

**Turkish Publishers Association**  
**2012 “Freedom of Thought and Expression Awards”**  
**REPORT ON FREEDOM TO PUBLISH (June 2011-2012) /Turkey**



## 2012 “Freedom of Thought and Expression Award” Ceremony Speech

This year passed with one heart-wrenching incident after another regarding the freedom of thought and expression. Arrests of writers, publishers, journalists and intellectuals; prohibitions directed at the freedom to publish; implementations that amount to censure and pressures that would lead to auto-censuring reached previously unseen dimensions.

We saw books, without no legal conviction against them, displayed alongside guns as evidence of terrorist activity, just like the days of the 12th of September coup d'état. Even unpublished book manuscripts and draft translations were presented as organizational documents. Still further, lists of books were counted among evidence of criminality. There is a printing press owner convicted to a prison term because of a book he printed, even though no such crime exists in the Penal Code, and there are graphic designers on trial for doing the layout of the annual calendar prepared by their publishing house.

Articles 6 and 7 of the Anti-terror Law have been implemented with the widest scope of interpretation and applied against any opposition. The number of journalists under arrest reached over a hundred, and the number of arrested party-workers, academics, students and lawyers is now over a thousand. Regardless of the decisions of the European Court of Human Rights, many articles of the Turkish Penal Code continues to be implemented in a manner restrictive of freedom of thought. The infamous Article 301 continues to be invoked for prosecution. With the article 226 of the Turkish Penal Code regulating obscenity, it is being questioned whether the books written by some of the world's most famous writers are works of literature or not. The Information Technologies and Communications Authority declared that it prohibits access to 110 thousand internet sites without bothering to inform their owners. The number of press cases and cases where criticism was taken as insult and taken to court, with the Prime Minister and the members of his cabinet leading the way, have reached striking levels.

Besides the Anti-Terror law and the Press Law, the Turkish Penal Code is full of tens of articles that curtail freedom of thought and expression. If we only look at the articles of the Penal Code that have been deployed to arrest writers, publishers, journalists and academics, we can see that no room is left to express thought: Harming the honour, reputation or dignity of another person (Article 125), Defamation of a public officer (Article 125), Soliciting, encouraging or supporting a person to commit suicide (Article 84), Violation of communicational secrecy (Article 132), Secrecy of private life (Article 134), Praising the offense and the offender (Article 215), Provoking people to hatred and hostility (Article 216), Offences against public peace through the press (Article 218), Violating the secrecy of investigation (Article 285), Recording of sound and vision during investigation or prosecution processes (Article 286), Attempt to influence fair trial (Article 288), Insulting the President (Article 299), acting against basic national interests for personal gain (Article 305), Openly provoking people not to obey the laws (Article 217), Establishing a criminal organization and making propaganda on its behalf (Article 220), Acts violating laws on hat wearing and Turkish alphabet (Article 222), Indecency (Article 226), Misconduct in Office (Article 257), Slander (Article 267), Making false statements as a witness (Article 273), Supporting the offender (Article 283), Membership to illegal armed organizations (Article 314), Provision of information relating to the security of the state (Article 327), Disclosure of information relating to public security and political interests of the State (Article 329), Provision of restricted information (Article 334) and Disclosure of restricted information (Article 336). (Source: Hüsni Öndül, 2012 Report of İHOP)

They say “ what is wrong with being taken to court, you would come clean if you are innocent!” But in our existing system, it is neither easy to get a trial nor to be acquitted. Many writers, publishers, journalists, intellectualst and hundreds of students are in prison awaiting trial for months and years without even knowing what they are being charged with. It is clear that the long trials and the time spend in prisons and in the corridors of courts amount to punishment without trial. What publisher and a writer Ragıp Zarakolu, the head of Freedom to Publish Committee and a longtime human rights defender, had to go through, cases such as Ergenekon, KCK and the Devrimci Karargah, which seems to incude anyone and everyone, amd years spent in prison without a charge are striking examples.

The freedom of thought is not only being curtailed through legal means but such curtailment has become something ordinary in all sections of the society. From the manager who bans the book poster hung in the metro station, to the rector who removes the book stand on the campus grounds, from the reader who burns the office of the magazine that published a cartoon that he deems contrary to his beliefs, to the party member who threatens the bookshop that sells a book he does not like, there is a wide-spectrum in this regard. It has become a daily event for oppositional and even pro-government journalists and columnists to lose their jobs and being turned into targets for their writings and newspieces that criticise the government. Banning or silencing is being made an ordinary event, a common practice, with auto-censure becoming natural.

Besides turning a deaf ear to the protests and the reports published in Turkey, the decisions of the European Court of Human Rights, the declarations of the officials of the European Union and the US, the calls or the reports of the worldwide institutions of freedom of thought are all left unanswered, international obligations renegaded upon and promises not being kept. The legal changes that would prevent long detention periods and secure fair trials are still not passed. Let alone abolishing the Anti-Terror law, the amending of its articles that most blatantly curtail freedom of expression is hardly being talked about. All this leads one to think that measures will continue to curtail freedom of thought and expression and that many more writers, publishers, jurnalists, academics and teachers will again face arrests in the coming year.

We believe that a true democracy is a regime where opposing views are expressed freely and people meet them with tolerance even when they disagree. Once again, we call on the government, the judges, prosecutors and the security forces to abide by the norms established by international treaties and the constitution regarding the freedom of expression; and we invite all the political parties in the Parliament to urgently amend the necessary articles in the Penal Code, Anti Terror Law, the Press Law and in other laws so that which stand in the way of a full freedom of expression.

Metin Celâl

The President of the Turkish Publishers Association

## **Turkish Publishers Association Freedom to Publish Report**

**(June 2011-June 2012)**

Turkish Publishers Association has been presenting a Freedom of Thought and Expression award to people who do not fear expressing their thoughts, with the hope that Turkey would attain the universal standards of freedom of thought and expression as soon as possible. The Freedom to Publish Committee continues to prepare and present its Freedom to Publish Report, revealing the limits of freedom in publishing in Turkey for all to see.

The year 2011 witnessed many writers, translators and cartoonists facing prosecution for their work, as well as publishers facing preventive decisions and implementations against their right to publish. Publishers were sentenced for the books they published and printing-press owners received prison sentences for the books they printed. Readers were questioned and tried, with the books in their houses listed as evidence for terrorist activity. The year 2011 was thus a very worrying one, both for the right to publish, as books with no court decision about them, book drafts that are yet to be published, and lists comprising book names were all accepted as evidence for heavy crimes; and also for the right to access and express thought, as serious infringements were seen in this regard as well.

In recent years, the number of people who were imprisoned for having dissenting opinions and expressing them verbally or in writing has increased rapidly. It was the members of the press who received the heaviest blow from the restrictions imposed on freedom to publish in 2011. According to the BIA Observation Report, as of end of March, the number of journalists under arrest is 100, and that of distributors is 35. According to the updated list of the Platform for Solidarity with Journalists under Arrest, the number of journalists under arrest is 92, as of May 5th. These numbers do not include the writers who are currently on trial and who have been awaiting trial for months under arrest without yet receiving an indictment.

According to the report of Bianet, the trials and investigations about the journalists and the distributors/media workers under arrest, generally stem from charges having to do with “news research,” “book writing,” “newsreporting critical of the government” and “working for the Kurdish media.” These journalists are in prison due to a definition of “crime” that considers their journalistic activity as the “media activity of an illegal organization.” In the trials, the press organization that they worked for, the subjects of the newspieces they wrote, the news sources that they contacted, the demonstrations that they reported, and the newsreports and books that were products of their journalistic work have been cited as evidence. In the cases opened based on the Anti Terror Law and with the prospect of heavy prison sentences, many journalists and writers are awaiting trial under arrest for months and years without knowing the specific charges against them, due to the long duration of the investigation and trial processes. During this long waiting period, they cannot use their right to defense, because of the “secrecy of the investigation” that prevents them from learning the charges and the evidence against them.

Besides the arrests, newspapers and periodicals were again confiscated, their publication halted and the owners were forced to close them down due to heavy monetary fines. Many members of the press and columnists had to withdraw from their profession as a consequence of their unwelcome newsreports and writings. As the legal pressure intensified, the official accusatory declarations saying that “the people under arrest are not journalists but terrorists” not only made it even more difficult for the journalists under arrest to defend themselves, but also constituted an environment of psychological pressure, ripe for auto-censure, for the members of press who are simply trying to do their duty.

## **Book Confiscations**

In March 2011, journalist Ahmet Şık's unpublished "*İmamın Ordusu* (Army of the Imam), on which he was working at the time of his arrest under the Oda TV investigation, was confiscated with the charge that it was "not a book but a terrorist organizational document." Journalist Ertuğrul Mavioğlu and Şık's lawyer's work computers, as well as the computers at the publishing houses that were expected to publish the book were searched for the copies of the book. As a reaction to the decision and the searches, the book draft was rapidly distributed via social media and hundreds of thousands of people downloaded the book from the internet regardless of the decision. The banned book was published in November with the accompanying signatures of 125 journalists, activists and academics, with the title "000Book: Burn if you touch" by Postacı Publishing House. It was on the stands of many publishing houses in the Istanbul Book Fair and many intellectuals signed the book. The book made it to the best-sellers list.

In June, İnsan Bookhouse in Istanbul, Serhat Books and Statitionary in Iğdır, and Jiyân Bookhouse in Elazığ was raided by the police, Cengiz Kapmaz's *Öcalan'ın İmralı Günleri* (Öcalan's İmralı Days), published by İthaki Publishing, was confiscated. The confiscation was based on the Kahramanmaraş Criminal Court of Peace's order to "confiscate and ban the sale" of six books by Mezapotamya Publishing and one book by İthaki Publishing. *Öcalan'ın İmralı Günleri* continued to be confiscated around the country with the sales ban imposed on the distributors and the bookshops. Thus, a book has been completely removed from the market without a case being opened against either its writer or publisher.

In December, journalist Harun Gürek's *Belediye İhale Dalavereleri* (Corruption at Municipal Tenders) (Togan Publishing) was confiscated in accordance with a decision of the Kocaeli Civil Court of First Instance, upon a complaint made by the Kocaeli Greater Metropolitan Mayor İbrahim Karaosmanoğlu. The book, examining the tenders by the AKP-held municipalities such as Ankara, İstanbul, Bursa, Kocaeli, Konya and Samsun, featured the photographs of these mayors on its cover. The court decided that Karaosmanoğlu's picture should not figure on future editions, and that it be removed from the printed and distributed copies. The fact that the book was confiscated without any complaints about its contents, apart from the cover, and that no article of the law was cited in the decision, received criticism.

## **Book Investigations**

In January 2012, there were many cases of books being investigated.

The books by Musa Anter, Kurdish poet and writer who had been killed in an armed attack in 1992, that were published by Aram Publishing were "banned." Istanbul Republican Prosecutor opened an investigation about the publisher with the charge of "making propoganda on behalf of the organization." Musa Anter's son Dicle Anter reported of being asked questions "why are you printing the books of a dead man?" by the prosecutor.

Demir Çelik, BDP MP from Muş, held a press conference at the Parliament to declare that his novel *Özgürlüğünde Kaldı Gözlerim* (My Eyes in your Freedom) by Aram Publishing was being investigated by Diyarbakır Republican Prosecutor for "making propoganda on behalf of the terrorist organization." Çelik said that 940 page-novel, based on a true story, was being investigated despite

being unread, and that Aram Publishing was raided upon the orders of the same prosecutor and five different books were being investigated with the same charge. Aram Publishing was fined 20 thousand liras for the novel.

Writer İrfan Babaoğlu, who was arrested in the aftermath of the 1980 Coup and put in Diyarbakır Military Prison, only to be released 20 years later due to changes in the law, had three of his Kurdish books investigated and the books were confiscated. Babaoğlu's works in the genres of memoir, short story and poetry, based on the events he witnessed in prison were confiscated and his memoirs *Auschwitz'den Diyarbakır'a 5 Nolu Cezaevine* (From Auschwitz to Diyarbakır Prison No: 5) (Şevda Publishing) was cited for a case in which the prosecutor asked for 5 years imprisonment. In the indictment for this trial, where Babaoğlu is tried alongside the Responsible Editor of Şevda Publishing in Diyarbakır, Mehmet Emin Teymur, excerpts from PKK cadres' statements in the courtroom or in prison conveyed in the book, were considered as "propaganda." It has been learned that only the Kurdish editions of Babaoğlu's books were subjected to trial while its Turkish editions were not. The Kurdish Writers Association organized a press conference along with Kurdish writers to voice its claim that Kurdish authors' books in Turkish and Kurdish were being confiscated and the writers were being charged.

### **Censure of Book Ads**

The publicity ads for *Harem*, the cartoon version of Zülfü Livaneli's *Engereğin Gözündeki Kamaşma*, published by Destek Publishing, could only be displayed in a censored fashion in the Istanbul Metro as the cover was deemed "obscene." The first version of the ad, with the book cover showing an illustration that can be construed as the body of a semi-naked woman, was rejected by the Transportation Authority. But as the publishing house put a band over the illustration in their second attempt, the book ad was approved.

### **Cases against Authors and Publishers**

#### ***"Insult"***

Journalist Deniz Yıldırım, who was the ex-editor-in-chief of the journal *Aydınlık*, was taken to court by the Minister for Customs and Trade, Hayati Yazıcı, with the accusation of "insulting" the minister in the book *Tayyip'in Voleleri* (Tayyip's Volleys) (Kaynak Publishing) that he wrote whilst in prison. Yıldırım was acquitted in December by the Istanbul 2nd Criminal Court of First Instance, but continues to remain in prison where he has been at for over two years as the sole arrested defendant among the 29 persons on trial in the "Wet Signature" case, which is now conjoined with the "Internet Memorandum" case under the Ergenekon investigations.

#### ***"Violation of Individual Rights"***

Prosecutor Osman Şanal, in charge of the Ergenekon investigations, filed three different complaints with different charges about three books. The first book is titled *Cübbeli Adalet* (Justice in Robe), narrating the unfolding of events after the ex-Erzincan Head Prosecutor, İlhan Cihaner, opened an investigation against the İsmailağa congregation. The book was published by Cumhuriyet Publishing and written by İlhan Taşçı, a reporter for daily *Cumhuriyet*. The second and third books were, *Ağa I*, written by Ali Dağlar, a reporter for Daily Hürriyet and published by Kaynak Publishing, and

*Postmodern Cihad* written by İsmail Saymaz, of the daily *Radikal*, and published by Kalkedon Publishing. Şanal's first complaint was that these three journalists had "made him a target for the terrorist organization." This case, based on the article 6/1 of the Turkish Penal Code, with a possible prison sentence, was dismissed as the requisite time period stipulated in the statute of limitations in the Press Law had already passed. The second case was opened with the charge of "violation of individual rights" based on the article 125 of the Penal Code, demanding damages. In the indictment of this case, *Postmodern Cihad* was accused of using Şanal's picture on its cover, and for claiming that "the investigation was born out of a struggle between the congregation and the tarikat," and that Şanal "had been acting out of a will for Cihad." The book *Cübbeli Adalet* was accused of claiming that Şanal "had been acting out of a will of Cihad," and *Ağa I* was accused of claiming that "Şanal acted in a biased way, indicating that he is a member of the tarikat." The case ended with an acquittal. The third case, opened with the charge that the journalists were "attempting to influence fair trial" currently continues at the İstanbul 2nd Court of First Instance.

### ***"Denigrating Religious Values"***

The case opened in 2010 against Metis Publishing for "denigrating the religious values embraced by a section of the populace" with its 2010 yearly calendar *İllallah Agenda*, with the theme of "right to not believe," continues, on the basis of article 216/3 of the Turkish Penal Code. Publishing House director Semih Sökmen, editors Müge Sökmen, Özge Çelik, Tuncay Birkan, Özge Duygu Gürkan, graphic designer Emine Bora and redactor Eylem Can, continue to be tried at the İstanbul 16th Court of First Instance. The agenda opens with a foreword where it is stated that the right to believe is being protected by religions, state budgets and police and armed forces. "We, the organizers of this agenda, respect people's right to believe. Yet we must say that we have a deeper respect for the right to not believe." The agenda contained excerpts from such figures as George Bernard Shaw, Umberto Eco, Fyodor Mihailoviç Dostoyevski, James Joyce, Albert Einstein, Bertrand Russell and Galileo Galilei.

### ***Case against a Cartoon and Arson***

Bahadır Baruter, working for the weekly *Penguen*, was taken to court for a caricature he had drawn, where the prosecutor asked for a sentence of a year in prison. In the caricature published in *Penguen*, a column in a mosque had "there is no God, religion is a lie" written on it. The indictment about Baruter, against whom complaints were filed by the Union of the Workers of Religious Administration and Foundations and some citizens, rests on the article 216/2 of the Turkish Penal Code, regulating the crime of "publicly insulting the religious values of a section of the populace." On May 3, a fire broke out in the building where *Penguen* is located, at an hour when the caricaturists would be at work. The report of the fire department indicates that the fire was a result not of an accident, but of arson. The event continues to be investigated by the Prosecutor's Office.

### ***"Slander and Insult"***

Hanefi Avcı, an ex-chief-of-police currently under arrest, faces the charges of "slandering" and "insulting" Osman Hilmi Özdil, whose name was mentioned in Avcı's *Haliç'te Yaşayan Simonlar: Dün Devlet, Bugün Cemaat* (Simons Living at the Golden Horn: Yesterday the State, Today the Congregation), at the Ankara 2nd Court of First Instance. At the hearing held in March, Avcı was sentenced to 1 year for "slander," and 3 months and 15 days for "insulting". The court converted the 3 months 15 days sentence to 2 thousand and 100 liras of pecuniary damages.

### ***“Proganda on behalf of an Illegal Organization”***

The case against Hüseyin Gündüz, the owner of Do Publishing, regarding the book *Haberlerin Ağında Öcalan*, written by Aras Erdoğan, was concluded. İstanbul 14th High Criminal Court sentenced Gündüz to a prison sentence of one year and six months for “making propaganda on behalf of an illegal organization.”

Publisher Hüseyin Gündüz was sentenced to a prison term for “making proganda on behalf of a terrorist organization” in the book *Şırnak Yanıyor 1992* (Şırnak is Burning, 1992) written by Sertaç Doğan and published by DO Publishing. The sentence, based on Law 3713, Article 7/2 of the Turkish Penal Code, was converted to a pecuniary fine. The book narrates the story of the Newroz celebrations in Şırnak in March 1992 which had ended with the death of tens of people.

### ***Punishment to a Printing-press Owner***

İstanbul 14th High Criminal Court with Special Authority could not identify the author of the book *Anılarla Abdullah Öcalan* (Memories with Ahmet Öcalan). As they could not punish the publisher either due to the constitutional changes, the culprit was identified as the owner of the printing press that printed the book. The investigation regarding the book, which had been published in 2005 by Çetin Publishing, revealed that the author, Gülseren Aksu, was a pseudonym. In accordance with the decision made by the Constitutional Court in 2009 that exonerates publishers and responsible editors from punishment, the publisher was acquitted. The court sentenced Sadık Daşdöğen, the owner of Berdan Printing House where the book was printed, to 1 year in prison and 782 TL pecuniary fine, for “making propaganda on behalf of an illegal organization,” with the assumption that the “printing house has usurped the place of the author.” Arrested on the 16th of December, Daşdöğen will remain in prison for 9 months.

### ***“Obscene Content”***

İrfan Sancı, the publisher and Süha Sertabiboğlu, the translator of William S. Borrough’s “Soft Machine,” were charged with the article 226 of the Turkish Penal Code, on the basis of a report by the Prime-Minister’s Board for Protecting Minors from Harmful Publications deeming that the book contains “obscene content.” The case currently awaits the report by a panel comprising two academicians of Comparative Literature and a Criminal lawyer.

The owner of the Ayrıntı Publishing Hasan Basri Çıplak and translator Funda Uncu, are currently on trial at the Istanbul 2nd Court of First Sentence for publishing “Death Porn” by Chuck Palahniuk, with the charge of “mediating the publishing of obscene content.” The indictment states that the work contains “non-moral” and “un-literary” narrations and demands a sentence upto 3 years. In their defense, Çıplak said that the work actually criticizes the objectification of a woman’s body and Uncu said that it was her bearing to translate the work in a manner that was loyal to the original. The case was postponed as the expected report could not be prepared as proper experts could not be found.

### **Inappropriate Books Found in Schools and Universities**

Ankara Yenimahalle Provincial Directorate for National Education opened an investigation about the teacher who recommended Mina Urgan’s *Bir Dinazorun Anıları* (Memoirs of a Dinosaurs), to high-school students as an example of texts of self-narrative. The justification is that the book includes “expletives, raises doubts in belief to God and encourages drinking.” In 9th, 10th, 11th and 12th

grades, it is mandatory to study self-narratives such as memoirs, travelogues, diaries in Turkish literature classes. *Bir Dinazorun Anıları*, a best seller in 1998 when it was published, includes details about the life of not only Mina Urgan, but also the lives of many other famous literary figures, such as Halide Edip Adivar, Abidin Dino, Necip Fazıl, Sait Faik Abasıyanık, Yahya Kemal, Ahmet Haşim and Orhan Veli, which therefore makes it an ideal book for that topic.

Aslı Tohumcu's *Abis* was recommended to high-schools by the "Writers at Schools" project initiated by the Istanbul Directorate of National Education, but a complaint was made, on the grounds of "pornographic" and "obscene" content, demanding a recall of the book from schools, which gave rise to a series of discussions. Published initially in 2003, the book comprises 19 stories dealing with violence in daily life. İbrahim Çakmak, chair of the 2nd branch of the Turkish Education Union, was the person who asked for the recall, saying that complaints were made by parents and that the book contained "expressions bordering on pornography" and he also suggested that they would take the matter to court. Ahmet Duran, a MHP MP from Balıkesir, registered a formal question in the parliament.

Seven students who opened a stand for book exchange at Samsun 19th of May University, faced an investigation. The stand had stood for three days in December, at the end of the term. When the students came back from the semester break, they learned that an investigation was opened about them. The students stated that they opened the stand because they oppose the sale of information and that they would rather share their books and that similar stands had been opened at other faculties in previous terms and that they could not understand why the matter would be subject to an investigation this time.

### **Books as Evidence of Crime**

In the indictment charging the the protestors, who protested the Hopa incidents in front of the AKP Ankara Provincial Headquarters, with "membership of a terrorist organization", numerous legal and currently on sale books and magazines were listed as evidence for "terrorist activity". Collected from the homes of the youth from Hopa and listed as evidence for "membership of a terrorist organization," were *İdam Gecesi Anıları* (Reminisces from the Night of Execution), Georges Politzer's "Founding Principles of Philosophy," *Bitmeyen Yolculuk*-a one-on-one talk with Oğuzhan Müftüoğlu, Lenin's "State and Revolution" and "Imperialism: The Highest Stage of Capitalism."

In the indictment against the employees of the journal *Yürüyüş*, who have been under arrest for 13 months, books on journalism and a book by Nazım Hikmet were listed as evidence. Istanbul office of the journal was raided in 2010. Various publications were sequestered as "organizational document," and 6 employees were arrested with the charges of "making propaganda on behalf of the terrorist organization" and "membership of a terrorist organization." The evidence listed for the case held at Ankara 11.th High Criminal Court, includes articles of the journal itself and various freely sold books. The books listed as evidence in the police operation report are: *Gazetecilerin Hakları ve Mesleki Sorunları* (The Rights of Journalists and Issues of the Profession), written by lawyer Sibel Gökçe, from Adalet (Justice) Publishing; *Tekelci Medyada Örgütsüz Gazeteci* (Lonely Journalist in Monopolistic Media), prepared by Atilla Özsever and published from İmge Publishing; Nâzım Hikmet's poetry book *Gurbet Ölümünden Beter* by Bilgi Publishing; *Ekmek Kavgası* (Fight for Bread)" co-authored by Sennur Sezer and Adnan Özyalçınar, by Evrensel Publishing; and Stalin's *The Principles of Leninism*, translated by late Muzaffer Erdost, of Sol Publishing. The indictment listed as

criminal evidence that the fingerprints of the employees of the Ozan publishing house, Cihan Gün and Halit Güldenoğlu, were found on the books found in the Office!

5 young members of Samsun, Hatay and Istanbul offices of Youth Association for Freedom were arrested on the grounds of “being members of a terrorist organization.” The indictment listed books as evidence for membership of terrorist organization. Among the evidence listed as their connection with TKP/K organization, there were books by Hikmet Kıvılcımlı, which could be bought at any bookstore, Tolstoy’s *War and Peace*, bookmarkers with the picture of Deniz Gezmiş’s picture on them and a list of books-to-read found in the house.

### ***Book list as crime evidence***

For the first time, a “book list” was accepted as an evidence. The “book list” found in the house of Ali Haydar Yıldız, a university student who was arrested on 21 January 2011, for “being a member of four different organizations” and “planning a protest,” was presented as evidence both in police investigation report and in the indictment. The police report referred to court decisions banning the books on the list, dating back to the 1970s. Murat Yılmaz, attorney for Yıldız, stated that these decisions belong to the pre-12 September period and that these books are easily available presently. At the prosecutor’s office, Yıldız was asked questions about why he has such a list of organizational books that were banned, and whether he had the names in order to cite them as sources in organizational training.

### ***Distributing a Draft Constitution is Crime***

In 2007, while discussion about a new constitution was ongoing in the country, 10 young people prepared and published a “Draft People’s Constitution” in the name of *Haklar ve Özgürlükler Cephesi* (Rights and Liberties Front). The case opened against them at the the Ankara 11th High Criminal Court with Special Authority concluded with convictions in 2011. The prosecutor argued that the emphasis on “the right of every people to self-determination” constituted proganda on behalf of PKK, and that the phrase “all the instruments of torture at MIT centers, police political crime departments, and secret contr-guerilla bases will be destroyed in front of the eyes of the people” constituted “an open insult to the military and security organization of the state.” At the final hearing of the case on 19th of June 2011, all the defendants were sentenced to 2 years and 6 months in prison for “making propaganda on behalf of the terrorist organization.” Furthermore, permission was requested from the Ministry of Justice, to charge the defendants with the article 301 of the Penal Code, for “insulting Turkishness, the Republic and the insitutions and organs of the state.” The ministry responded by a statement saying that there was no need for a case to be opened under article 301 and that the text in question fell under freedoms secured by the European Declaration of Human Rights.

### ***Draft Translation as Crime Evidence***

Journalist Zeynep Kuray, a reporter for the daily *Birgün* and Fırat News Agency, who was arrested along with 43 journalists as part of the KCK investigation, had a draft translation on a flashdisk found in her home, which later made it to the indictment as evidence. The flashdisk contained the draft translation of *Le Turban et la Stambouline*, by the French author Jean François Solnon, and actually belonging to husband of Kuray’s mother, Ali Berktaş, who had it scheduled for print in 2013. Berktaş had loaned the flashdisk to Kuray a short time ago with the translation recorded on it. Prosecutor Çimen regarded the expression “Turks were worse than dogs in everthing they do,” anonymously said in 1526, and Erasmus and Luther’s anti-Turkish statements that figured in the translation of the book that covers the Ottoman-Western cultural relations over five centuries as evidence for the crime of

“insulting Turks and Turkishness” under article 301 in the indictment. According to information gathered from Ali Berktaş, who has so far published over 50 books in French and Turkish, the section of the book that is subject to the indictment is the third chapter that covers the 1500s when the conflict between the Ottomans and the French was at its zenith. Although the book also includes insults made by Turks, that had not been an issue when it was published in France.

### **Books banned in Prisons**

The Sincan Prison Report, prepared by Contemporary Legalists Association’s Ankara branch’s Commission for Overseeing Prisons, has shown that books sent to the prison are not given to the inmates on the grounds of book banning orders dating back to the 1970s or simply because they are deemed “inappropriate.” The report states that numerous publications, periodicals and books were arbitrarily sequestered by the prison officials when there was no legal decision against them, including even daily newspapers at times. According to the report, the following books were not given to the inmates: Dimitrov’s *United Front Against Fascism*, *The Communist Manifesto*, Mao’s *Selected Works*, Server Tanilli’s *Uygarlık Tarihi* (History of Civilization), Ece Temelkuran’s *Ne Anlatayım Ben Sana* and the *Hayata Dönüş Operasyonu—Koğuştan Hücrelere* printed by ÇHD.

It has also been learned that in April, İlya Ehrenburg’s *Dipten Gelen Dalga* (The Wave from Deep), Mao Zedung’s *Halk Savaşında Temel Taktikler* (Fundamental Tactics in People’s War), Vladimir İ. Lenin’s *On Youth*, and *Strategy and Tactics* by Stalin, were not given to Aysun Akdağ and Elif Sultan Kalsen, currently staying at Bakırköy (İstanbul) Woman’s Prison, on the grounds that they are banned by the prison administration.

### **Destruction of a Bookdraft in Prison**

The draft of the second volume of *Metris’ten Munzur’a Bir Firarinin Öyküsü* (The Story of a Renegade from Metris to Munzur), written by the political convict Halil Gündoğan, in prison, was deemed to be “an objectionable letter” and destroyed. Gündoğan, who is imprisoned at Sincan F Type No 1 Prison, had published his experiences in the aftermath of 12 September, under the title *Metris’ten Munzur’a Bir Firarinin Öyküsü* in 2005. Having written the second volume, Gündoğan gave the dossier containing 200-page-manuscript to the prison officials in order for them to convey it his family. Prison administration decided to destroy the dossier on the grounds that it contained “criminal elements.” Denying the appeal of Gündoğan’s lawyer, the prison administration declared that it will destroy the manuscript, of which the author does not have a second copy.

### **22601 Banned Books**

Veli Ağbaba, CHP MP from Malatya, filed a parliamentary question for the Minister of Justice Sadullah Ergin, asking the number of books, CD and albums that currently have a ban and a confiscation order against them. Minister Ergin replied, saying that the 3rd Package of Judiciary Reform will contain articles that will bring an end to existing book bans. According to Ergin, his ministry had no information to answer the question and referred the question to the Ministry of Interior. Minister of Interior İdris Naim Şahin said that the total number of publications banned, confiscated or stopped from publication amounted to 22601 since 1952 and that 529 of them had the decision overturned.

## **Trials against the Press**

### ***Oda TV Trial***

Commonly known as the Oda TV trial, this case is exemplary as all the defendants are journalists charged with crimes that fall under Anti Terror Law for their journalistic activities.

The trial began on 22 November at Istanbul 16th High Criminal Court, with 14 defendants, 12 of whom are under arrest, including Nedim Şener, Ahmet Şık, Yalçın Küçük, Soner Yalçın and Oda TV employees. The journalists thus had their day in court 265 days after their arrest. At the hearing held on 12 March, Şık, Şener, Sait Çakır and Coşkun Musluk were released after 375 days under arrest. By the time of the next hearing in June, the other defendants will be under arrest for 1,5 years.

Furthermore, an investigation was opened about Şık, who said “Justice will come to Turkey when those who set this conspiracy up for us, including the police, the prosecutor’s office and the judiciary, too enter this prison” as he was released from prison, on the grounds that he was “threatening the judge and prosecutors and making them a target to a terrorist organization.”

### ***KCK Trial***

The Deputy Istanbul Republican Head Prosecutor’s Office with Special Authority is conducting the KCK investigation and the indictment regarding the 44 arrested defendants, 36 of which are journalists, was accepted by Istanbul 15th High Criminal Court. The defendants include the reporters and employees of *Özgür Gündem*, *Birgün*, *Vatan* dailies and Dicle Newsagency and Etkin Newsagency.

According to the indictment, the defendants are accused of being “organizational leaders” or “members of the organization” and for taking part in “KCK’s press committee.” News drafts, draft stories, draft book translations were listed as evidence along with demonstrations attended for the purpose of reporting and phone calls made with news sources. The journalists, who were arrested on 24th of January, will be under arrest for 9 months until the first hearing on September 10, 2012.

### ***The Arrest of Ragıp Zarakolu, Human Rights defendant and publisher, and Büşra Ersanlı***

Publisher Ragıp Zarakolu, a member of the Turkish Publishers Association and the Chair of the Freedom to Publish Committee, was arrested on November 1, 2011, under the KCK (Kurdish Communities Union) operations. At the prosecutor’s office, Zarakolu was asked why he had attended the opening of the “Politics Academy” of the Peace and Democracy Party (BDP) and whether he taught at the academy or not. Zarakolu is said to have stated that the documents and works confiscated at his home had to do with publishing and that “these documents contain various book drafts. My activities that are being subjected to accusations are purely intellectual in nature.” Released from prison in April due to an interim judgment of the court before the hearings had begun, Zarakolu is accused of “aiding and abetting the organization” with the possible sentence of up to 15 years.

As Zarakolu was under arrest, he was awarded the 2012 Freedom Award by the Belgium based Info-Turk Foundation and the Mahsus Mahal Friendship Award, given in solidarity with the writers, artists and publishers in prison every year by Mahsus Mahal Association. In the same period, Zarakolu was nominated for the Nobel Peace Award by Swedish parliamentarians. Lastly, Zarakolu was awarded “Jeri Laber International Freedom to Publish Award” by PEN in the name of Jeri Laber, a founder of the Human Rights Watch Committee, the biggest human rights organization in America.

Constitutional law professor and a member of BDP Constitution Commission, writer Būşra Ersañlı was also arrested in the same operation. Ersañlı is under arrest with the charge of “being a director of terrorist organization,” on the basis of the few lessons she had given at the politics academy and her notes on the questions asked to her, with the possible sentence of 22,5 years in prison. The case, which is due to have its first hearing in July, received heavy criticism for the so-called evidence, the insufficiency of the grounds for arrest and its long durations of arrest.

### ***Confiscation and Halting of Publishing for Periodicals***

In June, *Azadiye Welat* newspaper had its publication halted for the ninth time, based on the article 6 of the Anti-Terror Law. In September, the *Halkın Gūnlūĝū* (Diary of the People) newspaper was shut down for a month for “making propaganda on behalf of the terrorist organization,” and it was confiscated the day its 18th issue came out. In December, İstanbul 14th High Criminal Court stopped the publication of the periodical *Yūriyūş* for a month, on the grounds of “making propaganda on behalf of the terrorist organization.” The 299th issue of the periodical was also confiscated because of a few articles in it.

*Özgür Gūndem* newspaper received one month’s suspension for “making propaganda on behalf of the terrorist organization” due to some news, commentary and pictures published on some of its pages. The printing house was raided and the issue dated 24th of March was confiscated. The decision of the 14th High Criminal Court listed not the specific news or articles but only the page numbers. The appeal led to the removal of the ban on 30th of March.

Adana 7th High Criminal Court has decided to sequester the 24 March issue of *Atılım* newspaper, which had the header “Newroz, revolt, freedom,” on the grounds that it made “propaganda on behalf of an illegal organization,” with its newreports and photographs. The 2nd and 3rd issue of the newspaper was confiscated as well for “making propaganda on behalf of the terrorist organization,” and “encouraging armed protests and methods.” The publication of *Özgür Gelecek* newspaper was suspended for a month, because of “an interview with the TKP/ML TIKKO Regional Political Commissar and Regional Commandant” and the newspiece titled “Fight School”.

On July 16 2011, İstanbul 14h High Criminal Court suspended the publication of the monthly New Democracy Youth magazine for a month for “praising the crime and the criminal,” and “making the propaganda of an illegal organization.”

### ***Pecuniary Fines for Periodicals***

Prime Minister’s Board for Protecting Minors from Harmful Publications, fined the monthly comic magazine *Harakiri* for a 40 percent of its distribution fee, on the grounds of “promoting laziness among Turkish people,” and “encouraging unmarried relations.” Cartoonist Kutlukhan Perker, the editor-in-chief of the magazine, closed the periodical down, saying that an independent publisher cannot afford 150 thousand TL of a fine. The magazine employed cartoonists and writers such as Can Barslan, Behiç Pek, Serhat Gūrpınar and Atilla Atalay.

### ***Newsreporters and Columnists Losing Their Jobs***

Lately, many members of the press had to leave their job and even their profession because of the newsreports or column articles they wrote. Nuray Mert, Banu Gūven, Mehmet Altan, Cūneyt Ūlsever, Ece Temelkuran, Ŗzdemir İnce, Can Dūndar and Ruşen Çakır are only few of the journalists who had to resign from their jobs, had their tv-programs stopped or lost their columns in 2011 after their work

receiving reaction from the government. The increase in the numbers of the journalists facing this predicament is extremely worrisome.

### **Limits on Internet Publication**

The impediments on the way of freedom to publish in Turkey also revealed themselves in political and legal interventions on the internet. The “Procedures and Principles Related to Safe Internet Use” draft prepared by The Information Technologies and Communication Authority (BTK) in accordance with the provisions of the Directive for Customers Rights in Electronic Communications Sector, raised a great deal of public uproar. The reasons listed in the report for curtailing the freedom of access to information over the internet were deemed to contravene the freedom of thought, expression and information. Following some slight changes, the draft went into effect on 22 August 2011. In the document, the choice of packages filtering various content for internet users was left to the customers, while the Information Technologies Board’s authority to prohibit access to internet sites was kept in place.

### ***Decisions to Close Down Internet Sites and Prohibit Access***

In accordance with the Law Regulating Broadcasting by Internet and Suppression of Crimes Committed through Internet Broadcasting, access to internet sites could be prohibited via “precautionary measures” ordered by a court, even when no case has been opened. Courts have been taking decisions to block access to whole sites because of a complaint against a comment or an article on a site. With such measures, some very valuable content appealing to a wide audience has become inaccessible to users. In a press release dated 27th of March, BTK revealed that the board received 500 thousand complaints regarding content on the internet, and that 110 thousand sites are currently banned. It was indicated that 60 percent of content removal had to do with obscenity, 20 percent about crimes against Atatürk and 20 percent could be classified as other.

An exemplary case against the banning of sites was opened by Prof. Dr. Yaman Akdeniz, a member of the Faculty of Law at İstanbul Bilgi Univeristy and Prof. Dr. Kerem Altıparmak, from Ankara University Political Science Faculty. These professors opened a case against the decision to block access to the Playboy internet site, and when their case was rejected, they took their case to the High Court of Appeals. Akdeniz stated that decisions to close down sites were made mostly on the grounds of “obscenity,” but that the Playboy site did not have pornographic content, and that the question of which internet site an individual retrieves information from at his home is a matter of private life.

The Telecommunication Communication Directorate (TİB) censured a critical review of “A Serbian Film”(2010), which was not released in Turkey, published on the internet site otekisinema.com. In the warning letter sent to the site, the site directors were asked to remove content. TİB also blocked access to the internet page about the film on the site turkcealtyazi.org (turkish subtitles.org) The film, which had been a subject of controversy around the world for its violent scenes, was not bought by distributors in Turkey.

It has been learned that access to Kaos GL and Lambdaİstanbul web sites too was restricted, even though these sites did not figure in the lists of blocked sites at TBMM (Turkish National Assembly) or TİB. The MPs who tried to access these sites from the parliament building had to contend with pages saying “restricted access”, “homosexuality,” and “fill out a form if it is necessary for your work.”

Information was requested about the identity of those who want to access these sites as well as their reasons for wanting access.

### ***Cases against News and Political Commentary Sites***

Internet newssites also had their share of the restrictions imposed on printed newssources. Besides the published news pieces, comments made by readers to the news reports too can be subject to prosecution against the site owners and employees. Because of an interview published in Gercek Gundem.com news site, the interviewee, Şebnem Korur Fincancı, chair of TİHV, and Barış Yarkadaş, the Editor-in-Chief of the site, were accused of “Defamation of a public officer via press” on the basis of a complaint filed by Prof. Nur Birgen, the Chair of the 3rd. Expert Board of Criminal Medicine, who had been mentioned in the interview. The case ended with an acquittal.

Certain links of Fırat News Agency’s (ANF) internet site was prohibited access on the basis of Ankara 11th High Criminal Court’s decisions on the grounds of “precautionary measure” and “pornographic content.”

The indictment against Recep Okuyucu, the editor-in-chief of Batman *Doğuş* newspaper, who is on trial for using news reports from an internet site without permission, cited him accessing a forbidden site as evidence. The research in the computers of the newspaper revealed that Okuyucu had entered the ANF site, prohibited access from Turkey, and for that reason, he was charged with “making propaganda on behalf of the terrorist organization,” with a possible prison sentence of 5 years.

Ankara Republican Head-Prosecutors Office charged 6 people in responsible positions of the internet sites *Haber Vaktim*, *Beyaz Gazete*, *Aktif Haber* and *Aktif Kulis* with “defamation of a public official” by publishing a fake video, with a possible sentence of 2 years and 4 months.

Halil Savda, the director of the site [www.savaskarsitlari.org](http://www.savaskarsitlari.org) was charged with the articles 125/2 and 53 of the Turkish Penal Code, for putting the newspiece “Ağar: Accusations and Beyond,” which had been published previously on another site, on this site. In his defense, Savda said that the news report did not include his own claims and opinions, but passages from the ex-head of the MİT counter-terror department Mehmet Eymür’s statements in court as well as from the MİT report, and that they included this information on their site due to public’s right to get information.

### ***Cases against Shares on Social Media***

Social media users can face prosecution for the remarks they made on chats or comments online. Comments on one of the most popular sites in Turkey, *Eksisözlük*, with over 35 thousand writers, have been the subject of prosecution numerous times. In November, an *Eksisözlük* writer, Ahmet A.S. was charged for “insulting religious values” for the comment he wrote under the entry “nonsense that is religion.” The prosecution asks for a sentence ranging from 9 months to 1,5 years. Mikail Boz, a student at the Marmara University Communication Faculty, was suspended for a term from his school because of a critical comment he wrote about the dean Yusuf Devran. Boz said that he wrote his comment not with the intention of insult but with the idea of a democratic university.

A 17-year-old Facebook user B.K. was charged with “defamation of a public official,” with the possible sentence of up to 2 years in prison, for allegedly insulting the Prime Minister, the Chair of the Turkish Parliament, the Deputy Ministers, Ministers and MPs. In defense, B.K. said that (s)he had no ulterior motive, but had merely quoted from a columnist’s article and that if this indeed was a crime, millions of people would have to be prosecuted.

Adem K was sentenced to 2 years in prison by the Erzurum 2.nd High Criminal Court for making propaganda for PKK with the updates he made on his Facebook page in 2010. The court cited Adem K's previous criminal record with similar charges, the way in which the crime is committed and the subject and gravity of the crime as justification for its decision.

### ***Report about Prohibition of Access on the Internet***

The Human Rights Watch's 2012 World Report, in its section on Turkey, made the following observation: "The government revised a plan to impose obligatory filtering packages on all internet users and delayed implementation of optional filtering packages, following forceful public opposition in Turkey and by international bodies, including the OSCE and the Council of Europe. However, the practice of blocking an estimated 15,000 websites in Turkey—most of which have pornographic content but some of which are restricted for pro-Kurdish or other political content by order of the Telecommunications Ministry and court decisions—raises concerns about restrictions on the right to freedom of expression and access to information."

In Human Rights Joint Platform's Freedom of Expression in Turkey: Observations on Legislation and the Judiciary Report, the following comments and recommendations were made regarding the present Internet Law and The "Procedures and Principles Related to Safe Internet Use" which came into effect in 2011. According to the report, "these procedures introduce the State filtering of internet content. A stereotype concept of child/family is exalted and imposed. The authorization of the State in filtering and deciding on which sites should be accessible cannot be accepted in the context of freedom of expression. Turkey is the only OSCE (Organization for Security and Cooperation in Europe) country that resorts to central filtering.

In enforcing the Law no. 5651, decisions to block access can be given only in respect of catalogue offences listed in Article 8 and of the Law no. 5846 on Intellectual and Artistic Works. Yet, administrative bodies and the judiciary take decisions for banning access or give cautionary judgments, which runs counter to the rule that human rights can be restricted only as prescribed by law as stated in the ECtHR. The Information Technologies and Communication Authority cites provisions in some laws allowing for "precautionary measures" as the basis of decisions banning internet access. (Reserving the request for full abolishment of these provisions including those in the Law no. 5651) articles in various laws that need to be amended are as follows:

Annex article 4 in the Law on Intellectual and Artistic Works; Article 8, paragraph 5 and indent (k) in the Law on the Organization and Duties of Tobacco and Alcohol Market Regulatory Authority; provisions of Commercial Law related to unfair competition (Articles 56 and 58 in the former law and Articles 54, 55 and 56 in the present one); Article 6 paragraph 4 in the Anti-Terror Law; Articles 24 and 25 in Turkish Civil Code; Article 101 of Annulled Law on Civil Procedures (389 and following articles in the new law); Article 5 of the Law on Betting in Football and Other Sports Contests; Article 6 of the Law on the Establishment of the Head Office for Religious Affairs; and Articles 9, 76 and 77 of the Law Decree on the Protection of Trademarks.

The Law no. 5651 entitled "Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication" is applied in a manner to block access to many sites and there are many decisions blocking access without justification other than merely referring to articles from the law. The site owners are kept in the dark about the process and given no chance to defend the legality of their sites. The Law no. 5651 is enforced in practice so as to block access not only to any specific content but to the whole system. Such decisions are contrary to human rights, the constitution and the ECHR criteria.

While the purpose of The Law no 5651 is stated as protecting children from unlawful and harmful internet sites, the practice has assumed dimensions entailing direct censorship for all. This law should be abolished and a new policy is needed in this field. Particular attention needs to be given to the following four fundamental principles:

a- Regulations related to internet access and use should be respectful to the principles of international human rights law, particularly to freedom of expression and privacy of communication.

b- Restrictions must be as prescribed by law, proportional and in accordance with the norms of democracy.

c- Any content, saving, reading or visualizing of which is not considered as offense, must not be covered in regulations related to internet content.

d- As stated by the European Commission “problems of principle (caused by unlawful and harmful content) radically differ from each other and they require different legal and technological responses. It will be dangerous to mix up the issue of children’s access to pornographic content for adults with other issues. The new initiative must certainly take this important difference into consideration.”

### **Official Declarations**

In response to the mounting criticism from Turkey and abroad about the KCK operations, which led to 7748 detentions and 3895 arrests since 2009, Prime Minister Tayyip Erdoğan said that such criticism amounted to “support and service to terrorism.” In his speech, the Prime Minister said that “the statements you make, either in the media or elsewhere, without knowing how far the KCK reaches and who plays what kind of roles in this matter, is simply support for terror, service for terror.”

Minister of Interior İdris Naim Şahin, presented a new definition of terror in a statement he made on December 26, 2011. Saying that terror is not merely about the mountain and arms, he said that “There is psychological terror, there is scientific terror. There is a back garden feeding terror. In other words, there is propaganda, terrorist propaganda.” The minister’s following statement, accusing artists, writers, universities and civil rights organizations with “supporting terrorism” caused a great deal of controversy: “How does he give his support? Maybe he does so by painting a picture, maybe by writing a poem; perhaps by writing a daily column. If he cannot stop there, he goes on to demoralise the military, the police, who carries out the duty of countering terrorism, by making him the subject of his work, his art. Those who struggle against terror is somehow struggled against, messed with. The back garden where terror operates from behind is in Istanbul, in Bursa, in Vienna, in Germany, in London... wherever, it is a university chair, an association, a non-governmental organization.” In response to this statement that called artistic production terrorist activity, many artists signed a joint letter addressed to the Minister, calling for him to “either call all art terrorist or to resign.”

The Turkish Chief-of Staff made a public statement on May 3, World Press Freedom Day, and claimed that the Armed Forces was being denigrated with news reports, claims and comments. According to the statement, the freedom of press and expression was being manipulated to incense the Turkish Armed Forces.

In May, speaking at the closing ceremony of the Turkey-Africa Media Forum, Bülent Arınç, the Deputy Prime Minister said the following regarding the journalists under arrest in Turkey: “You can speak of maybe one or two journalist serving a sentence for what they wrote or drew in Turkey, but if you say there are hundreds, thousands of people, you are out of your mind.” Egemen Bağış, the Minister for the European Union affairs replied to a parliamentary inquiry that the number of

journalists under arrest is 92. Bağış corrected his earlier statement that “there are some on trial for rape,” by saying that he meant “ordinary crimes.”

Oktay Ekşi, CHP MP from Istanbul, presented a draft law to the Parliament, that would abolish the articles 6 and 7 of the Anti-Terror Law. In the reasoning of the draft, it was said that the laws passed to counter terrorism did not attain their goal and that Anti-Terror Law articles 6 and 7 had become a source of torment for members of the media. Particularly, it was said that Article 6 had made “reporting which targets the terrorist organization going to attack” and “printing and publishing the statements of the terrorist organization” a crime and that it made it an offense, punishable from one to three years, to “publicise the identities of the public officials who took part in the fight against terror,” and “to thereby make them targets.” It was argued that the article 7 of the Law which makes it punishable offence to “make propaganda on behalf of the terrorist organization” is superfluous considering the articles in the Turkish Penal Code to the same effect. The clause asking for a judicial fine from a thousand days to 10 thousand for employees of the media source “that did not take part in the crime,” was deemed to be contrary to the principle of the “personal nature of crime.” Turkey’s Journalists Association and Turkish Publishers Association appealed to the parliamentary parties and the Chair of the Parliament to act on this draft law immediately and to fully repeal the Anti-Terror law.

### **ECHR Decisions**

European Court of Human Rights, in its decision regarding Prof. Dr. Taner Akçam, who had been tried under article 301 of the Turkish Criminal Code because of his article about Hrant Dink and the article 301, concluded that the latest changes in the article were not sufficient and that the risk of trials being opened continued. The decision criticized the change that cases against freedom of expression could now be opened with the permission of the Ministry of Justice, saying that the interpretation of the law may change with a change in government or policy, that the Ministry did not have clear criteria in assessing the cases and that this state of affairs did not comply with the European Human Rights Convention and Fundamental Freedoms.

ECHR, also sentenced Turkey to pay monetary damages for infringing “the freedom of expression” in the case of journalist Erbil Tuşalp. Tuşalp had been sentenced to 10 thousand TL monetary fine for his two articles published in daily *Birgün*, titled “*İstikrar*” and “*Geçmiş Olsun*” which criticized Prime Minister Erdoğan. ECHR decided, upon the case opened by Tuşalp’s complaint, that Turkey had violated the article 10 of the European Human Rights Convention, saying that “scathing remarks too fall within political criticism,” and sentenced Turkey to pay a fine of 5 Thousand Euros to Tuşalp.

### **International Reports and Declarations**

Dunja Mijatovic, the Media Freedoms Representative of Organization for Security and Cooperation in Europe (OSCE), declared that many innocent journalists remain in prison in Turkey and that OSCE was to publish a database about the journalist under arrest. Emphasizing the importance of the free flow of information and the freedoms of access to information and communication, Mijatovic said that “We are defending the freedom of press and we are in Turkey for concrete proposals for a solution. Even if it is not possible to completely abolish a Law and replace it with another, we do ask for some specific amendments.”

Following the visit to Turkey of the European Council Human Rights Commissioner and Delegation in 10-14 October 2011, on October 2012, the Hammerberg Report was published. The report said:

“Long-standing, systemic shortcomings in the administration of justice in Turkey adversely affect the enjoyment of human rights.” According to the report “one of the major factors hampering progress lies in the established attitudes and practices followed by judges and prosecutors at different levels giving precedence to the protection of the state over the protection of human rights, borne out of the spirit of the 1982 Constitution.” Evaluating the legal problems, the report said that “The Turkish authorities should strengthen their efforts to accelerate proceedings and use non-custodial alternatives more frequently. They should also reduce the excessively long time limits for detention on remand, which can currently go up to ten years.”

In addition, the commissioner expressed his concern about the way certain offences relating to terrorism and membership of a criminal organisation are defined in the Turkish legislation, leaving room for a very wide interpretation by courts. “Terrorism poses enormous challenges and difficulties, but it should be fought while fully respecting human rights. Prosecutors and judges need to be further sensitised to the case-law of the ECtHR concerning in particular the distinction between terrorist acts and acts falling under the scope of the rights to freedom of thought, expression, association and assembly”. The Commissioner encouraged the authorities to review the need for assize courts with special powers, owing to the severe restrictions to the rights of defence before these courts, by derogation from normal procedural guarantees. Finally, he called for further measures to affirm the independence of judges from the executive and to develop internal democracy within the judiciary.

While publicising his report in Turkey in January 2012, Thomas Hammerberg was asked about the infringements of freedom of thought and expression. He said that the KCK case indicated a misuse of the terms “terrorism” and “membership of an illegal organization” and that any criticism is being construed as “terrorism” and “supporting terrorism.” Hammerberg added as follows: “The number of journalists under arrest is higher in Turkey than any other country Europe. Journalists’ links with terror is not properly justified. When the evidence is put under scrutiny, it appears that the journalists are in prison for the things they wrote.”

Amnesty International made a press declaration in Taksim square in April and asked for the removal of all the impediments in the way of freedom of expression in Turkey. The declaration reminded that many individuals, including teachers, academics and journalists, are taken into custody or arrested because of various articles of the Turkish Criminal Code. They said: “We want the unfair trials conducted under the Anti-terrorism regulations to come to an end. We call for a redefinition of the crime of terror on the basis of international standards and norms, and most notably on the principles of legality and legal clarity.”

Amnesty International also published a report card for freedom of expression in 2012, on 3<sup>rd</sup> of May, which is the World Press Freedom Day. The report said that journalists were arbitrarily arrested in Turkey in order to suppress dissident opinions, that article 216 of the Turkish Penal Code has definitions curtailing freedom of expression and that the definition of terrorism in Anti Terror Law is unduly broad, vague and devoid of the legal clarity necessary for international human rights law.

Amnesty International’s 2012 annual report also said, “Constitutional amendments and revisions to the Anti-Terrorism Law fell short of the fundamental change required. To the contrary, freedom of expression continued to be threatened and demonstrators faced increased police violence. Thousands of investigations conducted under the deficient anti-terrorism law failed to meet the standards of fair trial. Many cases were opened threatening the freedom of expression of individuals. Specifically, critical

journalists, Kurdish political activists and others expect to face charges when they speak about the situation of Kurds in Turkey or when they criticize the armed forces. In addition to the cases opened in accordance with the various articles of the Penal Code, many cases threatening freedom of expression were opened under anti-terrorism laws. In November, new regulations went into force leading to increase worries about arbitrary restrictions to internet sites.”

Human Rights Watch published its 2011 World Report in January 2012. In the Turkey section of the report, it was stated that “Turkey's overbroad definition of terrorism still allows for arbitrary imposition of the harshest terrorism charges against individuals about whom there is little evidence of logistical or material support for terrorism or of involvement in plotting violent activities. Prosecutors frequently prosecute individuals for non-violent speeches and writings. Politicians sue their critics for criminal defamation. Courts convict with insufficient consideration for the obligation to protect freedom of expression.”

The report said that the sole evidence against Şık and Şener, charged with aiding and abetting the Ergenekon organization, a criminal gang charged with coup-plotting against the AKP government, was their non-violent writing, in Şık's case consisting of an unpublished manuscript, and that the two had spent months in pre-trial detention. The report also said that “Academic Büşra Ersanlı and journalist Ragıp Zarakolu] will face trial in 2012 for alleged links with the Union of Kurdistan Communities (KCK/TM), a body associated with the PKK leadership. They were arrested during a clamp-down on the pro-Kurdish Peace and Democracy Party's (BDP) legal political activity, which began in April 2009 and intensified in 2011. Hundreds remain in pre-trial detention and thousands are on trial on terrorism charges after waves of arrests of officials and activist members of the BDP (which won 36 independent seats in the June 2011 general election) for alleged KCK links.”

According to the 2011 report of Journalists Without Borders (RSF), publicized on 3<sup>rd</sup> of May, World Freedom of Press Day, Turkey comes in the top 5 in the list of countries with “the most number of journalists in prison.” The other countries on the list are Iran, Erithrea, China and Syria. According to RSF's “World Freedom of Press Index” the countries with the freest press are Finland, Norway and Estonia. In this list, Turkey is above Afghanistan, Pakistan and Iraq, at number 148. The report also said that many journalists were under arrest because of the Ergenekon, Devrimci Karargah and KCK trials.

PEN Turkey Center, Turkish Writers Union, Translators Trade Association and Turkish Publishers Association, jointly organized a symposium on March 15<sup>th</sup> 2012, titled “Freedom of Thought and Expression, 12 to 12” and called attention to the situation of the journalists, writers and publishers in prison and the journalists who were left unemployed. Writer and publisher William Nygaard, representing International Publishers Association (IPA), and Norwegian writer, Eugene Schoulgin, representing International PEN, both took part in the symposium as speakers. At the conclusion of the symposium, writers', translators', critics', and publishers' associations and trade unions (BESAM, Association of Copyright Holders of Scientific and Literary Works; ÇEV-BİR, Translators' Trade Union; EDİSAM, Association of Copyright Holders of Literary and Scientific Works; KYD, Kurdish Writers' Association; OYÇED, Playrights and Translators' Association, PEN-Turkey; TEB, International Theater Critics Union, Turkish Office; TED, Literarians Association of Turkey; TYB, Turkish Publishers Association; TYS, Writers Union of Turkey; Translators' Association; Initiative against Crimes of Thought) approved a resolution, calling for “an end to the detentions that have turned into a means of deterrence, the immediate release of the writers and journalists under arrest, the repeal of all the antidemocratic laws and practices, including Article 301 of the Penal Code and Anti

Terror Law, and the reform of the Turkish Penal Code and the Press Law in line with the European Convention of Human Rights, so that journalists and academics can have a fair trial, free of arrest.”

Human Rights Joint Platform made a series of comments and recommendations in their “Freedom of Expression in Turkey: Observations on Legislation and Judiciary” report, dated May 15<sup>th</sup> based on an examination of indictments and the court decisions. The report stated that numerous articles of the Anti-Terror Law and Turkish Penal Code are problematic in terms of clarity, exactness and predictability. Banning propaganda even when there is no implication of violence, increasing of sentences when offenses are committed through the press and the articles regulating insult, do not conform to the norms and standards of the European Convention of Human Rights and the decisions of the European Court Of Human Rights. The existing legislation poses a threat to the function of the media to inform the public about issues that need to be debated, and also to the rights of receiving and having access to information and the rights of the media and media professionals to transmit news or information. Offenses related to insulting and libel must be deleted from criminal laws since issues emerging as a result of opinions expressed must be dealt with not by criminal but private law. The coverage of expressed opinions by criminal laws and particularly the possibility of being criminally punished as a result of expression relating to public officials or state institutions increases the risk of auto-censoring and threatens free debate of public issues. Obscenity is not defined in law and there is no clarity as to why it is an offense or should be deemed so.

The report began its recommendations by first suggesting “the option of totally annulling the Anti-Terror Law...and lifting courts with special authority,” and continued with a series of suggested amendments to its problematic articles. The report suggested specific amendments to the Law no. 6112 on the Higher Board for Radio and Television (RTÜK), Law no. 5816 on Offenses against Atatürk and Law no. 5187 on Press, as well recommending the Law no. 1117 on Protecting Minors from Harmful Publications to be abolished. In terms of the Turkish Penal Code, articles 301 and 318 would need to be abolished, and amendments had to be made to articles 125, 132, 134, 215, 216, 217, 218, 220, 257, 273, 283, 285, 299, 305, 314, 327, 329, 334, 336, in order for legislation to be more in line with international human rights law and the right to freedom of expression. Also according to the report, “the provisions envisaging monetary fines of the press instead of imprisonment and increase in sentences when offenses are committed through the press must be abolished.”

On 22-24 November 2011, an international group had visited Turkey upon an invitation by European Journalists’ Federation, on the grounds of the worsening conditions of press freedom in Turkey, and their observations culminated in the 2011 report of the European Journalists’ Federation. The report, sent to the European Union Commission, European Parliament, European Council and European Security and Cooperation Organization, stated that the officials declined to give the specific number of the journalists under arrest and the cases opened against journalists and that the numbers provided by journalists’ unions were reduced in the official declarations, making it necessary for European Union to appoint an independent delegation of its own to assess the real situation.

The International Group concluded its report by saying that “The freedom of press is under a greater threat today than it had been previously. According to the assessments of journalists and organizations of freedom of expression, Turkey has the highest number of journalists under arrest in Europe. Amendments should be made to the Anti-Terror Law and Turkish Penal Code to have the cases opened against journalists to be dropped; and the arrested journalists should be released immediately.”

## Conclusion

The impediments against freedom of thought and expression, followed and reported every year by the Publishers Association in Turkey, continue to stay in place, along with series of legal and political restrictions. Anti-terror Law and certain articles of the Turkish Penal Code prevent the expression of critical opinion not approved by the society or the state, either in spoken or published form, by way of heavy accusations, punishments, long and tedious investigation and trial processes. In order for the freedom of expression to be secured in Turkey, these articles of legislation has to be abolished, or they need to be amended so that the vague wording that makes them a basis for unfair accusations is removed. On the other hand, it is worth remembering, as had been expressed in the concluding declaration of the 5th Publishing Convention of Turkey, freedom of thought and expression, and freedom to publish, which complements them, can only fully take root in Turkey when both the society and the state denounce autocratic inclinations and the democratic framework gets enshrined in the mentality of all the individuals and institutions in the country. We conclude with our everlasting wish for a time when thoughts are expressed and shared freely, without any borders in sight.

## Turkish Publishers Association Freedom to Publish Committee

### The Confiscated, Banned and Tried Books, Authors and Publishing Houses

(June 2011- June 2012)

PUBLISHING HOUSE	AUTHOR	BOOKS
Aram	Demir Çelik	<i>Özgürlüğünde Kaldı Gözlerim</i> (fined 20 thousand TL)
Aram	Abdullah Öcalan	<i>Kapitalist Uygarlık /Maskesiz Tanrılar ve Çıplak Krallar Çağı</i> (Banned)
Aram	Hatip Dicle	<i>Yargılayanlar Yargılanıyor</i>
Aram	Ayhan Kaya	<i>Mordemin Güncesi</i>

Aram	Serdem Çiyayi	<i>İçimizde Bir Parça Ülke</i>
Ayrıntı	Chuck Pluhniuk	<i>Ölüm pornosu (Case continues)</i>
Belge	George Jerjian	<i>Gerçek Bizi Özgür Kılacak (sentenced- at appeal)</i>
Belge	Mehmet Güler	<i>Ölümden Zor Kararlar (sentenced-at appeal)</i>
Belge	Mehmet Güler	KCK Dosyası (sentenced-at-appeal)
Cumhuriyet	İlhan Taşçı	Cübbeli Adalet (Case continues)
Çetin	Duran Kalkan	Kürdistan'da Demokratik Siyasetin Rolü (banned)
Çetin	Derleme	Demokratik Konfederalizm (banned)
Çetin		Anılarla Abdullah Öcalan (printing-press owner sentenced)
Destek	Ali Dağlar	Operasyonun Adı: Ağa Ol (case continues)
Do	Aras Erdoğan	Haberlerin Ağında Öcalan (sentenced)
Do	Sertaç Doğan	Şırnak Yanıyor (sentenced)
Evrensel	Ahmet Kahraman	Kürt İsyanları (acquitted)
Evrensel	Zeynep Özge İmran	Bir İsyan Adı (acquitted)

İthaki	E.Maviođlu/A.Şık	Kır Satır, Kırk Katır (case continues)
İthaki	Cengiz Kapmaz	Öcalan'ın İmralı Günleri (confiscated, recalled)
Kalkedon	İsmail Saymaz	Postmodern Cihad (case continues)
Kaynak	Deniz Yıldırım	Tayyip'in Voleleri (acquitted)
Metis	Ajanda	İllallah (case continues)
Mezopotamya	Muzaffer Ayta	Yaşam Geçidinde Yirmi Yıl (confiscated, recalled)
Mezopotamya	Şiyar Dersim	Dersim'in Çıđlıđı (confiscated, recalled)
Mezopotamya	Murat Karayılan	Bir Savaşın Anatomisi (confiscated, recalled)
Mezopotamya	Abdullah Öcalan	Demokratik Toplum Manifestosu (confiscated, recalled)
Mezopotamya	Abdullah Öcalan	Yol Haritası (confiscated, recalled)
Mezopotamya	Abdullah Öcalan	Demokratik Konfederalizm (confiscated, recalled)
Ozan	Sinan Kara	Sinan'ın Kara Kitabı
Peri	M. Erol Coşkun	Acımın Dili Kadın (sentenced, at appeal)
Peri	Hejare Şamil	Diaspora Kürtleri (acquitted, appealed, case continues)

Peri	Ahmet Önal	Derheqa Diroka Kurd û Kurdistanê De (2 cases continue)
Sorun	Osman Tiftikçi	Osmanlı'dan Günümüze Ordunun Evrimi (case continues)
Sel	William S. Burroughs	Yumuşak Makine (case continues)
Su	Mahir Çayan	Toplu Yazılar (acquitted, at appeal)
Su	Derleme	Devrimci Türkü ve Marşlar (acquitted, at appeal)
Şevda	İrfan Babaoğlu	Auschwitz'den Diyarbakır'a 5 Nolu Cezaevi (case continues)
Timaş	Şamil Tayyar	Operasyon (sentenced-sentence deferred)
Tevn	Zülfikar Tak	Diyarbakır Cezaevinde İşkence
Tevn	Ergün Sönmez	Emperyalizm Sürecinde Kürt Özgürlük Hareketi
Tevn	Kasım Çakan	Astsubayken Er Olmak (acquitted)
Tevn	Cemal Şerik	Değişim ve Yenileme Üzerine
Tevn	Eyüp Demir	Yasal Kürtler
Tevn	Osman Özçelik	Külilken Geşaye (Buz Çiçekleri)
Togan	Harun Gürek	Belediye İhale Dalavereleri

