May, a group of environmentalists began a peaceful sit-in at Gezi Park in protest at a regeneration scheme that involved the destruction of the park. Police used excessive force, including tear gas, in an attempt to disperse the group of entirely peaceful protesters.
- During the early hours of 30 May, police forces raided the environmentalists occupying Gezi Park, using water cannon and significant quantities of tear gas in an attempt to disperse a protest that had, by all accounts, been peacefully conducted. During the police intervention, local municipal authorities set fire to some of the tents belonging to the environmentalists, before seizing the rest. Social media footage of the Gezi Park violence went viral and a significant increase in the number of protesters in Gezi Park was seen the following day.
- Police moved into Gezi Park again in the early hours of 31 May, using water cannon and tear gas to disperse entirely peaceful protesters once more. Police violence spread to the areas surrounding Taksim Square, continuing into the early morning.
- From 1-10 June police withdrew from the square, although violent police interventions against peaceful protesters persisted in other areas of Istanbul and across Turkey in cities including Ankara, Izmir, Antakya, Eskişehir, Edirne, Bursa, Kocaeli, Samsun, Trabzon and Adana.
- On the morning of 11 June, police forces re-entered Taksim, which had been peacefully occupied by protesters for ten days, resuming their use of excessive force, water cannon and tear gas to disperse protesters. In the afternoon, Istanbul governor Hüseyin Avni Mutlu justified the government intervention based on the presence of 'banners belonging to terrorist organisations' in the square, but pledged that no incursion would be made into Gezi Park. Hours later the police deployed tear gas, water cannon and plastic bullets against those in the park. After days of police violence Gezi Park was completely retaken by security forces on 15 June.

Justifications for the response of security forces during the Gezi Park protests included the protection of public order<sup>27</sup> and the protection of the rights of others (particularly local small business owners),<sup>28</sup> with government officials pointing to small outbreaks of violence or vandalism. Further justifications for the dispersal of the protests cited the 'unauthorised' nature of the assembly<sup>29</sup> and the presence of 'marginal' or proscribed groups.<sup>30</sup> These factors were cited when justifying the dispersal of these so-called 'illegal demonstrations'.

These justifications cannot be made under international law without due regard for the principle of proportionality and the need to discriminate between and separate violent individuals or groups from peaceful protesters. The OSCE Guidelines state: 'Any restrictions imposed on freedom of assembly must be proportionate. The least intrusive means of achieving the legitimate objective being pursued by the authorities should always be given preference. The dispersal of assemblies may only be a measure of last resort.' The copious use of tear gas and excessive force from the earliest, most peaceful stages of the protests demonstrates the lack of regard given to this guidance.

The European Court of Human Rights (ECtHR) judgments in *Ezelin v France* (1991) and *Ziliberberg v Moldova* (2004), which are also quoted in the OSCE Guidelines, state: 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour'. This is echoed by the Special Rapporteur, who states that the right to peaceful assembly carries a positive obligation for the state 'to facilitate the exercise of this right',<sup>31</sup> and crucially that 'acts of spontaneous violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly'.<sup>32</sup> Again, the police response to peaceful protesters evinced no regard for such principles. In particular, indiscriminate attacks on protesters and journalists in Gezi Park were symptomatic of the widespread absence of any attempt to differentiate between violent and peaceful protesters and even journalistic professionals, who should be 'impartial to the circumstances under which an event takes place, be it planned or spontaneous'.<sup>33</sup>



The OSCE Guidelines also emphasise that spontaneous protests are legal even where notification has not been provided by the organisers in advance: 'The ability to respond peacefully and immediately (spontaneously) to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous events should be regarded as an expected (rather than exceptional) feature of a healthy democracy. As such, the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.' This is a reiteration of the view found in the ECtHR case of *Oya Ataman v Turkey* (2006), where it was held that the right to peaceful assembly stood regardless of the absence of prior notification.

Many of these issues can be directly attributed to the poorly drafted Law on Meetings and Demonstrations (Law No. 2911). Article 34 of the Constitution of the Republic of Turkey complies with international standards by establishing that 'everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission', and that the 'right to hold meetings and demonstration marches shall be restricted only by law on the grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others'. Law No. 2911 undermines this right by imposing burdensome administrative requirements (in contravention of the OSCE Guidelines, which stipulate that 'the notification process should not be onerous or bureaucratic').<sup>34</sup> This includes overly broad restrictions on permissible times and locations for demonstrations under Articles 6, 7 and 22 (also in contravention of the OSCE Guidelines, which state that 'the blanket application of legal restrictions – for example, banning all demonstrations during certain times or in any public place that is suitable for holding assemblies – tend to be overly inclusive and will thus fail the proportionality test' and by establishing a broad remit of criteria that automatically renders an entire demonstration unlawful under Article 23). This too is in contravention of international law, with failure of the organisers to notify authorities of the demonstration; failure of the organisers to ensure that the stated topic of the demonstration is kept to; the presence of symbols and emblems belonging to proscribed organisations or even clothes/uniforms that can be considered to belong to them – something which has included Kurdish regional dress in the past – as well as the concealment of the face by a section of protesters (including via gas masks) all falling under the remit of automatic unlawfulness. Once demonstrations have been deemed unlawful, a warning to disperse is read out before force is employed in accordance with Article 24. 'Resisting dispersal' is a criminal offence punishable by up to three years' imprisonment under Article 32 of the law.

Additionally, a revised article concerning the right to freedom of expression has been introduced into the proposed new constitution which is currently under discussion and has been agreed upon by the all-party Constitution Commission. The proposed article would amend Article 34 (3) of the current constitution so that it will read, 'Administrative bodies will determine the time, course and location in which meetings and demonstration marches will be held in accordance with the law and with due regard for the democratic function and impact of the right.'

Care must be taken to ensure that the proposed administrative body or bodies genuinely safeguard the democratic nature of the right in line with standards set out in international law and that there is a right to challenge decisions of the body in court. It is a concern that the amendment points to deeply flawed legislation in Turkey as guidance for such an administrative body, including Law No. 2911 on Meetings and Demonstrations. This highlights the need to reform or replace this legislation before a new constitution is enacted, in order to ensure that freedom of assembly is fully protected in Turkey in the future.

### **Arbitrary arrest and detention of peaceful protesters**

According to government statistics, 5,300 individuals were detained by police over the course of the Gezi Park protests, with only a fraction of these detentions reportedly resulting in criminal charges.<sup>35</sup> The disparity between the number of individuals taken into police custody and the number of individuals actually charged is indicative of the arbitrary nature of the vast majority of these arrests. There were large numbers of individuals held for hours on end. They suffered physical, verbal and sexual abuse at the hands of police officers<sup>36</sup> before being released without charge – a violation of their right not to be subjected to inhuman or degrading treatment or punishment under Article 5 of the Universal Declaration of Human Rights, Article 7 of the ICCPR and Article 3 of the ECHR. This systematic targeting of peaceful protesters, journalists and bystanders by the police served to intimidate and legitimise abuse, representing an unlawful restriction on the rights to freedom of assembly and peaceful protest. Notable examples of this include:

- Thirty-nine journalists were taken into police custody over the course of the protests<sup>37</sup> directly as a consequence of their presence as field reporters. The chapter 'Attacks on Journalists' documents police conduct during a number of these arrests.

- On 11 June, 45 lawyers were arrested for protesting the detention of another group of lawyers who had attempted to make a press statement in front of the Çağlayan Courts of Justice.<sup>38</sup>
- On 17 June, 16 individuals engaging in separate, silent, motionless and solitary protests in Taksim Square – dubbed the ‘standing man’ protests – were arrested and released without charge after eight hours in police custody.

Regarding arrests during mass demonstrations, the OSCE Guidelines state: ‘Individuals should not be stopped and searched unless the police have a reasonable suspicion that they have committed, are committing, or are about to commit, an offence, and arrests must not be made simply for the purpose of removing a person from an assembly or preventing their attendance. Indeed, arrests made during an assembly should be limited to persons engaging in conduct that is creating a clear and present danger of imminent violence.’

### Violation of protesters’ right to life

The right to life is a basic tenet of international law, which provides that the state should not deprive individuals of their lives except in very limited circumstances. It is enshrined in Article 17 of the Constitution of the Republic of Turkey and Article 3 of the Universal Declaration of Human Rights, as well as a number of international treaties to which Turkey is a state party, including Article 6 of the ICCPR and Article 2 of the ECHR.

Eight lives were lost over the course of the protests. Three were protesters who are believed to have died directly as a result of interventions by the authorities:

- **Ethem Sarısülük** was shot in the head at close range during a demonstration in Ankara on 1 June. He died on 15 June. The autopsy report indicated injuries sustained from a 9mm bullet as the cause of death. A police officer is being tried for his murder.<sup>39</sup>
- **Ali İsmail Korkmaz** was beaten with baseball bats and truncheons while fleeing police at a demonstration in the city of Eskişehir on 2 June. The attack, which was recorded by security cameras, left him in a coma for 38 days before he died of a brain haemorrhage on 10 July. Eight individuals are being tried for his murder, four of whom are police officers.<sup>40</sup>
- **Abdullah Cömert** died on 3 June after a tear gas canister exploded upon impact with his head during a demonstration in the city of Hatay.<sup>41</sup> No one has been charged in connection with his death despite an official investigation.

The commentary to Article 3 of the UN Code of Conduct for Law Enforcement Officials states, ‘The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms... In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.’ The same commentary states that the use of physical force must be ‘proportionate to the legitimate objective to be achieved’.

### Freedom of expression

Freedom of expression is regarded as a fundamental human right in international law, and is closely related to the enjoyment of a number of other key human rights, particularly freedom of thought and opinion, and the freedom to impart information and ideas through the media (freedom of the press). It plays an indispensable role in the development of a healthy intellectual and political discourse within a democratic society, especially through the media and the arts. It has particular relevance in the context of mass demonstrations, which are often a vehicle for dissenting, marginalised and critical opinion.

The right to freedom of expression is enshrined in Article 26 of the Constitution of the Republic of Turkey, and Article 19 of the Universal Declaration of Human Rights as well as in a number of international treaties to which Turkey is a state party, including Article 19 of the ICCPR and Article 10 of the ECHR.

According to international law, it is only possible to restrict the right to freedom of expression under certain conditions and for specific reasons. Article 10 of the ECHR sets these limitations out as follows:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Detailed guidance is provided in General Comment No. 34 of the UN Human Rights Committee which oversees the implementation of the ICCPR; the reports of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Organization for Security and Cooperation in Europe’s Safety of Journalists Guidebook (the OSCE Guidebook); the Organisation for



Security and Cooperation in Europe's Special Report on the handling of the media during political demonstrations (the OSCE Special Report); and the judgments of the European Court of Human Rights.

### Violations during the Gezi Park protests

The Gezi Park protests sparked an intense period of pressure for media workers in Turkey as the government, the security forces, media regulators and mainstream media bosses closed ranks against those expressing support for, or even merely attempting to report on, the millions of people taking to the country's streets. This resulted in violations of journalists' right to freedom of expression as protected by international law. See the following chapter 'Attacks on Journalists' for further detail.

### Defamation suits against critics of the prime minister

Prime Minister Recep Tayyip Erdoğan has brought defamation suits against a number of high-profile public figures. Notable examples include:

- Writer, theologian and publisher **İhsan Eliaçık** (see page 25 for a case study of the lawsuit against him) strongly criticised Erdoğan for failing to deliver on his promise to produce a video proving that alcohol was consumed in a mosque in which protesters sought refuge during the early days of the protests (a controversial story at the time). On 30 January, Erdoğan was awarded damages totalling 900USD (2,000TL) in the civil suit against Eliaçık.<sup>42</sup>
- Opposition MP **Hüseyin Aygün** responded forcefully to the prime minister's claim that many of the protesters were terrorists.
- Caricaturist **Mehmet Gölebatmaz**, whose work was one of scores of pieces confiscated from a caricature competition in Didim. Gölebatmaz's caricature depicts Erdoğan aboard a ship bearing graffiti taken directly from the Gezi Park protests. A variety of highly satirised figures are on board, representing aspects of Turkish politics and society.<sup>43</sup>

While Eliaçık engaged in harsh and perhaps even personally offensive condemnation of Erdoğan, his comments were very clearly made within the context of political criticism. As value judgments in relation to the prime minister's policy decisions, they fall within the scope of political debate, a necessary component of democratic society. Eliaçık's criticisms were representative of the moral, ideological and religious principles that his group, the Anti-Capitalist Muslims, hold.

Freedom of expression includes the right to offend, particularly within the context of thoughts and opinions relating to the politics of high-ranking government officials. The onus is on the Turkish courts to ensure that the prime minister's personality rights are not unduly placed above those of others, nor above the general interest in a democratic society of promoting freedom of expression where issues of public interest and political criticism are concerned.

This approach was underlined in a European Court of Human Rights case, *Tuşalp v Turkey* (2012), a defamation suit brought by Erdoğan against journalist Erbil Tuşalp. The European Court highlighted the relevance of the fact that Tuşalp's scathing criticism of the prime minister involved 'important matters in a democratic society of which the public had a legitimate interest in being informed and which fell within the scope of political debate.' Regarding the 'offensiveness' of the words used by Tuşalp, the court held that 'the protection of Article 10 [freedom of expression] was applicable not only to information or ideas that were favourably received but also to those which offended, shocked or disturbed.' A crucial matter for consideration was the prime minister's public position: 'The limits of acceptable criticism were wider for a politician than a private individual. [The prime minister] would therefore have been obliged to display a greater degree of tolerance.'

The same principle is echoed in General Comment No. 34 of the UN Human Rights Committee: 'In circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the Covenant upon uninhibited expression is particularly high. Thus, the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, albeit public figures may also benefit from the provisions of the Covenant. Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly... laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.'

The final point is of particular relevance to Turkish legislation, as Article 125 of the Turkish Penal Code provides that defaming a public official for the commission of their duty carries a higher minimum sentence or fine than for defamation of ordinary citizens. This provision can scarcely be justified, as it places the personality rights of those in positions of authority above those of the general public, effectively facilitating, in the words of the Special Rapporteur, 'political...powers to retaliate

against criticisms or allegations of mismanagement or corruption, and to exert undue pressure on the media.’

Gölebatmaz’s caricature is afforded additional protection under international law as a work of satire. In the case of *Alves da Silva v Portugal* (2009), the European Court of Human Rights found in favour of an individual who satirised the mayor of Mortágua in the form of a carnival puppet bearing an anagram of his name as well as a blue bag representing illegally obtained money. The European Court rejected the mayor’s claim, finding that ‘the message conveyed by Mr Alves da Silva was quite clearly satirical in nature, namely, a form of artistic expression and social commentary which, through its exaggeration and distortion of reality, naturally sought to provoke a reaction. It could hardly be taken literally – particularly as it had been delivered in the context of a carnival... Such forms of expression could play a very important role in the free discussion of questions of public interest, without which there was no democratic society.’ The same principles can be directly applied in the case of Mehmet Gölebatmaz, whose caricature exaggerates and distorts reality in pursuit of social commentary, and whose work was submitted in the context of a caricature competition.

These defamation cases are part of a concerning wider trend. Prior to the Gezi Park protests, PEN had taken up the case of Ahmet Altan, who was facing criminal defamation charges for a critical article written about the prime minister in the aftermath of the Roboski Massacre (when Turkish warplanes bombed a group of 34 Kurdish<sup>44</sup> civilians as they crossed the border with Iraq, after mistaking them for PKK militants). The case against Altan, as in the cases against Elicaçık, Aygün, Gölebatmaz and Tuşalp, represents the diminishing scope for criticism and dissent in Turkey.

### Criminal investigations against artists

As a public display of dissent, the Gezi Park protests captured the imagination of artists across Turkey. Some were accused of being part of a foreign conspiracy aimed at toppling the Turkish government, including the following cases:

- On 27 July it was reported that actor and director Mehmet Ali Alabora had been called in for questioning under Article 313/1 (inciting the population to armed rebellion) of the Turkish Penal Code,<sup>45</sup> a crime which carries a maximum sentence of 25 years in prison. The reports came six weeks after an article in the pro-government newspaper *Yeni Şafak*, which accused Alabora of directing and starring in a play that the paper claimed was a dress rehearsal for the Gezi Park protests. According to the paper, the play was allegedly central to a British-funded conspiracy to topple the government of Turkey.<sup>46</sup>
- On 31 August, it was reported that an exhibition featuring contributions to an international caricature competition in Didim were confiscated by local police, and that the organisers of the event were questioned under vaguely defined accusations of ‘insulting senior figures in the state.’ The subject of the caricature competition was the Gezi Park protests, and a number of the confiscated caricatures featured the prime minister.<sup>47</sup> The police operation was reportedly launched after complaints from the president of the local branch of the AKP resulted in the public prosecutor ordering the confiscation of the caricatures.<sup>48</sup> One of the caricaturists, Mehmet Gölebatmaz, was eventually charged with criminal defamation,<sup>49</sup> as described above.

While neither of these investigations has resulted in criminal charges, the very act of an official investigation by the authorities carries a chilling effect for the artists involved. Particularly concerning is the questioning of Mehmet Ali Alabora following *Yeni Şafak*’s report, which resulted in him receiving death threats and attacks on social media.<sup>50</sup> The arbitrary confiscation of artistic material from the exhibition in Didim was an act of censorship and therefore a violation of the artists’ right to freedom of expression.





# JOURNALISM UNDER ATTACK

The mainstream media was slow to cover the protests, initially attracting ridicule when CNN Türk broadcast a documentary about penguins on 1 June 2013. Even when the media began to cover events, news editors and media owners were reluctant to stray from state rhetoric or to cover human rights violations. Many of the journalists who departed from the accepted editorial line ended up losing their jobs. The vested interests of media owners and the deep-seated paranoia of the state combined to undermine journalistic independence and integrity. Journalists were also physically attacked by police while attempting to report on the protests, and some also became the targets of smear campaigns or faced fines. The intense pressures on the media during this period therefore offer a revealing portrait of the restrictions on press freedom in Turkey: from the existing self-censorship within the media establishment to the failure of the government and authorities to uphold the right to freedom of expression.

### Attacks on journalists in the field: international law

The widespread use of force against journalists in the field during the Gezi Park protests was an unlawful interference with their right to freedom of expression and their duty to inform the public of newsworthy events. The police, far from safeguarding the rights of journalists to cover events, sought to attack them with the same indiscriminate force that was employed against peaceful protesters. Journalists working in the field were habitually subjected to excessive force by law enforcement officials, even where they were visibly identifiable as accredited reporters. According to statistics gathered by Bianet, by 30 September 2013 153 journalists had been attacked by security forces during the protests.

The OSCE Guidebook calls on OSCE participating states (including Turkey), ‘to treat violence against journalists as a direct attack on freedom of expression, and... [to] give their full political support to the strengthening of media freedom by promoting safe and unimpeded conditions for journalists to perform their professional duties.’

The OSCE Special Report adds, ‘Law enforcement officials have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations. Journalists have a right to expect fair and restrained treatment by police. Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstrations were sanctioned or not.’

The fact that a demonstration may or may not be illegal is explicitly deemed to be irrelevant with regard to the treatment of journalists by the OSCE Special Report: ‘Law-enforcers are responsible for... protecting the rights of journalists to cover the event regardless of its legal status... The very fact that a mass demonstration takes place – whether it be sanctioned or unsanctioned – is certainly newsworthy, is of public interest and therefore, journalists should be protected by the same rights as if they were covering any other public event.’

A number of journalists who spoke to PEN claimed that the security forces targeted media professionals throughout the protests. IMC TV reporter and editor **Gökhan Biçici** told PEN: ‘When I was first arrested I thought that it might have happened because I was an employee of IMC TV. However, upon seeing a whole host of journalists from *Milliyet* to *Star*, from Al-Jazeera to *Zaman*, injured, arrested and attacked in various ways, I realised that this wasn’t a system of repression aimed solely against media organs coded as “dissidents”, but a system of repression aimed at journalists as a whole.’

### Destruction of equipment and material

There were also a number of incidents where journalists’ material was destroyed or equipment damaged. According to the Journalists Union of Turkey (TGS), IMC TV reporter and editor **Gökhan Biçici** [see page 14], *Akşam* photographer **Cem Türkel**, *BirGün* reporter **Serbay Mansuroğlu** and freelance photographer **Salih Mülâyim** were forced to delete photographs that they had taken of police violence, while Halk TV cameraman **Serdar Kuru**’s camera<sup>51</sup> and *Evrensel* columnist and photographer **Özcan Yaman**’s camera lens were damaged beyond repair as a result of interventions by the police.

The OSCE Special Report is very clear on the illegality of these incidents: ‘Wilful attempts to confiscate, damage or break journalists’ equipment is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards.’

Police officers’ handling of journalists’ equipment and materials demonstrates a disregard for both freedom of expression and for fundamental property rights. All such instances of unlawful confiscation and criminal damage by law enforcement should prompt serious investigation.



# JOURNALISTS IN THE FIELD: EYEWITNESSES

Journalists faced arbitrary arrest and detention, confiscation of property or material and physical assault. The authorities also failed to respond to complaints from trade unions and human rights groups. **Tuğçe Tatari**, former reporter and columnist on the newspaper *Akşam*, who was herself attacked herself by the police and whose complaint is still pending with the public prosecutor, gives an insight into the situation on the ground:

There was no differentiation between protesters and journalists in the field. The journalists were subjected to a great deal of violence just like the protesters. At no point did they recognise that we had a right to report or a right of movement. You were liable to be injured if you approached the police or the place they were situated. A whole bunch of our colleagues were injured while taking photos. Especially in the early days, there was a mass of peaceful protesters here, and the sudden attacks that were directed against them were also directed against the press.

Even after the press took to displaying press stickers on their helmets they continued to be hit by gas canisters. They might have even been subjected to more violence than the protesters, because they did not want any news being reported from here.

A similar portrait of police aggression towards journalists is painted by **Gökhan Durmuş**, *Evensel* reporter and chairman of the Journalists Union of Turkey, Istanbul branch, who describes an exchange that he had with the police on one of Taksim's backstreets:

We were walking down Siraselviler and came across two young people sitting on the pavement; of course there is a constant stream of gas being fired at this point in time. One of the police officers slapped one of the kids sitting on the pavement and told him to 'move off', told him that he had no business sitting on the pavement. There were two or three of us journalists there, and as a reflex we immediately started recording. The other police officer immediately approached us and asked, 'Do you want to come with us or not?' In other words, if you record what happens you're not going to be allowed to leave, you're going to be arrested. It's one in the morning, you're in an alleyway, either you can continue recording and put up with the consequences or leave. And I mean, you simply do not know what the consequences are going to be – being kept in police custody would be a good outcome here. We knew full well what had happened to many of our colleagues outside official police custody. So you're left in an impossible situation there, which is why we ended up not taking the photo.

**Gökhan Biçici** worked as a field reporter for much of the protests and is well placed to describe the working environment for journalists on the streets. The sight of Biçici being dragged through the streets of Taksim by riot police was one of the abiding images of the protests,<sup>52</sup> representing the extent of police tactics against field reporters during the summer. Biçici told PEN about the police response when he objected to the deletion of photographs he had taken before he was in custody. He has since lodged a complaint:

The physical attacks began from that moment onwards. The other police officers approached me and restrained me by my arms. I knew that the police had done this sort of thing during the Gezi Park protests. They would make it as if they had arrested someone; walk them around for hours; beat them up; before dropping them off somewhere.<sup>53</sup> They had started hitting me, so I, thinking that my life was in danger, started shouting loudly to people, 'I'm a journalist, they're torturing me, help!'

They became really violent after that and started to beat me from all sides. I was trying to protect myself while also trying to make myself vocal. At one point I fell down. I was staggering from the impact of the blows and thought that I would be able to protect myself better if I threw myself to the floor and adopted the foetal position. You can see this from some of the images. All along that street, the people looking from the windows were giving voice to an incredible reaction. At the same time, the police were delivering blow after blow on my head and against my groin. It was very clear that the aim of these blows was to leave lasting damage. The doctors who treated me afterwards said, 'You protected yourself really well, and you were a bit lucky, because if those blows had come two centimetres higher or lower you would have been in mortal peril. The kicks that were levelled at my groin had left that area black and blue. Had one of those kicks come a little bit lower they might have burst a testicle. Again, in the event that the blow that resulted in my brow being split had come two/three centimetres lower, I could have lost an eye. I mean, those two centimetres could well have saved my life.'

The police took me towards the Beşler Sucuk store. They cuffed me diagonally with plastic cable ties. Except, it doesn't do it justice to call this cuffing, because they tightened those ties so hard that I felt the blood flow cut off from my wrists. They kept me waiting there for a while. Then they took me to the police custody bus behind the Ramada Hotel. On the way there, the police officers passing by me would trip me up. One of them threatened to kill me. Passers-by were continuing to react. The policeman who took me there punched my head as soon as he had got me on the bus and said, 'Let's see you talk here' before swearing at me. They made me sit down. Afterwards a policeman got on the vehicle, took out his baton and asked, 'Have you caressed these enough?' I was in the middle of the bus. I lifted my head and said, 'I am a journalist, you can't hit me. Don't touch the people here either.' The policeman was a bit surprised after that outburst; he passed by me without hitting anyone much but struck two young people at the back very hard. Then he got off. Speaking at the police station afterwards, the other 11 people on the bus explained that they had been beaten up whenever taken on board vehicles like this, but that that had stopped on this occasion after my outburst.

We know that throughout the Gezi Park protests, there were many individuals who were held for hours after being arrested, subjected to violence during custody, before being released without any official processing. You see, during the protests, the police actively carried torture out of the police station and onto the streets. They did this in response to the heavy monitoring that police and security centres are subjected to as a result of allegations of torture and ill-treatment.

### Threats against journalists

During the protests, a number of journalists became targets for smear campaigns by government figures or supporters. BBC journalist **Selin Girit** was dubbed 'an English spy' in a Twitter campaign started by Ankara Mayor and AKP politician Melih Gökçek,<sup>54</sup> a move that led to an avalanche of threatening messages against Girit and understandable claims from the BBC that the Turkish authorities were trying to intimidate its reporters.<sup>55</sup>

*Radikal* investigative journalist and writer **İsmail Saymaz** was threatened by the governor of Eskişehir, Güngör Azim Tuna. The governor sent Saymaz an email on 2 October following a report in which he detailed the governor's office's efforts to move the trial against the alleged assailants in the murder of protester **Ali İsmail Korkmaz** to another city. Having expressed his displeasure at Saymaz's choice of quotes from the governor's office, Tuna went on to tell Saymaz, 'Life imprisonment wouldn't suffice for you. If you continue covering this issue by making comments like this then you are a dishonourable low-life. Don't forget, there's six feet under as well; eventually we'll see each other there.'<sup>56</sup> The governor admitted that he had sent the email, but denied that his comments were threatening in nature.<sup>57</sup>

### Broadcasters fined for coverage of protests

On 3 June, the mainstream media's self-imposed blackout was finally broken following public outrage on social media and extensive coverage in the international and anti-government press. In spite of this, there was little live coverage of events. Channels that televised footage live from Taksim Square were particularly vulnerable to fines from Turkey's broadcast regulator RTÜK (the Radio and Television Supreme Council, it is composed of nine members directly elected by the Grand National Assembly of Turkey).

- On 12 June, RTÜK imposed fines of approximately 6,800USD (15,000TL) each against Halk TV, Cem TV, Ulusal Kanal and EM TV for their televised coverage of the Gezi Park protests, on grounds that it comprised 'content that encouraged or trivialised violence, violated broadcasting principles of impartiality and failed to fulfil obligations not to report unverified news.'<sup>58</sup>
- According to reports, RTÜK fined Samanyolu TV approximately 34,000USD (75,000TL) because their live television coverage of crowds in Taksim Square on 15 June 'contained uncensored images of citizens smoking cigarettes.'<sup>59</sup>

Both of RTÜK's justifications for the fines are recognised as possible restrictions of the right to freedom of

expression under international law.<sup>60</sup> However, for these restrictions to be lawful, they must pass as proportionate i.e. the restriction must be no more than is necessary and appropriate in a democratic society, and should certainly not be excessive given the circumstances. Considering the obvious newsworthiness and relevance of events occurring in Gezi Park – and the inherent difficulty of censoring live crowd footage – it is difficult to justify the fines, which are likely to have a chilling effect on live broadcasts that may serve the public interest.

### Sackings, the media blackout and media ownership

The fallout from the coverage of Gezi exposed the close ties between media institutions and the government, and the impact that this relationship has on press freedom. A dysfunctional system of media ownership has perpetuated an unhealthy relationship: the freedom of newspapers, and their journalists, frequently falls victim to the business interests of their owners who wish to maintain good relations with the administration.<sup>61</sup>

This unhealthy nexus between the government and media bosses has long been a feature of Turkish life. In the past it was the secularist, military establishment that intimidated writers and editors. When the Justice and Development Party (AKP) defeated the military's stranglehold of Turkey, it also appropriated the system of tutelage that had long dominated the media, replacing pro-military figures with its own supporters throughout the mainstream media.

The upshot has been near total domination of the media scene. Indeed, it has increasingly been media bosses who have independently endorsed a regime of editorial self-censorship, rather than the government which has directly intervened. Former *Yeni Şafak* columnist and writer **Murat Menteş** spoke to PEN about the problematic nature of media ownership in Turkey:

With regards to the pressure; I don't deny that the government has succeeded in dominating the media. It's true of course; the government has the final word with over 90 per cent of the media. But we cannot fully understand the situation through such statements alone. We have certain problems stemming from the Turkish media tradition. The media should be founded on two values: independence and stability. Because the Turkish media finds neither indispensable to its existence, today it has found itself easily drawn into the government's sphere of influence.

That is to say, since media owners and bosses in Turkey are businessmen with other business



interests who have turned to the industry to support their other activities, and since the government is a central factor dictating the conditions and profitability of these activities, these bosses easily give in to the government's demands and threats.

We should take into account this problem in the very nature of our media as much as we blame government repression. I am of the opinion that when people in the media point to the pressure they face and say the government is solely to blame for what is going on, they fail to reveal the scope of the problem.

This state of affairs has been aggravated by the conduct of the Savings Deposit Insurance Fund of Turkey (TMSF), a body officially attached to the prime minister's office,<sup>62</sup> which is responsible for the seizure, management and sale of assets belonging to companies in arrears with the Turkish treasury. TMSF has faced significant criticism for the way it manages the media assets that it seizes and for the lack of transparency behind the sales process. Furthermore, opposition critics have questioned the audit process that leads to TMSF seizures, suggesting that companies that take an anti-government stance are more vulnerable to aggressive audits than those that are supportive of the administration (the \$2.5 billion tax fine levied against the Doğan Media Group in 2009<sup>63</sup> is often cited as the clearest example of this).

The newspaper *Akşam* was seized in May 2013 as a result of considerable tax arrears incurred during the global economic downturn by its parent company, Çukurova Media Group. Little over a month after taking over the newspaper, former AKP deputy Mehmet Ocaktan, who had previously worked as an editor for pro-government newspapers *Star* and *Yeni Şafak*, was brought in by TMSF to replace the paper's long-serving editor-in-chief İsmail Küçükkaya, prompting a spate of job losses (numbering 16 by 2 August according to *Radikal*) of government critics writing for *Akşam*. In November 2013,<sup>64</sup> the paper was eventually sold to one of the prime minister's close associates,<sup>65</sup> businessman Ethem Sancak. In an interview with PEN, former *Akşam* columnist **Tuğçe Tatari**, one of the opposition writers made redundant during TMSF's control over the paper, expressed her concerns about the number of journalists who lost their jobs following the takeover, and her fears regarding the likely influence of TMSF on the editorial line. She believes that journalists who reported on Gezi or tweeted about it subsequently lost their jobs as a result:

After TMSF took over our newspaper, they sacked all of the opposition writers. They completely filled the place with people who were close to the government, who were close friends of the

prime minister, or even former AKP deputies. For example, *Akşam*'s current editor-in-chief is a former AKP deputy; he was one of those put in place by TMSF before they sold the paper.

It was not just the opposition writers that got the sack either. For example, there were celebrity gossip columnists who were made redundant because they came here [to Taksim Square] during the Gezi Park protests and wrote about it; editors too. They also sacked individuals who didn't work in the public-facing side of the newspaper or who didn't share their thoughts with the readers; just because they came to Gezi Park and discussed it in their tweets. For instance, they fired the editor of the paper's weekend supplement; not because of an article that they wrote, but because they followed the protests on Twitter and supported others [in their protests].<sup>66</sup>

**Gökhan Durmuş**, *Evrensel* reporter and chairman of the Journalists Union of Turkey, Istanbul branch, echoed the same concerns:

As soon as TMSF got control of *Akşam* and Show TV, towards the end of the Gezi Park protests, they sanctioned very heavy job losses. They parted ways with everyone who ran stories like that [i.e. criticising the government]. Of course, they called it streamlining, they got rid of them under the guise of restructuring. They did not cite Gezi with anyone. They almost never pointed to dissenting views expressed on social media either. It was always streamlining.

Opposition voices were vulnerable throughout the media. A typical example was the national newspaper *Milliyet*, which has been under the sole control of the energy and construction magnate Erdoğan Demirören since 2012. According to a speech given by the prime minister, Demirören personally asked him whom he should hire as editor-in-chief upon acquiring the paper, entering into ultimately unsuccessful negotiations with the recommended candidate,<sup>67</sup> a former press spokesman for the prime minister.<sup>68</sup> Sixteen journalists lost their jobs at *Milliyet* during the Gezi Park protests, including the columnist **Can Dündar** [see pages 18-19].

For the public, the restrictions on the press during the Gezi protests brought a system of censorship and self-censorship that has long been the norm into focus. 'The thing is, the Turkish media has worked on [state] orders for a long time,' reporter Tuğçe Tatari told PEN. 'The conflict in Rojava [Syria's Kurdish region] is a good example of this.'

[The media] cannot expect to report on that as breaking news; it has to wait to hear from certain authorities in the state about the extent of reporting that it is “allowed” to do. Only after a delay can this story be run alongside other news headlines.

‘The reaction on social media [during Gezi], the protests against NTV and *HaberTürk*, the burning of [press] vehicles; these are all manifestations of a build-up of anger. In the early days here [in Gezi Park], the protesters’ reaction was to ask: “Why are you here? It’s not like you’re going to print anything or write anything about this, so why are you here?” Ultimately you had to try to explain that it was to do with the media bosses and not us.’

**Gökhan Durmuş** explained how the protests were a turning point for the public’s perception of the press:

The Gezi Park resistance was something of an exposure of how the media reports the news in Turkey. Ordinary citizens were going home, switching on the evening news, and watching incredulously as the media failed to cover the protests. They couldn’t understand how it was possible that they could be at a mass demonstration for eight-ten hours, only for the press not to deem it newsworthy.

A demonstration was held as part of the Gezi Park protests, featuring two satellite dishes. The demonstrators asked, ‘Now do you understand why Kurds have two satellite dishes outside their homes?’ Because for Kurds, the only means by which they could get their version of the news was by watching Roj TV [a Kurdish television channel described by the Turkish government as a mouthpiece for the outlawed Kurdistan Workers’ Party, Roj TV broadcasts on a separate satellite network to Turkish broadcasters]. Suddenly, the rest of the population could appreciate what that experience was like.

The thing is, the [public’s] anger was not directed against the channels traditionally aligned with the government. Those channels had always used the language of the state, had always dubbed protesters ‘provocateurs.’

It was the channels that they had previously considered objective – NTV, CNN Türk, HaberTürk and ATV – that people reacted to. It was in front of their offices that they went and held demonstrations. We have a saying here in Turkey, ‘He who pays the piper calls the tune.’ In front of

the headquarters of NTV, demonstrators took to waving money from their own pockets, saying, ‘We can pay you to put us on air too.’ After a point, this frustration began to be manifested against journalists in the field as well.

The events have sharply underlined the necessity for reform, for the regulation of media ownership, for the independence of the media and for upholding the fundamental principle of press freedom, along with the conditions that are required for freedom of expression to flourish.

# JOURNALISM UNDER ATTACK CASE STUDY: CAN DÜNDAR

Can Dündar is a writer, columnist and documentary filmmaker who has become one of Turkey's most prominent voices in a career spanning more than three decades. He is well known for his literary work as well as for a series of biographies and documentaries regarding key figures in Turkish history, including the founder of the republic Mustafa Kemal Atatürk, the poet Nazım Hikmet and industrialist Vehbi Koç. Dündar has been described as a man of 'impeccable republican credentials'.<sup>69</sup> His 2008 documentary on Atatürk sparked nationwide debate for its depiction of Turkey's first president as a flawed and troubled leader. Dündar was sacked from his position at *Milliyet* following a series of articles critical of the government during the Gezi Park protests. In September 2013, he spoke to PEN about his experiences:

## **On Gezi Park**

From the beginning, the government tried to keep the media under siege. It had mixed success. I didn't encounter any obstruction at *Milliyet*. We had extensive coverage and ended up giving more space to the events than most other newspapers. At the time the editor-in-chief and the sub-editors would both be there giving genuine support to all of our writing, so we succeeded in providing good coverage, though we paid the price for this later on. There is this freedom in Turkey: you can write whatever you want, provided you pay the price. Sometimes the price is your job; sometimes a bullet; sometimes prison. So we enjoyed this freedom for a short while at least.

And of course there are the threats. I received so many threats. Besides losing my job as a voice of opposition, I became unemployable elsewhere; then I was attacked by elements of the press supporting the government. They ran issues saying 'these people provoked the protests', identifying them in photographs on the front page, asking why they hadn't been arrested yet, why they were still free. They basically said that if there is to be an investigation tomorrow, take these people into custody first. There might well still be such an investigation.

I'm one of the fortunate journalists. As I said, my newspaper supported me and, even though there was pressure from my boss from time to time, there were efforts to shield me from this. I'm not a normal correspondent; I'm a columnist for this paper, so I was able to write what I did. But a number of friends genuinely faced serious problems in writing or getting their words out. In the end, even I had problems because of the things I'd written, or live telephone interviews that I had taken part in.

## **On censorship**

Unfortunately it did happen with one of my pieces. It isn't something that happens often but at the time the newspaper was in a tough spot. It was up against a lot of pressure from the government and was trying to maintain its resistance against this pressure. It didn't want to take an even greater risk with my piece, and I regarded this with some understanding at the time. My piece wasn't published. The important thing is this – yes, we can say that owners are scared, anxious, meek, or keen to please the government; but we should not ignore that it is heavy governmental pressure that is causing this.



### On the Turkish media

As far as possible, the media tried to ignore what was happening. At the beginning it tried not to notice; by the time it could no longer ignore events and sought to get closer to what was happening it came up against government intervention. This basically blinded it again. But there was another interesting development – alternative channels proliferated. While the mainstream media was acquitting itself badly, with the majority of channels pulling out of the frontline, protesters employed their own communication techniques. First they used Twitter and Facebook, then they founded their own private TV stations such as Capul TV, and they kept people informed that way. Some crises are strongly associated with certain channels. This crisis will be remembered with Halk TV. Halk TV suddenly went from an unknown station with limited resources to the most watched channel, because it broadcast nothing but Gezi news.

### On pressure facing journalists

There's this photograph that the editor published with his own column, his Monday editorial. I'm there writing on my laptop while he's standing looking at my words, making sure I'm not getting him into trouble. I think it's a photograph that speaks of the state of the Turkish press. That is, he's keeping an eye out so the newspaper doesn't have difficulties, because in Turkey it's risky to write freely about these sorts of events. A friend told me something he'd seen with his own eyes. A government spokesman called the female head of a news channel and ordered her to stop its live broadcast immediately. The channel stopped its live feed. This is something that happened to a number of channels. Government pressure was strong enough to interfere directly with news channels. And this is a channel protesters eventually occupied and forced to apologise.

### On media ownership

The system was fundamentally flawed from its origins. In Turkey the close relationship between the bourgeoisie and the state, the existence of incentive systems, the nature of rules governing public tenders, all of these have brought about a structure where capital and the government are intimately connected. As soon as that structure is applied to the media, content is affected, whatever the original intentions were. Either they [the media] become totally supportive of the system, or they are only able to criticise or turn against it very rarely. This isn't a healthy model and unfortunately it is reflected in content. It gets to the stage where it determines what newspapers and news channels broadcast.

### The challenges for journalism in turkey

The most fundamental issue is the important role of big business. As long as this is the case, it will be difficult for us to act freely within the system; the government can rule us with a policy of carrot and stick. It can give great opportunities to media organs chasing the carrot. Let's just say that if a channel like NTV gives in it may suddenly gain serious advantages in other areas. Or somebody like Aydın Doğan [the founder of Doğan Media Group, one of Turkey's largest media conglomerates], when he provides a critical voice, he can face some serious penalties. You can manipulate the media with this carrot and stick policy. After a while you no longer have to intervene, you start to see managers and writers working in your name and with your interests at heart. Either your government appoints them, or existing members of staff suddenly become government supporters. This model is currently the biggest problem facing the media. It is stopping the emergence of an independent media because the media is afraid of facing pressure from big capital, and big capital is afraid of government pressure.

### Alternative media

In my opinion the long-term solution is to change the whole media structure. This is a matter for political change but I think this has to happen. I think new stricter rules will be brought in to govern the ownership of media empires, perhaps restricting who can own media organs or prohibiting work with the government and entry into other government tenders. In my view these are the things that will be debated, and they are the beginnings of a free media.

### On police brutality, protesters and the media

The police behaved without tolerance or restraint. As both a direct witness and a victim, I can say that they aimed directly at us. A plastic bullet narrowly missed my head. On 15 June, the night they attacked Gezi Park, I believe they targeted us directly. And I was there when they fired gas into some part of a hotel being used as a sick bay; they brutally targeted us. That day, and on other days like it, I, along with the whole of Turkey, saw that force was being used brutally and disproportionately.

It was this that turned the protesters against the media, and they were right in some sense. The fact that the media ignored something so important happening in Turkey caused outcry and a number of fellow journalists undeservedly came under attack as a result. Live broadcast vehicles were set on fire, microphones were snatched out of hands; some were even physically assaulted. It wasn't pleasant but protesters did react to the media presence.



# **SOCIAL MEDIA AND THE PROTESTS**

The mainstream media's self-imposed blackout during the demonstrations in Taksim Square left a vacuum for news and information in the early days of the protests. Social media users rapidly came to occupy this space as millions shared information and engaged in commentary that the mainstream media was afraid or unwilling to print. The contrast between what was being said on Facebook and Twitter and what was being reported on the pages of Turkey's mainstream newspapers was stark. As the numbers taking part in the protests grew, the outcry on social media against the authorities' heavy-handed tactics and the lack of media coverage intensified. Turkey's social media user base multiplied within the first ten days of the protests: the total number of Turkish Twitter users rose from 1.8 million to over 9.5 million during this period.<sup>70</sup>

The scathing government rhetoric directed towards protesters during the early days of the unrest was soon turned against social media companies and users, as the authorities realised the crucial role they played in the protests.

### Government backlash

On 5 June, amid increasingly harsh statements directed against the protesters in Gezi Park, Prime Minister Recep Tayyip Erdoğan stated: 'There is now a menace which is called Twitter. The best examples of lies can be found there. To me, social media is the worst menace to society.'<sup>71</sup> The pro-government media attacked social media as a vehicle for dissidents and disinformation,<sup>72</sup> and as a platform for foreign-led coup conspiracies.<sup>73</sup>

These criticisms were echoed by government figures. AKP Gaziantep MP and media spokesman Ali Şahin stated, 'Much of the content shared in the last week is deceitful, false and dirty. Social media too has been wrecked and demolished during the Gezi Park provocation... This environment has become a channel for recruitment, operations, manipulation and provocation for organisations and agents. A provocative tweet is a lot more dangerous than a vehicle rigged with a bomb exploding in a crowd.'<sup>74</sup>

Later in June, former Minister for Transport, Maritime Affairs and Communication Binali Yıldırım announced that Twitter would be required to open an office in Turkey and cooperate on 'cyber-crime' or else face 'an Ottoman slap.'<sup>75</sup> These statements were later toned down after high-profile meetings in Silicon Valley. The government also made general statements about plans to introduce a new law regulating social media,<sup>76</sup> although this appears to have been shelved.<sup>77</sup>

Similarly, there was a great deal of speculation in early July surrounding the proposed creation of social media surveillance centres as part of a beefed-up department within the security services (called SOME) focusing on 'cyber crime'.<sup>78</sup> Dubbed the 'blue room' (in reference to the colour associated with social networking and micro-blogging sites Facebook and Twitter), this department was supposedly going to involve the cooperation and expertise of Turkey's Cyber Security Board, the Ministry of Foreign Affairs, the Scientific and Technological Research Council of Turkey (TÜBİTAK), the National Intelligence Service (MİT), the Turkish Armed Forces and the Security Service's Anti-Cyber Crime Division under the coordination of the Ministry for Transport, Communications and Maritime Affairs. When SOME was finally founded, social media surveillance was conspicuously absent from its stated remit.<sup>79</sup>

In January, the government proposed a series of amendments to the internet law,<sup>80</sup> which was passed by the Grand National Assembly on 6 February as part of Law 6518.<sup>81</sup> The new legislation will provide the Minister for Transport, Communications and Maritime Affairs as well as the Directorate of Communication and Telecommunication (TİB) with extensive new powers and mandates all internet service providers (ISPs) in Turkey to join an Ankara-based 'association of ISPs' that will be responsible for blocking access to certain URLs,<sup>82</sup> including individual Facebook, Twitter or YouTube posts/pages. The new law has been widely criticised as ushering in a regime of online censorship and surveillance with inadequate judicial oversight.

Article 9 of the revised internet law concerns the censorship of URLs deemed to violate individuals' personality rights. An individual who feels that such a violation has occurred may directly apply to a magistrates' court in order to obtain a URL block. A decision must then be made within 24 hours, and if the court finds in favour of the complainant, a court order is sent to the ISPs' association, all members of which must block access to the URL within a further four hours.

This amendment bodes poorly for freedom of expression in Turkey given the Turkish courts' overbroad interpretation of personality rights in the past. Cases involving Erbil Tuşalp<sup>83</sup> and Ahmet Altan<sup>84</sup> have demonstrated the Turkish courts' lack of tolerance towards critical speech concerning senior politicians. A well-justified fear is that this new law could be used to block access to articles critical of leading government politicians under the guise of the protection of personality rights. Its potential use as a means of



censoring dissent and public interest journalism, and its introduction in the run-up to local and presidential elections, is a serious cause for concern.

Article 9/A permits the censorship of URLs deemed to violate individuals' privacy rights. On the one hand, this article empowers the head of TİB to order ISPs to block access temporarily to URLs with immediate effect upon receipt of a complaint. A magistrates' court must then decide whether to continue or lift the block within at most 72 hours of the initial complaint being made. However, Subsection 8 of Article 9/A also allows TİB to block access to URLs directly itself, without requiring any judicial confirmation, if it deems the circumstances to be urgent. URL blocks instated under Subsection 8 are permanent unless overturned by a magistrates' court on appeal.

The urgent need for a blocking order cannot justify the lifting of judicial mechanisms until the appeal stage. In its Briefing on Proposed Amendments to the Internet Law, the OSCE Representative on Freedom of the Media stated, 'Laws designed to restrict freedom of expression should not grant administrative authorities like TİB excessively broad discretionary powers to limit expression or content. If the provisions become law this will enable the issuing of politically motivated blocking orders and such a discretionary power may have a chilling effect on freedom of expression. Vaguely drafted provisions such as these are vulnerable to broad interpretation and therefore they could be applied by the authorities to situations that bear no relationship to the original purpose... In the absence of a valid legal basis the issuing of blocking orders and decisions by a public authority or the Director of such an authority other than courts of law is therefore potentially problematic from a freedom of expression perspective.'<sup>85</sup>

### Social media arrests

Five 'leaders' of the Taksim Solidarity Platform and 21 others were included in an indictment on 5 February for messages posted on social media websites Facebook and Twitter during the protests. The indictment asked for up to 29 years imprisonment for the five leaders and up to ten years imprisonment for the 21 others for creating a threat to public order through their social media posts, spreading provocative and false news, and being responsible for vandalism of an AKP vehicle in the Taksim area. Charges included founding an illegal organisation under Article 220 of the Turkish Penal Code, trying to intimidate a civil servant by means of threat or violence under Article 265 of the Turkish Penal Code and resisting dispersal under Article 34 of the Law on Meetings and Demonstrations.

The indictment was rejected by the Istanbul 33rd Court of First Instance on grounds that there was a lack of evidence linking the 26 individuals with any of the accusations mentioned by the public prosecutor.<sup>86</sup>

The indictment fails to reference any tweets containing incitement to violence or to engage in anything other than the right to peaceful assembly. The investigation into these messages is, as such, a prima facie violation of their right to freedom of expression. Furthermore, the investigation represents an overbroad interpretation of organisers' liability. The OSCE Guidelines state that 'organisers should not be held liable for the actions of participants or third parties, or for unlawful conduct that the organizer did not intend or directly participate in. Holding organizers of the event liable would be a manifestly disproportionate response since this would imply that organizers are imputed to have responsibility for acts by individuals (including agents provocateurs) that could not have been reasonably foreseen.'

On 4 June 2013, 38 Twitter users were detained and questioned in Izmir on suspicion of inciting the public to disobey the law under Articles 217 and 218 of the Turkish Penal Code. Twenty-nine of them were eventually indicted under these charges on 19 February 2014 following a seven-month investigation. Three of the 29 are also accused of criminal defamation against the prime minister. Twenty-nine of the 31 pages in the indictment are screenshots of individual tweets. The tweets call on others to attend the protests in Izmir. Many are simply informative – directing people towards sources of medical attention and away from violent clashes with the police.

The blanket restrictions on time, manner and location of protests can render such communication unlawful under the Law on Meetings and Demonstrations. Articles 217 and 218 of the Turkish Penal Code can be used to penalise anyone calling on others to exercise their right to peaceful protest once the authorities have decided to deem them unlawful. As such, this case highlights the vulnerability of the rights to freedom of expression and freedom of assembly in Turkey.

Another investigation into social media users was reportedly underway in Antakya against approximately 50 people for Facebook posts similar to the Izmir tweets,<sup>87</sup> although PEN is unaware of any charges that have been brought. A further investigation is continuing into the social media activity of an individual in Mersin who has been charged with participating in an illegal demonstration under the Law on Meetings and Demonstrations.<sup>88</sup>

## Defamation cases

A number of high-profile social media users are being prosecuted. Prime Minister Recep Tayyip Erdoğan is suing opposition deputy, lawyer and writer Hüseyin Aygün in a 100,000TL lawsuit. The complaint relates to a tweet posted by Aygün on 2 June, when he responded to an accusation by the prime minister that Gezi Park protesters were 'terrorists'. The petition filed against Aygün accuses him of attacking Erdoğan's individual rights, 'making provocative statements by tweeting', and choosing a time of civil unrest to do so.<sup>89</sup>

Writer, theologian and publisher İhsan Eliaçık is also being sued for 12 tweets posted during the Gezi Park protests, nine of which reportedly concerned Erdoğan personally.<sup>90</sup> On 30 January, Erdoğan was awarded damages totalling 900USD (2,000TL) in the civil suit against Eliaçık.<sup>91</sup> [For more information on the case against Eliaçık, see the case study on page 25]

## Individuals targeted

Fifteen Turkish Radio and Television (TRT – Turkey's state broadcaster) employees faced disciplinary action for statements made on social media during the Gezi Park protests. An official TRT statement released on 16 October read, 'Disciplinary proceedings have begun against 15 members of staff who committed offences under the guise of expressing their thoughts.'<sup>92</sup> Two TRT employees were made redundant while one was reportedly fined as a result of their social media activity.

The Media, Communication and Postal Workers Union (HABER-SEN), which represents one of the fired TRT employees, told PEN that the investigation against the member of their union centred on tweets warning of the presence of riot police seeking to confront protesters in certain parts of Taksim. The grounds for their dismissal were cited as, 'orchestrating illegal street demonstrations,' an exaggeration, according to HABER-SEN, of what was being discussed in their tweets. The union claims that the content of the tweets did not constitute grounds for lawful dismissal. HABER-SEN underlined concerns about state broadcaster TRT's impartiality, an issue also brought up in Turkey's Grand National Assembly by opposition deputy Sezgin Tanrikulu,<sup>93</sup> and invited the organisation's leadership 'to uphold the people's right to news rather than a particular political party's perspective'.

On 24 June, BBC Turkish Service reporter **Selin Girit** was targeted by Ankara Mayor Melih Gökçek, who launched a Twitter campaign against the journalist, accusing her of being an 'English agent'. Girit, who received 'a large number of threatening messages' after the inception

of the campaign,<sup>94</sup> was targeted following a tweet that quoted a controversial statement during a public debate (the statement in question advocated boycotting all consumer goods for six months in order to collapse the Turkish economy).<sup>95</sup>

Writer and columnist **Can Dündar** told PEN how he had been targeted as a result of comments he made on Twitter regarding student protests at the Middle East Technical University (ODTÜ). 'I have been the subject of headlines in the pro-government media for the past four days. The threats constantly pour in, the campaigns go on... If I showed you my Twitter now, you would see hundreds of tweets constantly coming in.'

## Artists under attack

Social media was also used to target government critics, including the writer **Meltem Arıkan** and Turkish actor **Mehmet Ali Alabora**. Arıkan's play *Mi Minör* is the story of a fictional country, Pinima, which is ruled by an authoritarian dictator (played by Alabora) who ruthlessly restricts freedom of expression as well as other fundamental human rights. Social media plays a crucial role in the story, with audience members encouraged to participate via their own smart phones as an online version of the play is acted out in real time with the onstage performance. Depending on the audience reaction, the dictator is toppled at the end of the play, overpowered by a triumphant citizenry.

On 9 June, pro-government newspaper *Yeni Şafak* ran a story titled 'What a coincidence', where it was claimed that the play was a British-backed rehearsal for a civil coup that was being attempted in Gezi Park. The conspiracy theory was repeated by government supporters, and key figures involved in the play rapidly became targets on social media. Mehmet Ali Alabora was called in for questioning over the play, on suspicion of offences under Article 313/1 of the Turkish Penal Code (inciting the population to armed revolt), which carries a maximum sentence of 25 years.<sup>96</sup>

The investigation against Alabora was eventually dropped,<sup>97</sup> but the damage against him and others involved in the play had been done. The play's creative director, **Melin Edomwonyi**, told PEN:

Although it was a spontaneous and non-organised happening, I was accused of being one of the organisers of the demonstrations not by the government but pro-government organisations, media and individuals.

Later on, I was shocked seeing the news made about me on the main news and so immediately

called the channel as the news was done falsely without my knowledge. I wrote to them correcting all the false information that they gave about me, but the only thing I received back was an email saying, '...at a time like this, such complications happen.'

### **The future of freedom of expression online**

The protesters' use of social media effectively bypassed media censorship. That freedom is now threatened by new laws that would fundamentally undermine the right to privacy and freedom of expression online. Alongside the intimidation of social media users in the aftermath of Gezi, these reforms are a chill on activity online and a message to the government's opponents that lawful criticism will not be tolerated.



# SOCIAL MEDIA CASE STUDY: İHSAN ELİAÇIK



İhsan Eliaçık is a writer, theologian and publisher and the ideological leader of a group of socialist Muslims who strongly oppose the synthesis of capitalism and Islam on moral grounds. An outspoken critic of the incumbent AKP administration and Turkey's Directorate of Religious Affairs, Eliaçık and his group were present throughout the Gezi Park protests. Eliaçık's Anti-Capitalist Muslim movement was unique amongst the myriad factions that participated in the Gezi Park protests because of its ability to marry Islamic ethics with criticism of Prime Minister Recep Tayyip Erdoğan, who often uses Islamic rhetoric to appeal to a conservative base.

Eliaçık and his group's outspoken views and prominent public presence during the protests drew a significant amount of attention within Turkey. His Twitter followers increased from approximately 70,000 before the protests to over 220,000 by November 2013 as he communicated his outspoken views regarding the government on the micro-blogging site. On 21 June, a petition against Eliaçık was filed in an Ankara court by Erdoğan's legal representatives; the court accepted a defamation suit against Eliaçık for 12 tweets, nine of which concern Erdoğan directly. On 30 January, Erdoğan was awarded damages totalling 900USD (2,000TL) in the civil suit against Eliaçık.<sup>98</sup>

Eliaçık spoke to PEN about the defamation suit against him and developments regarding social media in Turkey as well as his participation in the Gezi Park protests.

## On the court case

Erdoğan complained about 12 of my tweets and eventually issued proceedings on account of phrases found in nine of them. These aren't personal insults, attacks on a man's family or religion; these are criticisms of the prime minister's authoritarian manner, these are tough words about the use of powers that he owes to the electorate.

## On the public's response

There are many who support me, who call me to say so. Some have even promised to pay the damages if I lose. At the same time sections of the media tied to the AKP, and a group of around 6,000 people on Facebook and other social media sites, continue to attack me. They are professionals and I believe they receive financial support. Young, desperate people paid to attack certain individuals en masse on social media. For the most part I ignore them, I don't answer.

## On the government's stance

I think this is the result of the prime minister's personal psychology, his own anxieties. During his reign, the Ottoman Sultan Abdulhamid II was suspicious of everyone, even his own wife. In the internet age you can't shut people up by controlling sites. I believe they [the government] are being consumed by a desire to control. In the age of social media, the government feel they have to prioritise this medium; they want to wear down any opposition. This is part of the struggle.

### On Gezi Park

The incumbent government has conservative Islamic roots. We [the Anti-Capitalist Muslims] also have Islamic roots. We wanted to show that it is possible to form an Islamic opposition to an Islamist government. We were concerned with the way things were developing, particularly the government's liberal and capitalist tendencies. They are seeking to make capitalism holy, something we refer to as Sanctified Capitalism [a reference to pre-prayer, ritual ablutions in Islam]. They wanted to remove trees in Gezi Park to give the area to rich capitalists and turn it into a big money-spinner. Because of our social conscience and sense of community we wanted it to remain as a park, so we joined the protests against the authorities.

### On the protests

When we refer to the Gezi spirit, this includes strands of nationalist Kemalism, but sections of other opinions too, all coming together in a broader alliance. For example, there are also Kurds, Alevis, the religious poor, anti-capitalist Islamists, young revolutionary Islamists, feminists, football fans and environmental campaigners. People from all sections of the population were there. It is totally wrong to view Gezi as a Kemalist uprising, to smear it with accusations of being pro-coup, or controlled by sinister powers. This is government propaganda. The government said we were coup plotters, enemies of the state, and the agents of foreign powers. These are lies. In Gezi, atheists could discuss religion with believers in prayer halls; during Friday prayers, the socialist youth would gather in the square and protect those worshipping. We had nationalists waving Turkish flags and pictures of Atatürk near Kurds celebrating [imprisoned PKK leader] Abdullah Öcalan and dancing to their traditional music.

### Turkish National Police response

The Turkish National Police responded to the concerns raised in this report by PEN on 10 March, stating in writing that the demonstrations were started as 'routine peaceful demonstrations, but were transformed into violent demonstrations by marginal groups, which consist of persons supporting terrorist organisations, by taking aim especially at public institutions, establishments and innocent citizens, through turning the events into illegal demonstrations across the country particularly in metropolitan cities'. They informed PEN that 697 security officers were injured, one security officer became 'a martyr', three citizens lost their lives, 4,329 citizens were injured and 189 people were arrested during the disturbances that started on 28 May 2013.

The police stated that local and international media 'fabricated news' during the protests that 'our police have used disproportionate force and inflicted violence'.

In response to PEN's concerns regarding the use of force and tear gas against peaceful protesters, the arbitrary arrest and detention of peaceful demonstrators and journalists, and respect for human rights as safeguarded by international law, the police said: 'Intervention of security forces during [the] Gezi Park events aim not to prevent using fundamental rights and freedoms, but to provide and sustain peace and security in society and to prevent illegal protests and acts planned by provocative groups...

'Law enforcement officers, conducting their duties to maintain public order and security, do not intervene in any lawful meetings and demonstrations. For instance, in Turkey, there were nearly 38,000 meetings and demonstrations in 2013; 3,423 of these were unlawful and demonstrators didn't disperse despite all warnings and resorted to the use of force. Police officers used force and intervened in only 1,070 (3 per cent) of above mentioned events.'

The police concluded their response by stating that they display 'the necessary tolerance during social disturbances', intervening proportionately when there is a threat to the security of participants and public order, while ensuring that their actions are within the law.





# CONCLUSION AND RECOMMENDATIONS

**THE GEZI PARK PROTESTERS DID ACHIEVE A VICTORY: A COURT ORDER STOPPED CONSTRUCTION WORK AT THE SITE, WHICH LOOKS SET TO REMAIN A PARK FOR THE FORESEEABLE FUTURE.**

However, the authorities in Turkey have failed to address the human rights violations that took place during the protests. Despite thousands of arrests, few protesters have faced charges, indicating the arbitrary nature of the police response. Yet there has been no comprehensive review of the heavy-handed tactics of the police, nor have prosecutors satisfactorily pursued journalists' complaints. Criminal proceedings relating to police violence against protesters have been reserved primarily for the most extreme cases, such as the brutal beating to death of **Ali İsmail Korkmaz**.

The protests have highlighted urgent challenges for Turkey's democracy: the lack of independence of public bodies such as the broadcast regulator RTÜK and public broadcaster TRT from the state, the mainstream media's self-censorship, legislation that fails to comply with international standards, such as the right to hold demonstrations without prior permission, and the threat of prosecution to silence dissent, restricting both artistic and press freedom. The breadth of PEN's recommendations demonstrate that not only do the specific violations during the Gezi protests still require immediate attention, but fundamental reform is essential to ensure the protection of human rights. As Turkey deals with the aftermath of a new crisis, following the corruption investigation last year, the necessity for action remains critical.

## PEN CALLS ON THE TURKISH AUTHORITIES TO:

- Ensure that the right to freedom of expression is fully respected, including on social media, and that facts or opinion which may be offensive to public figures, but which is in the public interest, may be expressed.
- Ensure that the right to peaceful assembly is fully protected within the proposed new constitution of the Republic of Turkey. The constitution and any related secondary legislation should be fully consistent with international law.
- Ensure that peaceful protesters are not arbitrarily detained and do not face charges solely for peacefully exercising their right to freedom of assembly under the Law on Meetings on Demonstrations, the Turkish Penal Code, the Anti-Terror Law or any other legislation.
- Comprehensively revise Law No. 2911 on Meetings and Demonstrations so that it is in line with the OSCE Guidelines. Urgent reform is required particularly with regard to Articles 6, 7, 10, 22, 23 and 24.
- Decriminalise defamation as a matter of urgency and dismiss the criminal defamation cases brought against İhsan Eliaçık, Mehmet Gölebatmaz and Hüseyin Aygün.
- Carry out an independent investigation into the failure of the police to protect journalists adequately during the Gezi Park protests.
- Bring disciplinary and, where appropriate, legal action against any law enforcement officials found to have tortured or otherwise ill-treated journalists, including by using excessive force against those attempting to carry out their duty to inform the public of ongoing events during the protests, and ensure that any individual whose rights were violated have a right to reparation including an enforceable right to compensation.
- Conduct a comprehensive review of police regulations and training with regard to the treatment of journalists, their property and materials during demonstrations.
- Drop charges brought against any individual solely in connection with their lawful use of Twitter or other social media to inform others of events during the Gezi Park protests.
- Repeal the recently passed amendments to the laws governing the internet, which threaten to instate a regime of online censorship and surveillance that will undermine the fundamental rights and freedoms of Turkish citizens.
- Review Law No. 5651, Turkey's internet law, in its pre-existing form, and ensure that it is brought in line with ECHR standards.
- Desist from acts of censorship such as the confiscation of materials from exhibitions on unlawful grounds.
- Launch an inquiry into the reason why journalists were sacked during and after the protests and ensure that any who lost their jobs solely for peacefully expressing criticism of the authorities are either reinstated or have an enforceable right to compensation.
- Introduce an independent mechanism to regulate media freedom and media pluralism so that journalists are not subject to undue influence by any party or body, and to ensure that citizens in Turkey are able to access a wide range of media reflecting different views.
- Review the activities of TMSF, Savings Deposit Insurance Fund of Turkey, and introduce necessary reforms to safeguard the editorial independence of media outlets under TMSF control.
- Reform the broadcast regulator (RTÜK) to ensure that it is fully independent of government and that its appointment system, including remit, means of appointment, grounds for termination of service, funding and potential conflicts of interest, is independent, clearly defined in law, and is implemented in a transparent manner.

1. <http://arsiv1.tihv.org/index.php?gezi-park-eylemleri-bilgi-notu-02-austos-2013> [Turkish]
2. <http://gundem.milliyet.com.tr/devletin-gazi-20-gunde-bitti/gundem/detay/1724846/default.htm> [Turkish]
3. <http://tv.haberturk.com/gundem/video/sabrin-sonundayiz/91238> [Turkish]
4. *Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey*, Amnesty International, October 2013, p.50
5. Ibid.
6. <http://www.hurriyet.com.tr/gundem/24960668.asp> [Turkish]
7. <http://www.trthaber.com/haber/gundem/basbakan-erdogan-chpli-aygune-tazminat-davasi-acti-90745.html> [Turkish]; <http://www.turkiyegazetesi.com.tr/politika/129039.aspx> [Turkish]
8. <http://translatingtaksim.wordpress.com/2013/07/27/mehmet-ali-alabora-to-be-taken-to-court/>
9. <http://www.todayszaman.com/columnist/orhan-kemal-cengiz-325559-how-caricatures-became-the-tools-of-crime.html>; [http://www.radikal.com.tr/turkiye/yalanciya\\_dava\\_karikature\\_sorusturma-1155692](http://www.radikal.com.tr/turkiye/yalanciya_dava_karikature_sorusturma-1155692) [Turkish]
10. <http://www.bianet.org/english/freedom-of-expression/147517-rtuk-fines-tv-networks-on-gezi-resistance-coverage>
11. <http://roarmag.org/2014/01/crackdown-press-freedom-turkey/>
12. Ibid.1
13. Ibid.1
14. <http://www.bianet.org/bianet/medya/150728-habercinin-dort-aylik-isim-isim-gezi-seruveni>
15. <http://www.amnesty.org/en/news/turkey-accused-gross-human-rights-violations-gezi-park-protests-2013-10-02>
16. <http://www.tgc.org.tr/duyuru.asp?did=565> [Turkish]; <http://bianet.org/english/english/148002-women-journalists-condemn-targeting-of-colleagues>
17. Ibid.4; Ibid.6
18. <http://translatingtaksim.wordpress.com/2013/07/27/mehmet-ali-alabora-to-be-taken-to-court/>
19. Ibid.9
20. Ibid.7
21. <http://www.hurriyetdailynews.com/court-releases-gezi-park-protesters-and-taksim-solidarity-members-charged-by-prosecutor.aspx?PageID=238&NID=50511&NewsCatID=341>
22. <http://birgun.net/haber/45-avukata-gezi-sorusturmasi-4668.html> [Turkish]
23. [http://www.radikal.com.tr/turkiye/gezi\\_parki\\_iddianamesi\\_iade\\_edildi-1152888](http://www.radikal.com.tr/turkiye/gezi_parki_iddianamesi_iade_edildi-1152888) [Turkish]
24. [http://www.thestar.com/opinion/commentary/2013/06/13/turkish\\_democracy\\_cutting\\_erdogan\\_down\\_to\\_size\\_siddiqui.html](http://www.thestar.com/opinion/commentary/2013/06/13/turkish_democracy_cutting_erdogan_down_to_size_siddiqui.html)
25. <http://gundem.milliyet.com.tr/gezi-parki-acildi-bu-aksam-neler/gundem/detay/1733934/default.htm> [Turkish]
26. [http://www.bbc.co.uk/turkce/haberler/2013/10/131019\\_odtu\\_baskin.shtml](http://www.bbc.co.uk/turkce/haberler/2013/10/131019_odtu_baskin.shtml) [Turkish]
27. [http://www.zaman.com.tr/politika\\_erdogandan-avrupaya-gezi-parki-resti\\_2100140.html](http://www.zaman.com.tr/politika_erdogandan-avrupaya-gezi-parki-resti_2100140.html) [Turkish]
28. <http://www.haberturk.com/gundem/haber/863025-gezide-esnaf-hedef-alindi> [Turkish]
29. <http://www.cnnturk.com/2013/turkiye/07/08/gezi.parki.acildi/714522.0/> [Turkish]
30. <http://www.theguardian.com/world/middle-east-live/2013/jun/13/turkey-referendum-plan-mooted-as-erdo-an-sets-protesters-deadline-live-coverage>
31. Maina Kiai, *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association*, May 2012
32. Maina Kiai, *Report of the Special Rapporteur on the rights of freedom of peaceful assembly and of association*, May 2013
33. OSCE Representative on Freedom of the Media Milos Haraszi, *Special Report: Handling of the media during political demonstrations*, June 2007
34. Problematic articles in Law No. 2911 regarding the organisation of demonstrations include Article 7 which restricts the holding of assemblies to the period between sunrise and sunset; Article 10, which poses an onerous notification requirement of over 48 hours before a meeting or demonstration; Article 22, which prohibits protests in an overly broad array of locations, including public parks such as Gezi Park; Article 23, which renders an entire protest illegal if: organisers fail to notify authorities of the demonstration; organisers fail to ensure that the stated topic of the demonstration is kept to at all times by all of those participating in it; any symbols, emblems or uniforms – the latter including Kurdish regional dress – of a proscribed organisation are brought to a demonstration, even if by an individual; any of the protesters conceal their faces, including via gas masks; and Article 24, which requires that any protests that are deemed to have become illegal are immediately dispersed in their entirety by security forces, regardless of whether the illegal activity is limited to a small group within the demonstration or even an individual demonstrator.
35. Ibid.1
36. Ibid.4 pp.15-34
37. Ibid.14
38. <http://birgun.net/haber/45-avukata-gezi-sorusturmasi-4668.html> [Turkish]
39. <http://www.hurriyet.com.tr/gundem/25257003.asp> [Turkish]
40. <http://www.bbc.co.uk/news/world-europe-26014681>
41. [http://www.radikal.com.tr/turkiye/abdullah\\_comerti\\_gaz\\_fisegi\\_olurdurdu-1154091](http://www.radikal.com.tr/turkiye/abdullah_comerti_gaz_fisegi_olurdurdu-1154091) [Turkish]
42. <http://www.turkiyegazetesi.com.tr/politika/129039.aspx> [Turkish]
43. [http://www.dha.com.tr/gezi-karikaturleriyle-hakaret-davasi\\_556030.html](http://www.dha.com.tr/gezi-karikaturleriyle-hakaret-davasi_556030.html) [Turkish]
44. <http://www.englishpen.org/turkey-focus-2013-ahmet-altan/>
45. <http://www.takvim.com.tr/Guncel/2013/07/27/mehmet-ali-alaboraya-20-yil-hapis-talebi> [Turkish]
46. <http://yenisafak.com.tr/gundem-haber/bu-ne-tesaduf-10.06.2013-530647> [Turkish]
47. [http://www.todayszaman.com/columnist/orhan-kemal-cengiz\\_325559\\_how-caricatures-became-the-tools-of-crime.html](http://www.todayszaman.com/columnist/orhan-kemal-cengiz_325559_how-caricatures-became-the-tools-of-crime.html)
48. <http://www.cnnturk.com/2013/turkiye/09/03/gezi.karikaturleri.sergisine.sorusturma/722028.0/> [Turkish]
49. A hearing took place on 28 February
50. [http://www.bbc.co.uk/turkce/haberler/2013/06/130610\\_mi\\_minor\\_alabora.shtml](http://www.bbc.co.uk/turkce/haberler/2013/06/130610_mi_minor_alabora.shtml) [Turkish]



51. Ibid.14
52. [https://www.youtube.com/watch?v=gSHAf\\_VUM-k](https://www.youtube.com/watch?v=gSHAf_VUM-k)
53. PEN contacted the Turkish National Police for a response to the specific allegations. The Department of Security informed PEN on 23 January that it has no information or documents relating to the allegations in question. PEN has also contacted the prime minister and the governor of Istanbul for a response to the allegations of police violence and treatment of journalists and protesters. PEN has not received a reply from the prime minister or the governor of Istanbul at the time of publication.
54. <http://www.al-monitor.com/pulse/originals/2013/06/foreign-journalists-targeted-in-turkey.html#>; [http://i.milliyet.com.tr/GazeteHaberlciResim/2013/06/23/fft16\\_mf3397007.Jpeg](http://i.milliyet.com.tr/GazeteHaberlciResim/2013/06/23/fft16_mf3397007.Jpeg) [Turkish]
55. [www.bbc.co.uk/mediacentre/statements/bbc-reporters-turkey.html](http://www.bbc.co.uk/mediacentre/statements/bbc-reporters-turkey.html)
56. [http://www.radikal.com.tr/turkiye/eskisehir\\_valisinden\\_muhabirimize\\_mektup\\_oglum\\_ismail\\_yine\\_rahat\\_durmuyorsun-1153586](http://www.radikal.com.tr/turkiye/eskisehir_valisinden_muhabirimize_mektup_oglum_ismail_yine_rahat_durmuyorsun-1153586) [Turkish]
57. <http://www.hurriyet.com.tr/gundem/24838329.asp> [Turkish]
58. [http://www.rtuk.org.tr/sayfalar/lcerikGoster.aspx?icerik\\_id=6fd3bdf7-64c2-42de-96af-98d1b185621d](http://www.rtuk.org.tr/sayfalar/lcerikGoster.aspx?icerik_id=6fd3bdf7-64c2-42de-96af-98d1b185621d) [Turkish] Decision No: 96
59. [http://www.rtuk.org.tr/sayfalar/lcerikGoster.aspx?icerik\\_id=d7af35f5-eb78-46a1-9084-ab3b95286d27](http://www.rtuk.org.tr/sayfalar/lcerikGoster.aspx?icerik_id=d7af35f5-eb78-46a1-9084-ab3b95286d27) [Turkish] Decision No: 38
60. The justifications for the fines against Halk TV, Cem TV, et al. are referenced in the Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis (<https://wcd.coe.int/ViewDoc.jsp?id=1188493>). The justification for the fine against Samanyolu TV references the public health derogation mentioned in the ECHR and ICCPR
61. <http://t24.com.tr/haber/turkiyede-medya-sahipligi-ve-getirileri/244181>
62. <http://dtvt.basbakanlik.gov.tr/KurulusListesi.aspx> [Turkish]
63. <http://uk.reuters.com/article/2009/09/08/turkey-dogan-idUKL815352620090908>
64. <http://t24.com.tr/haber/aksam-ve-skyturk-360-ethem-sancakin-oldu/244522> [Turkish]
65. <http://www.hurriyetdailynews.com/pressing-for-freedom-the-rise-of-a-partys-partisans.aspx?pagelD=438&n=part-v-the-rise-of-a-party8217s-partisans-2010-06-08>
66. PEN has contacted TMSF for a response. However, at the time of publication, we are still awaiting a reply.
67. <http://t24.com.tr/haber/erdogan-demiroren-bana-sordu-akif-beyi-al-dedim/226209> [Turkish]
68. <http://t24.com.tr/haber/ve-akif-beki-hurriyet-yazari-oldu/240303> [Turkish]
69. <http://blogs.reuters.com/global/2008/11/10/is-turkey-reassessing-ataturks-legacy/>
70. [http://www.radikal.com.tr/yazarlar/m\\_serdar\\_kuzuloglu/gezi\\_parki\\_eylemlerinin\\_sosyal\\_medya\\_karnesi-1138146](http://www.radikal.com.tr/yazarlar/m_serdar_kuzuloglu/gezi_parki_eylemlerinin_sosyal_medya_karnesi-1138146) [Turkish]
71. <http://www.theguardian.com/world/2013/jun/02/turkish-protesters-control-istanbul-square>
72. <http://www.sabah.com.tr/Gundem/2013/06/02/gezi-parki-olaylarindaki-17-buyuk-yalan> [Turkish]
73. <http://yenisafak.com.tr/gundem-haber/bu-ne-tesaduf-10.06.2013-530647> [Turkish]
74. <http://www.aksam.com.tr/siyaset/ali-sahin-provokatif-tweet-bombadan-tehlikeli/haber-212850>
75. <http://www.hurriyetdailynews.com/turkish-minister-warns-that-companies-uncooperative-on-cyber-crime-will-receive-ottoman-slap.aspx?PageID=238&NID=49640&NewsCatID=338>
76. <http://www.todayszaman.com/news-318800-.html>
77. <http://www.ntvmsnbc.com/id/25449936/> [Turkish]
78. <http://yenisafak.com.tr/gundem-haber/mavi-oda-3.7.2013%200-537272> [Turkish]
79. <http://www.resmigazete.gov.tr/eskiler/2013/11/20131111-6.htm> [Turkish]
80. <http://blogs.wsj.com/emergingurope/2014/01/13/turkey-debates-new-law-to-control-web-users/>;  
<http://www.ft.com/cms/s/0/af179212-7b6b-11e3-a2da-00144feabdc0.html#axzz2qUdsGVuN>
81. <http://www.tbmm.gov.tr/kanunlar/k6518.html> [Turkish]
82. Ibid. Article 90
83. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109189#{"itemid":\["001-109189"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109189#{)
84. <http://www.englishpen.org/turkey-focus-2013-ahmet-altan/>
85. OSCE Representative on Freedom of the Media Dunja Mijatović, *Briefing on Proposed Amendments to Law No. 5651: The Internet Law of Turkey*, January 2014
86. [http://www.radikal.com.tr/turkiye/mahkeme\\_taksim\\_dayanismasi\\_iddianamesini\\_iade\\_etti-1174875](http://www.radikal.com.tr/turkiye/mahkeme_taksim_dayanismasi_iddianamesini_iade_etti-1174875) [Turkish]
87. Ibid.4
88. Ibid.6
89. <http://www.trthaber.com/haber/gundem/basbakan-erdogan-chpli-aygune-tazminat-davasi-acti-90745.html> [Turkish]
90. Ibid.42
91. <http://www.turkiyegazetesi.com.tr/politika/129039.aspx> [Turkish]
92. [http://www.radikal.com.tr/turkiye/trtden\\_gezi\\_kiyimi\\_aciklamasi-1155851](http://www.radikal.com.tr/turkiye/trtden_gezi_kiyimi_aciklamasi-1155851) [Turkish]
93. [http://www.radikal.com.tr/politika/trtde\\_gezi\\_sorusturmasi\\_basbakana\\_soruldu\\_kac\\_kisi\\_daha\\_gidecek-1157345](http://www.radikal.com.tr/politika/trtde_gezi_sorusturmasi_basbakana_soruldu_kac_kisi_daha_gidecek-1157345) [Turkish]
94. <http://www.bbc.co.uk/news/world-europe-23036924>
95. Ibid.54
96. <http://haber.stargazete.com/guncel/mehmet-ali-alaboraya-sorusturma-soku/haber-776368> [Turkish]
97. <http://www.ntvmsnbc.com/id/25466052/> [Turkish]
98. <http://www.turkiyegazetesi.com.tr/politika/129039.aspx> [Turkish]



garanti

ENGLISH  
PEN

pen  
INTERNATIONAL