

Submission to the Universal Periodic Review (UPR) of Turkey by Freemuse
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Freemuse

Freemuse is an independent international organisation advocating for and defending freedom of artistic expression. We believe that at the heart of violations of artistic freedom is the effort to silence opposing or less preferred views and values by those in power – politically, religiously or societally – mostly due to fear of their transformative effect. With this assumption, we can address root causes rather than just symptoms – if we hold violators accountable.

Our approach to artistic freedom is human rights-based as it provides an international legal framework and lays out the principles of accountability, equality and non-discrimination, and participation.

To accomplish such fundamental change, we monitor and document violations of artistic freedom, expose laws and policies that enable and sustain these violations, and leverage evidence-based advocacy for systemic structural changes at international, regional and national levels. Working with partners, artists and activists in the global south and north, we campaign for and support individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally-owned national coalitions in their campaigns and capacity building to monitor and defend artistic freedom.

Freemuse has held ECOSOC status since 2012.

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1. Introduction

In the last Universal Periodic Review (UPR) in 2015, Turkey supported 14 recommendations related to strengthening the legislative framework for freedom of expression yet none of these have been implemented.¹ Under the State of Emergency, enacted in July 2016 for an initial three months after an attempted coup and extended until July 2018, the Government of Turkey created a number of decrees that bypassed parliamentary scrutiny, undermined the rule of law, and contradicted Turkey's international human rights obligations, especially regarding the right to freedom of expression and including the right to freedom of artistic expression.

The unprecedented crackdown on the right to freedom of expression for cultural workers, civil society and those advocating an alternative discourse to the official government line, which includes journalists, academics and artists, have become a recurring feature of Turkey's human rights record. Dissent has been quashed on the grounds that it poses a threat to national security.

This has contributed to the 2019 Global Peace Index from the Institute for Economics & Peace ranking Turkey as the 152nd least peaceful country out of a total 163² and the 2018 Global Terrorism Index analysing the impact of terrorism on countries and placing Turkey as the 12th country out of 138.³ In 2019, Freedom House rated the country as 'not free' with an aggregate freedom score of 31/100 – where a 0 score indicates a country being least free.⁴ Freemuse data also indicates a restrictive environment in Turkey, with the majority of violations in the country occurring after Turkey's second cycle UPR. We therefore welcome the opportunity to submit a report to the third cycle UPR of Turkey and will focus on freedom of expression in Turkey and our observations on the authorities lack of compliance with international human rights standards.

2. Legislation under the State of Emergency (2016-2018)

Following the attempted coup on 15 July 2016 a State of Emergency was declared on 21 July 2016. During this State of Emergency the Turkish government adopted more than 30 emergency decrees that significantly weakened the framework of protection for human rights in the country.⁵ Initially declared for three months, the State of Emergency was renewed until July 2018 and radical changes to the legislative framework of Turkey were created and consequently made permanent in 2018.

This includes decree 680 of 6 February 2017 allowing for the extension of police powers and control over online content⁶ and decree 668 of 25 July 2016 restricting access of detained individuals to a lawyer for

¹ Recommendations made by: Botswana, Lebanon, Luxembourg, Nicaragua, Austria, Italy, Finland, France, Switzerland, UK, USA, Latvia, Angola, Norway.

² Institute for Economics & Peace (2019). *Global Peace Index*, <http://visionofhumanity.org/app/uploads/2019/07/GPI-2019web.pdf>

³ Institute for Economics & Peace (2018). *Global Terrorism Index*, <http://visionofhumanity.org/app/uploads/2018/12/Global-Terrorism-Index-2018.pdf>

⁴ Freedom House (2019). *Turkey*, <https://freedomhouse.org/report/freedom-world/2019/turkey>

⁵ Turkey Human Rights Litigation Support Project (2018). *State of Emergency in Turkey: A Collection of Available Resources, Reports, Case law, and other Relevant Materials*. University of Middlesex Law

⁶ New Turkey (2017). *State of Emergency Decrees 2017*, <https://www.newturkey.today/Coup-aftermath/decrees/2017/index.html>

up to five days.⁷ Further, the June 2018 presidential system that replaced the previous prime minister's post in Turkey made President Erdoğan the Head of State and provided the president control of all executive functions in the country, such as appointing judges who are supposed to be independent.

3. Political Tensions and Anti-Terrorism Legislation

3.1 Anti-Terror Law (no.3713/TMK)

Fundamental to the violations against freedom of artistic expression in Turkey is the 1991 Anti-Terror Law (no.3713/TMK). In July 2013, changes were made to article 7/2 of the Anti-Terror Law that regulates “propaganda in favour of terrorist organizations” as actions or speech that praise and/or legitimize the “force, violence, and threats” employed by terrorist organizations.⁸ The vague wording of the law often enables Turkish authorities to criminalise artistic and political expressions on the basis that these expressions are congruent with terrorist organisations, when in reality it is used to silence dissenters and alternative opinions. This has particularly been used in regions populated by Kurdish people in Turkey and within the movement for Kurdish independence.

Illustrative of this law is the November 2018 sentencing of German-Kurdish singer Hozan Cane to six years and three months in prison for ‘being a member of a terrorist organisation’ and ‘inciting public hatred and enmity’ by disseminating propaganda on social media on behalf of the Kurdistan Workers’ Party (PKK).⁹ The charge is largely based on an image where Cane is posing with alleged Kurdish rebels but the singer has repeatedly asserted her innocence and claims that the image is from her movie, *74th Genocide Sinjar*. The musician was taken into custody by Turkish officials whilst attending campaign events for the pro-Kurdish People’s Democratic Party (HDP) on 22 June 2018, with Cane scheduled to perform for HDP supporters days before the parliamentary and presidential elections in Turkey. The Turkish government allege that some HDP supporters – like Cane – are allied with the outlawed PKK which calls for an independent Kurdish state within the boundaries of Turkey.¹⁰ At the time of writing, Cane remains in prison.

Days before Cane’s arrest, the lead vocalist for the band *Koma Rosida*, Jiyan, was detained and charged with pro-Kurdish propaganda after including the word ‘Kurdistan’ in song lyrics. The authorities considered this as terror related and charged the musician on 19 June 2018. This case illustrates how the scope of the law is being used in arbitrary ways to silence alternative voices across the country, with Jiyan currently in prison awaiting trial.¹¹

Similarly, artist Zehra Doğan was prosecuted and sentenced to two years, nine months and 22 days in prison for her painting on social media that depicted the destruction of Kurdish city Nusaybin by Turkish

⁷ European Commission (2016). *Turkey, Emergency decree laws of July - September 2016: Nos. 667 – 674*,

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁸ Republic of Turkey (1991), *Anti-Terror Law (TMK)/Law no.3713*,

<https://www.legislationline.org/documents/action/popup/id/6975>

⁹ Freemuse (2018). *Turkey: Singer jailed for six years on terrorism charge*, <https://freemuse.org/news/turkey-singer-jailed-for-six-years-on-terrorism-charge/>

¹⁰ BBC (2016). *Who are Kurdish Workers’ Party (PKK) rebels?*, <https://www.bbc.com/news/world-europe-20971100>

¹¹ Freemuse (2018). *Turkey: Singer jailed for six years on terrorism charge*, <https://freemuse.org/news/turkey-singer-jailed-for-six-years-on-terrorism-charge/>

security forces.¹² She was arrested on charges of being a ‘member of an illegal organisation’ and ‘spreading propaganda’ as the Turkish authorities claimed her painting was proof that she was part of the PKK.¹³ Whilst Freemuse welcomes the news that Doğan was released on 24 February 2019, our concerns about the continuing imprisonment of dissidents for the peaceful expression of their creativity remain.

3.2 Gülen Movement

In 2018, Freemuse documented the arrest and remand in pre-trial custody of more than 30 artists and cultural workers for their suspected political association or political views. At least nine were later sentenced to prison and five accused of being part of the Gülen movement. Turkish authorities have classified the movement as a terrorist organization and have accused the leader, Fethullah Gülen, as the mastermind behind the 2016 attempted coup attempt.¹⁴ The Gülen movement is referred to as the Fethullahist Terrorist Organisation (FETÖ) by the Turkish authorities and has seen more than 445,000 people investigated over links to the Gülen movement.¹⁵

This includes prominent Turkish novelist, essayist, and journalist Ahmet Altan who was arrested in 2016 along with his journalist brother Mehmet Altan for being linked to the Gülen movement by sending ‘subliminal messages’ on a TV show on which they participated in on 14 July, one day before the coup attempt.¹⁶ In February 2018, Ahmet Altan was sentenced to life in prison. In the same month, a court in Istanbul sentenced him to an additional five years and 11 months in prison on charges of producing propaganda for the banned PKK and insulting incumbent President Erdoğan. The conviction was largely based on an article published on the Haberdar news website where Altan, according to the convicting court, was found guilty of portraying violent acts of the PKK as innocent and insulted president Erdoğan.

Also being investigated over alleged ties to the Gülen movement is Turkish pop singer Mabel Matiz, who was accused of ‘ties to a terrorist organisation’ in September 2018 after he used US one-dollar bills in his 2017 music video for his song *Ya Bu İşler Ne*.¹⁷ The Turkish government allege that US one-dollar bills are used a code for members of the Gülen movement,¹⁸ but Matiz stated that he did not intend to support the group with the inclusion of the dollar bills in his video.

4. Penal Code of Turkey

¹² Freemuse (2017), *Turkey: Artist sentenced to two years and ten months in prison*, <https://freemuse.org/news/turkey-artist-sentenced-two-years-ten-months-prison/>

¹³ Ibid

¹⁴ Deutsche Welle (2018). *From ally to scapegoat: Fethullah Gulen, the man behind the myth*, <https://www.dw.com/en/from-ally-to-scapegoat-fethullah-gulen-the-man-behind-the-myth/a-37055485-0>

¹⁵ Turkey Purge (2018). *Turkish pop singer Mabel Matiz faces post-coup investigation for showing \$1 bills in video clip*, <https://turkeypurge.com/turkish-pop-singer-mabel-matiz-faces-post-coup-investigation-for-showing-1-bills-in-video-clip>

¹⁶ Freemuse (2019). *The State of Artistic Freedom Report 2019*, https://freemuse.org/wp-content/uploads/2019/03/SAF_2019_online.pdf

¹⁷ Freemuse (2018). *Turkey: Singer investigated over terrorist links for using US \$1 bills in video clip*, <https://freemuse.org/news/turkey-singer-investigated-over-terrorist-links-for-using-1-bills-in-video-clip-freemuse/>

¹⁸ Turkey Purge (n.d.). *Have a dollar bill in your pocket? That would get you arrested on terror charges in Turkey*, <https://turkeypurge.com/dollarbill>

According to articles 10 and 22 of the Constitution of Turkey, all individuals are guaranteed equality before the law and the right to freedom of communication.¹⁹ However, this is compounded by a number of articles within the Penal Code that are vaguely worded and implemented. Freemuse research on Turkey since the 2015 UPR leads us to believe that Penal Code articles have been consistently used as a means to restrict freedom of expression in the country. This is particularly evident with article 299 on insulting the president, and also includes article 125 on defamation, article 213 on causing fear or panic among the public, article 215 on praising an offence or offender, article 216 on provoking the public to hatred and hostility, and article 318 on discouraging people from performing military service.

4.1 'Insulting the President'

Following Recep Tayyip Erdogan taking office as President of Turkey in 2014, article 299 on 'insulting the president' was introduced as an amendment into Turkish Penal Code. The charge is punishable with up to four years in prison as the Turkish authorities claim these arrests are intended to detain people with links to terrorist organizations, including the PKK and the Islamic State. German news agency Deutsche Welle have reported that investigations under this article reached 20,539 in 2017 and 6,033 criminal cases were opened.²⁰

Despite Turkish authorities supporting 14 recommendations in the previous UPR cycle to strengthen freedom of expression in the country, musician Ferhat Tunç has had five lawsuits filed against him since the previous UPR cycle; three for 'insulting the president' and 'insulting the former Prime Minister Binali Yıldırım' and two cases for 'propaganda for a terrorist organization'. On 25 September 2018, Tunç was sentenced to one year, 11 months and 12 days in prison for 'propaganda for a terrorist organization' over social media messages he shared in 2016. His other cases have been adjourned numerous times, consequently leaving Tunç in judicial limbo. If convicted, Tunç could face more than 13 years in prison.

On 12 July 2018, popular Turkish singer and actress Zuhale Olcay was convicted of 'insulting the president' and given a suspended prison sentence of 11 months and 20 days.²¹ The prosecution came after a concertgoer told police that Olcay made an insulting hand gesture whilst singing a song in which she revised lyrics about President Erdoğan at an August 2016 concert in Istanbul. She has been held guilty for substituting President Erdoğan's name into the song *Boş Vermişim Dünyayı (I Let Go of the World)* but has repeatedly denied the charge and stated that she changed the lyrics because the president's name fitted the rhyme. The jail term was suspended with an 18-month probation.

5. The Digital World and Artistic Freedom

In 2015, Turkish authorities blocked the global image sharing site Imgur.com after two members of the banned terrorist organisation Revolutionary People's Liberation Party/Front (DHKP-C) kidnapped a

¹⁹ Republic of Turkey (1982). *The Constitution of the Republic of Turkey*, https://global.tbmm.gov.tr/docs/constitution_en.pdf

²⁰ Deutsche Welle (2018). *Record increase in "insulting President" cases*, <https://www.dw.com/tr/cumhurba%C5%9Fkan%C4%B1na-hakar-et-davalar%C4%B1nda-rekor-art%C4%B1%C5%9F/a-46622702>

²¹ Freemuse (2018). *Freemuse concerned over artist Zuhale Olcay sentencing for insulting Turkish president*, <https://freemuse.org/news/freemuse-concerned-over-artist-zuhale-olcay-sentencing-for-insulting-turkish-president/>

prosecutor in Istanbul and posted images on the site.²² Popular online news website Wikipedia was blocked in May 2017 and authorities in Turkey closed 201 media broadcasters in 2018.²³ YouTube was also temporarily banned in 2015 and 2016. Individuals in Turkey have hence become increasingly reliant on the digital space to obtain and share news that is not a product of the Turkish administration, but due to government limiting access online, the spaces for safe expression in Turkey have been restricted.

According to Twitter's *Transparency Report*, the Turkish Ministry of Interior requested the removal of 4,417 Twitter accounts and requested the information from 277 Twitter accounts between July and December 2018.²⁴ Turkish authorities also submitted 2,399 requests to Facebook for content removal in between July to December 2018.²⁵ In addition, figures from the Common Knowledge and Communication Association estimate that more than 100 people are questioned in police custody each month for content they have written on social media.²⁶

Further, in November 2016 whilst a number of MPs belonging to pro-Kurdish opposition party HDP were being arrested, the then-Turkish Prime Minister Binali Yıldırım blocked access to Facebook, Twitter and YouTube throughout Friday 4 November 2016.²⁷ When questioned by the media, Yıldırım said this move was part of "temporary measures" and that "these precautions can be resorted to for security reasons from time to time".²⁸ In a similar move, in 2016 the Turkish authorities shutdown phone and internet services in 10 cities for six hours during the removal of 28 Kurdish mayors from their posts, 25 on the accusation of supporting the PKK and the four others on accused of supporting FETÖ.²⁹ In a different case, authorities in Turkey suspended phone connection in 11 cities affecting six million citizens over several days during mass protests about the detention of local Kurdish politicians, leading reporters having to travel to neighbouring cities to upload footage of the protests.³⁰

6. Recommendations

Freemuse therefore recommends that Turkey:

1. Develop and implement a specific definition of 'terrorism' in line with international human rights standards. This also includes producing specific definitions of 'terror', 'terrorist organization', 'membership of a terrorist organization', and 'making propaganda of terrorist organization'

²² BBC News (2015). *Turkey Twitter block lifted after image removed*, <https://www.bbc.com/news/technology-32194915>

²³ Ferhat Tunc (2019), *Interview with Freemuse*

²⁴ Twitter (2018). *Transparency Report 'Turkey'*, <https://transparency.twitter.com/en/countries/tr.html>

²⁵ Facebook (2018). *Turkey*, <https://transparency.facebook.com/government-data-requests/country/TR>

²⁶ Ahmet A. Sabanci (2018). *Internet censorship in Turkey*, <https://journo.com.tr/internet-censorship-in-turkey>

²⁷ Turkey Blocks (2016). *Facebook, Twitter, YouTube and WhatsApp shutdown in Turkey*,

<https://turkeyblocks.org/2016/11/04/social-media-shutdown-turkey/>

²⁸ Ergun, D (2018). 'National Security vs. Online Rights and Freedoms in Turkey: Moving Beyond the Dichotomy', *Cyber Governance and Digital Democracy: Center for Economics and Foreign Policy Studies*, <http://edam.org.tr/wp-content/uploads/2018/04/TurkeyNational-Security-vs-Online-Rights.pdf>

²⁹ Human Rights Watch (2017). *Turkey: Crackdown on Kurdish Opposition*, <https://www.hrw.org/news/2017/03/20/turkey-crackdown-kurdish-opposition>

³⁰ Turkey Blocks (2016). *New internet shutdown in Turkey's Southeast: 8% of country now offline amidst Diyarbakir unrest*, <https://turkeyblocks.org/2016/10/27/new-internet-shutdown-turkey-southeast-offline-diyarbakir-unrest/>

2. Introduce amendments to bring article 7/2 of the Anti-Terror Law in line with international human rights standards, specifically the ICCPR and relevant European Court of Human Rights case law
3. Review the implementation of article 299 of the Turkish Penal Code to assess its application and how it is being used as a vehicle for targeting specific groups of individuals, including artists
4. Introduce an independent domestic ombudsman to oversee decisions on blocking online content and websites.