

Reporters Without Borders

<http://www.rsf.org/turquie-judicial-reform-bill-just-09-02-2012,41833.html>

Europe/Ex-USSR - Turkey

Cautious hope

Judicial reform bill – just placatory gesture or start of real change?

9 February 2012

[Read in Turkish / Türkçe](#)

Reporters Without Borders takes note of a government bill aimed at loosening Turkey's legislative straightjacket, especially as regards the media, and hopes that it represents a first step towards more significant reforms, or else its impact will be minimal.

"By finally addressing certain major failings in the Turkish judicial system, this bill is a step in the right direction," Reporters Without Borders said. "This recognition of the shortcomings is welcome, contrasting as it does with the usual denial on the part of senior officials.

"But the bill envisages just a few adjustments whose effects will be very limited if legislators think they suffice and refrain from more thorough reforms. Patching holes is not enough. Civil liberties will not be properly guaranteed until the Anti-Terrorism Law, the Criminal Code and the Code of Criminal Procedure are completely purged of the repressive attitudes that pervade them."

Drafted by the justice ministry and approved by the cabinet, the bill was sent last week to the national assembly, where it will soon be put to a debate and vote. Its declared aims are to "make the services provided by the judicial system more effective" and to introduce a generalized "suspension of prosecutions and sentences in media cases."

The European Court of Human Rights has repeatedly ruled against Turkey for violating freedom of expression. The country's legislation and the tendency of the courts to prioritize security concerns are both largely to blame. Reporters Without Borders presented its recommendations on this issue in [a report released in June 2011](#).

Generalized three-year suspension

The most spectacular aspect of the bill seems to be the suspension of a range of prosecutions and sentences affecting journalists.

"We await the releases of journalists with impatience," Reporters Without Borders said. "But there will not be enough of them, because what are really media cases are more often than not defined as terrorism cases by the judicial system and most of them will be excluded from this provision. Furthermore, the many journalists prosecuted in connection with their writing who benefit from a three-year suspension will in practice be forced to remain silent during this period."

Prosecutions and sentences for "media and opinion offences" committed before 31 December 2011 and carrying a maximum sentence of five years in prison will be suspended for three years and the cases will thereafter be closed for good if the persons concerned have not committed another similar offence during this period. If they have, the suspended investigation or prosecution will resume. According to the justice ministry, this provision could affect 5,000 cases involving journalists.

The nature of the crimes covered by this provision is vague. Commentators think it will cover "disseminating a terrorist organization's statements" and "propaganda for a terrorist

organization” under the Anti-Terrorism Law. If this is so, then the cases against **Irfan Aktan**, [Ragip Zarakolu](#) and **Hakan Tahmaz** will, for example, be suspended.

Other detained journalists such as **Vedat Kursun**, **Bedri Adanir**, **Ruken Ergün** and **Ozan Kiling** may also partially benefit. Some could even be freed because of the length of time they have already been held, but not those who have been arbitrarily charged with “membership of a terrorist organization.”

A judicial system that complies more with international standards?

[Abuse of pre-trial detention](#) is one of the most criticized aspects of the Turkish judicial system. Suspects often spend years in prison before being tried, especially in terrorism cases. Judges systematically rejected bail requests without having to explain why.

This crucial point is addressed by article 76 of the bill. If adopted, judges will have to justify a refusal to grant bail. Concrete evidence will have to be produced to demonstrate a risk that the suspect would try to flee, tamper with evidence or put pressure on witnesses.

“We cannot wait to see how this amendment will be implemented,” Reporters Without Borders said. “Around 100 journalists have had to kill time in prison for months if not years while awaiting a possible conditional release. The expectations are enormous.”

The bill would also limit the time between a suspect’s arrest and announcement of the charges. Journalists are often held for months or more without knowing the charges against them, in flagrant violation of the principles of the European Convention on Human Rights. This prevents their lawyers from being able to present effective arguments for their release.

The 11 journalists in the [Oda TV case](#), for example, spent six months in detention before knowing what charges were being brought against them. [The approximately 30 journalists who have been held since the end of December](#) still do not know.

Significant progress for the media, but also concerns

The [suspension of newspapers and magazines](#) for periods ranging from two weeks to a month under article 6.5 of the Anti-Terrorism Law will no longer be possible. This provision was widely used to [silence the pro-Kurdish newspapers](#) *Özgür Gündem* and *Azadiya Welat* and the left-wing weekly *Atılım* (*Fervour*). The European Court has ruled against Turkey several times on the grounds that this is a disproportionate sanction.

The public’s right to information should finally be taken into account and thereby loosen [the straightjacket on reporters covering judicial proceedings](#). Most prosecutions against journalists are based on articles 285 and 288 of the Criminal Code, which punish violation of the confidentiality of judicial investigations and attempts to pervert the course of justice. The penalties are increased (to a maximum of four and a half years in prison) for journalists.

The proposed amendment to article 285 says that “covering judicial investigations and trials within the bounds of informing the public does not constitute a crime” while the scope of article 388 is more clearly defined and the penalty is reduced from four and a half years in prison to a fine. It remains to be seen if this will really modify the often extreme way prosecutors and judges interpret these articles.

Similarly, much will depend on the way that the amendments concerning the protection of privacy are interpreted. They are intended to curb abuses by the police, whose investigations are often [based on phone taps or the interception of correspondence](#), but they could easily be used against investigative journalists.

If the bill is adopted in its current form, the penalties for this kind of offense will be increased. “The unauthorized monitoring and recording of private telephone conversations” (article 133 of the Criminal Code) will be punishable by two to five years in prison. “Violating the confidentiality of correspondence” will be punishable by three years in prison, or more if the content has been recorded or revealed. “Violating privacy” will be punishable by one to three years in prison, or more if photos, video footage or audio recordings are published.

“International experience in this area shows the need for the utmost caution,” Reporters Without Borders said. “Protection of privacy and bans on phone taps are often used as a pretext to nip investigative journalism in the bud, [as Silvio Berlusconi’s government recently tried to do in Italy](#). We hope Turkey’s judicial authorities will be able to weigh these legitimate

concerns against the public's right to be informed on matters of general interest, and in accordance with the European Court's jurisprudence, which [was reaffirmed yesterday](#)."

Finally, the Criminal Code's provisions as regards "membership of an illegal organization," which have also given rise to many prosecutions of journalists, have been changed only slightly. A person found guilty of a "crime on behalf of an illegal organization" will still automatically be convicted of "membership" of the organization, even if this has not been established.

"The Turkish government has repeatedly contented itself with cosmetic gestures designed to temporarily defuse domestic or international criticism," Reporters Without Borders said. "This must not happen yet again. The plight of Turkey's journalists is now well known internationally and is undermining the image of country that claims to be a regional model. This is a litmus test for the government."

You can download those documents on our website :

- , (JPEG - 105.5 kb)
 - RSF- "Daha Derin Reformlar İzlemezse Paketin Etkisi Olmaz", (PDF - 107.8 kb)
-