

Turquie : risques liés à la publication d'information « sensible » sur les réseaux sociaux

Recherche rapide de l'analyse-pays de l'OSAR

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1 Introduction

Le présent document a été rédigé par l'analyse-pays de l'Organisation suisse d'aide aux réfugiés (OSAR) à la suite d'une demande qui lui a été adressée. Il se penche sur les questions suivantes :

1. Est-il concevable qu'un citoyen ou une citoyenne turque qui a posté des photos ou vidéos liées au *Parti des travailleurs du Kurdistan* (PKK) fasse l'objet d'une arrestation et soit poursuivie pénalement à son retour en Turquie ? Si oui, quelle serait la sentence encourue ?
2. Existe-t-il des informations qui démontrent un risque concret de torture ou de mauvais traitements en détention pour des personnes accusées d'être liées au PKK ou de faire de la « propagande » en son nom ? Si oui, ce risque est-il plus prononcé dans une région que dans une autre ?
3. Existe-t-il des informations qui démontrent que des personnes accusées d'être liées au PKK, ou d'en faire la propagande, font l'objet d'une procédure pénale (de l'enquête à l'exécution en cas de condamnation) particulière pendant laquelle les droits de l'accusé sont diminués (avec par exemple des possibilités de défenses juridiques réduites ou des conditions de détention plus strictes) ?

Pour répondre à ces questions, l'analyse-pays de l'OSAR s'est fondée sur des sources accessibles publiquement et disponibles dans les délais impartis (recherche rapide) ainsi que sur des renseignements d'expert-e-s, y compris des expert-e-s rencontré-e-s lors de deux missions d'enquête en Turquie, la première en juillet 2018 et la seconde en octobre 2018.

2 Restrictions de la liberté d'expression et réseaux sociaux sous surveillance

Utilisation par le gouvernement du système judiciaire criminel et des lois anti-terroristes pour restreindre la liberté d'expression et faire taire les voix critiques, surtout les journalistes. Selon *Human Rights Watch* (HRW), la Turquie a une longue tradition d'utilisation du système judiciaire criminel et des lois anti-terroristes à portée excessive pour intimider et poursuivre toute personne critique du régime, y compris des journalistes et des activistes (HRW, 27 mars 2018). Selon *Reporters sans frontières* (RSF), accuser quelqu'un de « propagande terroriste » est une méthode utilisée par le système judiciaire turc depuis au moins 25 ans pour restreindre le débat public et réduire au silence les personnes critiques, surtout sur la question kurde. Elle trouve son origine légale dans la loi turque sur le terrorisme d'avril 1991, adoptée à une époque où les affrontements armés avec le PKK étaient fréquents. L'utilisation de cette accusation « fourre-tout » s'est répandue ces dernières années, surtout depuis l'échec des discussions de paix avec le PKK en 2015, alors que le gouvernement adoptait une position de plus en plus ferme sur la question kurde. Le coup d'État manqué de juillet 2016 a encore donné un coup d'accélérateur à cette

pratique qui a surtout été utilisée contre les journalistes et les médias. Selon RSF, pendant la période de deux ans qui a suivi la tentative de coup d'État, au moins 57 journalistes et professionnels des médias ont été inculpés de « propagande terroriste » ou de « publication de déclarations d'organisations terroristes » et la Turquie détient aujourd'hui le triste record du plus grand nombre de journalistes en prison (RSF, 6 septembre 2018). Selon la BBC, qui cite le *Platform for Independent Journalism* (Punto24), une organisation fondée par des journalistes turcs, le nombre de journalistes turcs en détention ou emprisonnés dépassent 160 (BBC, 18 juin 2018). Dans son dernier rapport sur la Turquie, daté d'avril 2018, la *Commission européenne* (CE) note que les droits fondamentaux, notamment la liberté d'expression, ont été fortement restreints depuis l'application de l'état d'urgence et de divers décrets qui ont suivi la tentative de coup d'État de juillet 2016 (CE, 17 avril 2018).

Le gouvernement considère ceux qui critiquent sur les réseaux sociaux les opérations militaires contre le PKK comme des « traîtres » qui doivent être tenus responsable de leurs « crimes ». Selon *Binali Yildiri*, premier ministre turque, cité par le *Financial Times* (FT) dans un article de janvier 2018, les utilisateurs-trices de réseaux sociaux qui décriaient l'opération militaire turque comme une opération contre les Kurdes, plutôt que contres des milices kurdes, commettaient là une « trahison » et une « infamie » (« the biggest villainy »). Il annonçait également que ces utilisateurs-trices ne devaient pas être un média « irresponsable » et que dorénavant ces personnes seraient tenues responsables de leurs « crimes » (FT, 23 janvier 2018). Selon HRW, depuis le début de l'année 2018, la répression du gouvernement turque contre ceux qui ont partagé des messages critiques de l'opération militaire turque dans le district syrien d'Afrin s'est soldée par l'arrestation et la mise en accusation de milliers de personnes. Selon des chiffres du ministère turc de l'Intérieur, 648 personnes ayant partagé des messages sur les réseaux sociaux ont été arrêtées entre janvier et février 2018. Cette vague de répression a ciblé des défenseur-e-s des droits humains, des politicien-nes, des membres du parlement du part pro-kurde *Parti démocratique du peuple* (HDP), des membres d'ONG, des universitaires, des médecins et des étudiant-e-s (HRW, 27 mars 2018).

Les restrictions à la liberté d'expression sous couvert de lutte contre le terrorisme ou de diffamation s'appliquent à tout le monde, y compris des avocat-e-s, des universitaires, des politicien-n-es ou simplement des utilisateurs-trices des réseaux sociaux. Selon *Foreign Policy*, déjà en mars 2016, l'accusation de « terrorisme » s'appliquait à tous ceux qui exprimaient des opinions que le gouvernement désapprouvait. Ces voix dissidentes, des journalistes, des avocat-e-s, des universitaires ou des politicien-n-e-s, ont été arrêtées, la plupart du temps, pour avoir fait de la « propagande pour une organisation terroriste ». Toutes déclarations contredisant le gouvernement sur la question kurde étaient rapidement étiquetées « propagande terroriste », un terme tiré de la loi turque anti-terroriste qui punit « la propagande en relation avec des organisations terroristes » (FP, 24 mars 2016). Selon la CE, les accusations criminelles qui visent, entre autres, les défenseur-e-s des droits humains, les journalistes, les écrivains mais également simplement des utilisateurs-trices des réseaux sociaux (principalement Facebook, Twitter, YouTube, Instagram etc.) sont généralement basées sur une application sélective et arbitraire des lois, en particulier les dispositions liées à la sécurité nationale et la lutte contre le terrorisme. Un autre motif fréquent de poursuites contre les journalistes, écrivain-e-s, utilisateurs-trices des réseaux sociaux et autres citoyens ou citoyennes, y compris des enfants, est le crime « d'insulte au président » (CE, 17 avril 2018). Selon RFI, n'importe qui peut potentiellement faire l'objet de poursuites, du journaliste célèbre à l'individu lambda qui n'est suivi que par

100 personnes. Même les personnes à l'étranger ne sont pas à l'abri (RFI, 9 juillet 2018). En juillet 2017, un ancien soldat britannique, *Joe Robinson*, a été arrêté pendant ses vacances en Turquie. Il est accusé d'avoir partagé de la propagande pro-kurde sur Facebook, notamment d'avoir partagé des photos de lui portant l'uniforme d'une milice kurde, les *unités de protection du peuple* (YPG) (*Guardian*, 23 juillet 2017). L'YPG est la branche armée du *Parti de l'Union Démocratique* syrien (PYD) et est considéré par la Turquie comme une organisation terroriste. En juillet 2018, les autorités turques ont arrêté un ressortissant allemand dans le sud-est de la Turquie au motif que celui-ci avait fait de la propagande pour le PKK sur les réseaux sociaux (*Reuters*, 25 juillet 2018). En décembre 2018, le gouvernement a émis un mandat d'arrêt contre le journaliste *Can Dunder* qui vit depuis 2016 en Allemagne. Le journaliste est accusé d'avoir joué un rôle important lors des protestations de Gezi de 2013, notamment à travers l'utilisation des réseaux sociaux. Il est également accusé d'avoir soutenu des membres d'une organisation terroriste (*Swissinfo*, 5 décembre 2018).

Le début de la répression contre les utilisateurs-trices de réseaux sociaux date de février 2014 avec l'adoption d'une seconde loi Internet plus restrictive. Cette loi est perçue comme une réponse au mouvement protestataire de Gezi de 2013 et à un scandale de corruption impliquant le gouvernement. Selon *Yezi* et *Sözeri*, deux universitaires turcs, l'intensification de la surveillance des réseaux sociaux, ainsi que la répression de ses utilisateurs-trices, a été favorisée par le mouvement protestataire de Gezi de 2013 et par la dissémination sur Internet d'information au sujet d'un scandale de corruption impliquant le gouvernement la même année. Le mouvement protestataire du parc Gezi, qui a débuté en mai 2013 et a eu une résonance nationale, s'est largement appuyé sur l'utilisation des réseaux sociaux, notamment Facebook et Twitter. En février 2014, le gouvernement a approuvé des amendements législatifs à la loi Internet de 2007. En vertu de ces amendements, le gouvernement peut ordonner la fermeture de sites internet sans décision judiciaire. Les fournisseurs d'accès internet sont aussi contraints de collecter des informations sur les utilisateurs-trices et de les tenir à disposition du gouvernement (*Yezi et al.*, 2017). Selon le FT, la vague de répression et d'arrestations des utilisateurs-trices des réseaux sociaux pour des motifs de « propagande terroriste » a été lancée en 2015, peu après l'échec du processus de paix et des discussions avec le PKK. Celle-ci s'est accélérée suite à la tentative de coup d'État de juillet 2016. Selon le dernier rapport de *Freedom House*, pendant 2017, les arrestations motivées par des messages partagés sur les réseaux sociaux étaient fréquentes, conduisant à une autocensure généralisée et à une grande prudence sur ce qui est mis en ligne ou dit en public (*Freedom House*, janvier 2018)

La police turque a considérablement renforcé ses capacités de lutte contre la cybercriminalité. Une étude sur la surveillance en ligne en Turquie réalisée en 2017 par *Bilge Yesil*, professeur associé à l'Université de New York, et d'autres auteurs, souligne qu'à partir de 2011, les autorités turques ont acheté divers "outils et services d'intrusion en ligne" à des sociétés telles que Hacking Team et d'autres fournisseurs et les ont utilisés pour surveiller les activités en ligne de citoyennes et citoyens turcs (*Yesil et al.* 2017). Selon la *Neue Zürcher Zeitung* (NZZ), la police turque a considérablement augmenté ses effectifs pour lutter contre la cybercriminalité. *Efe Kerem Sözeri*, co-auteur de l'étude sur la surveillance en ligne en Turquie, parle de plusieurs milliers d'emplois supplémentaires créés dans ce secteur. Selon le quotidien *Hürriyet*, un nouveau département a également été créé pour s'occuper uniquement des « insultes contre les autorités publiques » (NZZ, 1 novembre 2018). Selon l'étude de *Yesil et al.* de janvier 2017, une « Social Media Monitoring Unit »

nouvellement créée était chargée d'identifier 17 000 utilisateurs-trices et les adresses de 45 000 autres personnes (Yesil et al., 2017).

Des dizaines de milliers de personnes sous enquête par la « cyber-police ». Des milliers de personnes arrêtées et mises en détention. La publication par le Ministère de l'intérieur chaque mois du nombre d'utilisateurs-trices des réseaux sociaux sous enquête vise à intimider la population. Selon la CE, en décembre 2016, le *Ministère de l'intérieur* a annoncé avoir ouvert une enquête à l'encontre de 10 000 personnes en relation avec des messages publiés sur les réseaux sociaux. Dans les six mois qui ont précédé, 3 710 personnes avaient été détenues pour subir un interrogatoire et 1 656 avaient été arrêtées (CDH, 7 juin 2017). Selon le site d'information *Hürriyet Daily News*, citant comme source l'agence gouvernementale d'information *Anadolu*, entre la tentative de coup d'État de juillet 2016 et février 2017, 1 734 personnes ont été arrêtées pour avoir « fait de la propagande anti-terroriste » sur les réseaux sociaux. En tout, 3 894 personnes sur les 22 088 personnes identifiées par la « cyber-police » ont été détenues depuis juillet 2016. Les personnes identifiées, mais non détenues restent sous la menace de décisions de détention. Le nombre de comptes réseaux sociaux suspectés d'avoir été impliqués dans « la propagande pour des organisations terroristes ou des actes terroristes » s'élève à près de 70 000. La police travaille également à l'identification de suspects à l'étranger et a informé les gardes-frontières (*Hürriyet Daily News*, 23 février 2017). Selon *Radio France Internationale* (RFI), la surveillance accrue des réseaux sociaux par le gouvernement turc et la publication par le *Ministère de l'intérieur* du nombre d'enquêtes ouvertes chaque mois contre des utilisateurs-trices soupçonné-e-s de « propagande pour une organisation illégale » ou « d'insulte au président » visent avant tout à intimider les citoyennes et citoyens turcs et à limiter les critiques sur ces réseaux (RFI, 9 juillet 2018).

Les délations et dénonciations gagnent la société civile. Les citoyennes et citoyens encouragés à surveiller leurs voisin-e-s. Dans un article du 1er novembre 2018, la NZZ souligne qu'en plus de ses propres activités de surveillance, la police turque compte également sur l'aide des citoyennes et citoyens pour surveiller Internet et les réseaux sociaux. Ceux-ci/celles-ci sont activement encouragé-e-s à dénoncer les messages et déclarations problématiques sur les réseaux sociaux. L'ambassade d'Allemagne fait explicitement référence au danger de telles dénonciations/délations lorsqu'elle émet des avertissements de voyage en Turquie (NZZ, 1er novembre 2018). Les personnes de contact C, D, E, G et H, rencontrées par l'OSAR en Turquie lors d'une mission en octobre 2018, ont confirmé que ce type de dénonciation et de délation se poursuivait (entretien du 9 octobre 2018 avec la personne de contact C, qui est un expert juridique dans le domaine des droits humains en Turquie ; entretien du 10 octobre 2018 avec la personne de contact D, qui travaille dans le domaine des droits de l'homme en Turquie ; entretien du 11 octobre 2018 avec la personne de contact E, qui travaille pour le parti pro-kurde HDP; entretien du 11 octobre 2018 avec la personne de contact G, qui travaille pour une ONG internationale; entretien du 11 octobre 2018 avec la personne de contact H, qui travaille dans le domaine des médias). La personne de contact C mentionne qu'un litige personnel peut parfois être à l'origine d'une délation. Dans le cas mentionné par ce contact, une personne a par exemple été dénoncée par une autre personne pour des infractions présumées sur les réseaux sociaux parce que cette dernière lui devait de l'argent. Selon ce contact, les délations peuvent être faites de manière anonyme (entretien du 9 octobre 2018). La personne de contact D souligne que les dénonciations de particuliers sont très répandues (entretien du 10 octobre 2018). Selon la personne de contact E, il arrive aussi que des personnes soient dénoncées parce que des

voisin-e-s dans les transports publics ont observé des messages suspects postés sur les réseaux sociaux depuis les smartphones des personnes concernées (entretien du 11 octobre 2018).

Dénonciations/délations via une application ou un site internet. Selon la NZZ et *Yesil*, une application pour smartphone est désormais disponible pour faciliter les dénonciations/délations (NZZ, 1er novembre 2018 ; *Yesil et al.* 2017). Cette application, qui a été lancée par la police turque en décembre 2016, et qui est disponible sur le Playstore de Google sous le nom de « EMG Mobil », permet de faciliter le contrôle et la surveillance des utilisateurs-trices des réseaux sociaux aussi bien à l'intérieur du pays qu'à l'étranger. En octobre 2018, le *parti chrétien-démocrate* néerlandais (CDA) rapportait qu'il avait soulevé la question de cette application avec son gouvernement, s'inquiétant que des Néerlandais-e-s d'origine turque puissent, à travers cette application, dénoncer des personnes qui critiquent le gouvernement turc, avec comme conséquence que celles-ci puissent rencontrer des problèmes en cas de retour en Turquie (*Dutch News*, 5 octobre 2018). Selon le *Frankfurter Allgemeine*, cette application est également utilisée en Allemagne pour dénoncer les personnes qui critiquent le président *Erdogan* (*Frankfurter Allgemeine*, 29 septembre 2018). En outre, il existe un site internet qui permet aux particuliers de signaler des articles sur les réseaux sociaux qu'ils soupçonnent de constituer de la propagande terroriste. La police turque a publiquement exhorté les citoyennes et citoyens à communiquer toutes les informations disponibles sur les « contenus préjudiciables » et sur leurs diffuseurs. Il a également été recommandé de faire des captures d'écran des contenus dans le cas où ceux-ci devaient être supprimés ultérieurement. Le lancement de l'application a fait l'objet d'une évaluation positive dans les journaux gouvernementaux et les lecteurs-trices ont été encouragé-e-s à signaler les présumés « terroristes des réseaux sociaux » (*Yesil et al.*, 2017).

3 Sanctions légales à l'encontre de personnes accusées de terrorisme ou de faire de la propagande pour une organisation terroriste

Les mises en accusation et les poursuites contre les personnes accusées de terrorisme ou de diffamation ont avant tout une visée punitive. Ceux et celles qui échappent à la prison risquent quand même de perdre leur emploi ou d'être socialement exclu-e-s. Le caractère arbitraire des inculpations pour messages postés sur les réseaux sociaux renforce l'autocensure. Selon la CE, les personnes inculpées « d'insulte au président » se voient souvent infliger des peines de prison, des peines avec sursis ou des amendes. Ce climat d'intimidation, encouragé par des prises de position et des discours antagonistes tenus par des officiels au plus haut niveau, conduit à une autocensure grandissante (CE, 17 avril 2018). Selon le dernier rapport annuel d'*Amnesty International* (AI), les représentant-e-s de la société civile aussi bien que la population en général, pratiquent l'autocensure et font très attention à ne pas faire ou publier de commentaires publics de peur qu'ils soient poursuivis, qu'ils perdent leurs emplois ou que leurs organisations soient fermées par le gouvernement. Des milliers de personnes, qui n'ont fait qu'exercer leur droit à la libre expression, font l'objet de poursuites criminelles, y compris dans le cadre de lois

interdisant la diffamation ou de lois anti-terroristes. Ces personnes subissent des détentions provisoires arbitraires et punitives (AI, 22 février 2018). Selon HRW, les actions de la police contre ceux et celles qui ont partagé des messages critiques sur l'opération militaire à Afrin depuis le début de l'année 2018 sont avant tout punitives. Même si les accusé-e-s sont acquitté-e-s ou ne sont même pas jugés, être étiqueté comme « terroriste » et faire l'objet d'une enquête criminelle suffit déjà à entraîner des conséquences négatives comme perdre son emploi ou être socialement exclu (HRW, 27 mars 2018).

Jusqu'à cinq ans de prison pour une personne accusée de « propagande terroriste ». **Utilisateurs-trices des réseaux sociaux de plus en plus souvent accusé-e-s d'être membres d'une organisation terroriste, avec des peines de prison beaucoup plus lourdes.** Dans son rapport de juin 2017 devant le *Conseil des droits de l'homme* (CDH), le *Rapporteur spécial sur la promotion et la protection du droit à la liberté d'opinion et d'expression*, David Kaye, notait que selon l'article 7(2) de la loi anti-terroriste (loi no. 3713), une personne coupable de « propagande pour une organisation terroriste » risque d'un à cinq ans de prison. Cette peine peut être augmentée de moitié si cette « propagande » a été publiée ou rendue publique par voie de presse (CDH, 7 juin 2017). Selon David Kaye, les décrets d'état d'urgence s'appliquent à n'importe qui soupçonné d'être membre d'une organisation terroriste ou d'avoir des liens ou un contact avec celle-ci, et ceci sans définition précise ou critères pour évaluer ce qui constitue une affiliation ou un contact, laissant ainsi toute latitude aux autorités pour en juger (CDH, 7 juin 2017). D'après HRW, les utilisateurs-trices de réseaux sociaux arrêté-e-s sont de plus en plus souvent accusé-e-s d'être « membres d'une organisation terroriste armée » plutôt que d'y être associé-e-s ou d'en faire la propagande. Cela se traduit par des détentions provisoires plus fréquentes et des peines plus lourdes s'ils sont condamnés. Les éléments à charge sont généralement maigres et consistent souvent uniquement en l'utilisation de hashtags, de l'opinion exprimée sur les réseaux sociaux ou du fait d'appartenir à la même organisation de la société civile (HRW, 27 mars 2018).

Caractère arbitraire des inculpations. Celles-ci ne touchent pas systématiquement tous ceux et celles qui postent des messages critiques sur les réseaux sociaux. Le teneur du message, son niveau de diffusion et les éventuels liens entretenus par son auteur-e avec un réseau considéré par le gouvernement comme subversif, sont autant de facteurs à prendre en compte pour évaluer le risque de poursuites. Selon *Freedom House*, même si les messages postés sur les réseaux sociaux qui critiquent le gouvernement ne sont pas systématiquement punis, le côté arbitraire des inculpations, qui souvent se traduisent par des détentions préventives et un risque de longues peines de prison, crée une atmosphère d'autocensure (*Freedom House*, janvier 2018). Selon une personne de contact de l'OSAR rencontrée le 14 septembre 2018 et qui travaille pour une ONG turque de défense des droits humains, une personne qui partage des messages sur les réseaux sociaux, comme par exemple une photo liée au PKK, court le risque d'être arrêtée et poursuivie pour « propagande terroriste » à son retour en Turquie. Néanmoins, ces poursuites ne sont pas systématiques et dépendent largement de la teneur des messages partagés. Selon cette personne de contact, dans le cas de la photo liée au PKK, si celle-ci était accompagnée d'un message de soutien au PKK, alors son auteur-e serait vraisemblablement condamné-e à une peine de prison. Pour « simple propagande », la peine de prison oscillerait entre un et cinq ans. Selon différentes sources consultées par l'OSAR en Turquie en juillet 2018, une personne qui partage une photo liée au PKK sur les réseaux sociaux sera « probablement » arrêtée et poursuivie à son retour. Ces sources indiquent que ce risque est à

évaluer en fonction de facteurs « aggravants », comme par exemple si la famille de cette personne est active politiquement ou critique publiquement le gouvernement, si cette personne appartient à un réseau considéré par le gouvernement comme subversif ou critique du régime en place, si l'information publiée par cette personne a été relayée par les médias ou a été assez largement partagée par d'autres personnes. Si aucun de ces critères n'est rempli, alors cette personne court peu de risques de se voir emprisonner ou poursuivre par le gouvernement. En cas d'arrestation et de poursuites, la sentence va dépendre du contenu de l'information, à l'écho que celle-ci a pu trouver sur les réseaux sociaux ou dans les médias, mais également à l'identité du réseau ou groupe dont l'accusé-e est supposément membre. Plus ce réseau ou groupe est considéré par le gouvernement comme subversif ou dangereux et plus la sentence, mais également la procédure, sera lourde.

Les poursuites sont souvent décidées de manière arbitraire. Il est difficile de prévoir qui sera poursuivi. La formulation des messages peut, mais ne doit pas nécessairement, être déterminante pour décider d'éventuelles poursuites. Selon diverses personnes de contact, les autorités semblent décider arbitrairement quelles personnes seront poursuivies pour avoir publié des messages considérés comme illicites sur les réseaux sociaux (entretien du 28 septembre 2018 avec la personne de contact A, qui travaille dans le domaine des droits humains en Turquie ; entretien du 8 octobre 2018 avec la personne de contact B qui travaille comme avocat en Turquie ; entretien du 9 octobre 2018 avec la personne de contact C qui travaille comme expert juridique dans le domaine des droits humains en Turquie ; entretien du 10 octobre 2018 avec la personne de contact D, qui travaille dans le domaine des droits humains en Turquie). Selon la personne de contact A, il est très difficile de déterminer qui sera poursuivi et pour quelles activités sur les réseaux sociaux. Selon la personne de contact D, la formulation des messages sur les réseaux sociaux n'est pas toujours pertinente pour déterminer si une personne sera poursuivie (entretien du 10 octobre 2018). La personne de contact C a souligné qu'en raison du caractère arbitraire des décisions prises par les procureurs, il est presque impossible de déterminer sur la base de la formulation d'un message si une personne sera poursuivie. Même en tant qu'experte juridique, cette personne de contact n'a pas été en mesure d'évaluer si certains messages sur des réseaux sociaux comme Twitter seraient considérées comme des infractions pénales par les autorités. De l'avis de la personne de contact C, personne n'est en mesure de faire cette évaluation de manière fiable. Cela conduit au fait que de nombreuses personnes ne publient que des messages apolitiques sur les réseaux sociaux (interview du 11 octobre 2018). La personne de contact C souligne que les poursuites pénales dans le domaine des réseaux sociaux illustrent la crise de l'État de droit en Turquie : les conséquences des activités sur les réseaux sociaux sont difficiles à prévoir.

Les autorités concentrent leur surveillance sur les comptes les plus populaires. Selon le chercheur *Sözeri*, cité par la NZZ (1er novembre 2018), les moyens techniques, notamment l'utilisation d'algorithmes, permettent d'identifier du contenu suspect sur les réseaux sociaux. Toutefois, selon cette source, en raison de la grande quantité de données, les autorités turques se concentrent principalement sur les comptes les plus populaires, ceux qui ont le plus grand nombre de followers. Parmi les détenteurs-trices de ces comptes, on trouve souvent des personnes politiquement et socialement actives, mais également des journalistes. Cependant, en raison des dénonciations, il est en principe possible pour toute personne de se trouver dans le viseur des autorités turques (NZZ, 1er novembre 2018).

Les messages publiés sur les réseaux sociaux il y a plusieurs années peuvent également donner lieu à des poursuites. Selon la personne de contact H, les messages publiés sur les réseaux, il y a plusieurs années en arrière, peuvent également donner lieu à des poursuites. Le contenu peut avoir été légal à l'époque et avoir été soutenu par des fonctionnaires publics, comme par exemple certaines déclarations sur le processus de paix entre le PKK et l'État turc. C'est le cas par exemple du politicien du parti pro-kurde HDP, Demirtas, qui a été poursuivi pour un discours tenu en 2013 (entretien du 11 octobre 2018). Dans un cas mentionné par la personne de contact D, une personne a également été poursuivie pour propagande terroriste pour des messages datant de 2014 à 2016 (entretien du 10 octobre 2018). Selon la personne de contact H, cela conduit de nombreuses personnes à passer au crible leurs comptes sur les réseaux sociaux pour supprimer des anciens messages potentiellement problématiques (entretien du 11 octobre 2018).

Le fait de partager ou d'approuver (« liker ») des messages sur les réseaux sociaux, ou simplement de suivre certains comptes, peut également donner lieu à des poursuites judiciaires. Diverses sources soulignent qu'en général seul le partage d'un message peut donner lieu à des poursuites (NZZ, 1er novembre 2018 ; entretien du 10 octobre 2018 avec la personne de contact D ; *Yesil et al.*, 2017). Cependant, la NZZ a rapporté (1er novembre 2018), en référence à l'avis de voyage du *Ministère allemand des Affaires étrangères*, que dans des cas individuels déjà, l'approbation (« like ») de messages sur les réseaux sociaux peut également mener à des poursuites pénales sous le délit « d'insulte présidentielle » ou de « propagande pour une organisation terroriste ». La personne de contact D a mentionné qu'une personne de sa connaissance, qui s'était retrouvée dans le viseur des autorités suite à une plainte privée, a été accusée de propagande terroriste et poursuivie sur la base de messages simplement partagés il y a plusieurs années, et ceci sans que la personne accusée ait elle-même rajouté de commentaires (interview du 10 octobre 2018). Selon la personne de contact E, le fait que des utilisateurs suivent (« follow ») le compte de politiciens du parti pro-kurde HDP peut être utilisé par les autorités pour justifier des accusations de liens avec des organisations terroristes (11 octobre 2018).

En termes de messages sur les réseaux sociaux, ce qui est considéré comme interdit ou illicite un jour, peut très bien ne plus l'être le jour suivant. Selon la NZZ (1er novembre 2018), les enquêtes et les poursuites des autorités turques sur les messages publiés sur les réseaux sociaux dépendent souvent de la situation ou du climat politique, qui tend à changer et à évoluer. A titre d'exemple, les messages pro-russes, considérés comme problématiques un certain temps ne le sont plus depuis que les relations entre la Russie et la Turquie se sont apaisées.

Même les déclarations sur la crise économique ont donné lieu à des poursuites judiciaires. Selon certaines sources, des personnes qui ont publié des messages relatifs à la crise économique que traverse le pays se sont retrouvées dans le viseur des autorités (NZZ, 1.11.2018 ; entretiens du 8 octobre 2018 avec la personne de contact B. et du 11 octobre 2018 avec la personne de contact G, qui est active dans le domaine des droits humains en Turquie).

4 Torture et mauvais traitements

Malgré une baisse par rapport à la période qui a suivi la tentative de coup d'État, des cas de tortures et de mauvais traitements continuent d'être rapportés. Selon AI, des cas de tortures et de mauvais traitements continuent d'être rapportés, en particulier dans le cas de détention policière. Le nombre de ces tortures aurait néanmoins baissé en comparaison avec les semaines qui ont suivi la tentative de coup d'État en juillet 2016. Les autorités turques continuent de s'opposer à la publication du rapport du *Comité européen pour la prévention de la torture* sur les allégations de torture pendant la période qui a suivi la tentative de coup d'État. De plus, il n'existe aucun mécanisme national préventif qui a un mandat de suivi dans les lieux de détention et aucune information qui laisse penser que les allégations de torture soient examinées (AI, 22 février 2018). Selon le dernier rapport annuel de *Freedom House*, qui se base sur des informations d'organisations des droits humains, la torture est devenue de plus en plus répandue (*Freedom House*, janvier 2018). Selon HRW, les cas de tortures et de mauvais traitements étaient fréquemment rapportés pendant 2017, en particulier à l'encontre de personnes détenues sous le couvert de la loi anti-terroriste. Cela marque un retour en arrière dans un pays où de progrès notables avaient été relevés. Il y avait de nombreux rapports de policiers passant des détenus à tabac, les mettant dans des positions de stress prolongées, les menaçant de viol ou s'opposant à un examen médical (HRW, janvier 2018). Des chiffres officiels, cités par HRW, montrent qu'entre octobre 2016 et octobre 2017, plus de 150 000 personnes ont été détenues par la police sur la base d'accusations de terrorisme, appartenance à un groupe armé, ou d'implication dans la tentative de coup d'État de juillet 2016 (HRW, 12 octobre 2017).

Le risque de torture existe dans tout le pays, mais il serait surtout concentré dans l'est et le sud-est, comme par exemple dans la province de Mardin ou d'Urfa. Selon une personne de contact de l'OSAR rencontrée le 14 septembre 2018 et qui travaille pour une ONG turque de défense des droits humains, la torture et les mauvais traitements ont sensiblement baissé pendant les négociations de paix entre le gouvernement turc et le PKK. Mais depuis la rupture de ces négociations, en juillet 2015, la torture semble avoir repris et se concentrerait surtout dans l'est et dans le sud-est du pays. Les différentes sources consultées par l'OSAR en Turquie en juillet 2018 s'accordent à dire que le risque de torture est réel, mais elles divergent sur la distribution géographique de ce risque. Selon une source, la torture serait systématique dans la plupart des régions du pays, surtout dans la carte d'activités anti-terroristes. Selon d'autres sources, ce risque serait particulièrement prononcé dans les régions d'Urfa (Sanliurfa) et dans la province de Mardin. Le risque est plus difficile à évaluer dans l'est en raison du peu d'informations qui filtre de cette région. Dans les grandes villes, telles qu'Istanbul, Izmir ou Ankara, les rapports de mauvais traitements, y compris de torture seraient fréquents.

La suppression des garanties qui protégeaient les détenu-e-s d'abus, décidée pendant l'état d'urgence, s'est traduite par une augmentation des cas de tortures et de mauvais traitements. Selon la CE, les décrets adoptés pendant l'état d'urgence ont supprimé bon nombre de garanties qui protégeaient les détenu-e-s d'abus, ceci dans un contexte où les allégations de torture et de mauvais traitements étaient en augmentation. La CE rapporte que, selon des organisations actives dans la protection des droits humains, la suppression de ces garanties s'est traduite par une augmentation du nombre de cas de torture

et de mauvais traitements, accompagnée d'un risque plus important que les responsables de ces crimes restent impunis (CE, 17 avril 2018). Dans un rapport, publié en octobre 2016, HRW notait que dans le cadre de l'état d'urgence imposé après la tentative de coup d'État, la suppression des garanties contre la torture et les mauvais traitements, ainsi que d'autres mesures comme l'extension de la période de détention policière à 30 jours et des restrictions sur le droit des détenus à voir leurs avocats, avaient été suivies par des incidents documentés de torture. Malgré la levée de certaines de ces restrictions en janvier 2017, les abus contre les détenus se sont poursuivis (HRW, 12 octobre 2017).

Les personnes soupçonnées de liens avec le mouvement Gülen et celles soupçonnées de liens avec le PKK sont plus exposées aux tortures et aux mauvais traitements. Selon HRW, il y a deux groupes qui sont particulièrement exposés à un risque de torture et de mauvais traitements pendant leur détention par la police. Le premier est composé de personnes soupçonnées de liens avec le *mouvement Gülen*, une organisation, considérée comme terroriste par le gouvernement turc et qui est dirigée par l'imam turc *Fethullah Gülen*, réfugié aux États-Unis. Le second regroupe les personnes qui sont accusées de terrorisme, plus spécifiquement de liens avec la branche armée du PKK. Les mauvais traitements ou la torture apparaissent comme visant à obtenir des aveux ou des dénonciations d'autres personnes. Parmi les abus rapportés à HRW, il y avait des humiliations, menaces, des violences sexuelles et des passages à tabac (HRW, 12 octobre 2017). Selon le *Rapporteur spécial des Nations unies sur la torture, Nils Melzer*, entre décembre 2016 et février 2018, il y a eu une hausse du nombre des allégations de torture et autres mauvais traitements infligés à des personnes détenues par la police. Les victimes, principalement des personnes suspectées de liens avec le *mouvement Gülen* ou avec le PKK, ont subi des interrogatoires qui visaient à extraire des confessions ou à incriminer des d'autres détenus. Les abus rapportés incluaient, entre autres, des passages à tabac, des privations de sommeil, des menaces, des insultes et des agressions sexuelles (OHCHR, février 2018).

Une large impunité qui s'explique par l'emprise grandissante de l'exécutif sur le judiciaire et par les décrets urgents qui donnent une immunité aux agents de l'État. Selon HRW, il existe en Turquie un climat d'impunité pour les auteur-e-s de torture et de mauvais traitements. Il n'y aurait pas eu de mesures sérieuses prises par le gouvernement pour enquêter sur des allégations crédibles de torture, ou pour en punir les auteur-e-s. Selon HRW, les licenciements massifs de juges et une emprise grandissante de l'exécutif sur le système judiciaire font que peu de juges et de procureurs vont se risquer à prendre l'initiative d'enquêter ou d'instruire ces crimes (HRW, 12 octobre 2017). Selon la CE, la suppression, sous l'état d'urgence, des garanties contre les abus et mauvais traitements à l'encontre des détenu-e-s, a accru le risque d'impunité par les auteur-e-s de ces abus. L'exercice des droits est mis à mal par la fragmentation et l'indépendance limitée des institutions publiques chargées de la protection des droits humains, ainsi que par le manque d'indépendance du système judiciaire (CE, 17 avril 2018). Selon *Nils Melzer*, aucune mesure n'a été prise par le gouvernement pour enquêter sur les allégations de torture ou pour punir les auteurs de ces actes. Au contraire, pour justifier l'absence d'enquête, le procureur a mis en avant le décret d'état d'urgence (Article 9 du Décret no. 667) qui exempterait les agents publics de toute responsabilité criminelle pour des actes commis dans le contexte de l'état d'urgence (OHCHR, février 2018). Selon *David Kaye*, les décrets d'état d'urgence facilitent l'impunité et l'absence d'obligation de rendre des comptes en donnant une complète immunité légale, administrative, criminelle et financière aux autorités administratives qui agissent dans le cadre de ces décrets (CDH, 7 juin 2017). Selon *Freedom House*, un décret urgent, daté de

décembre 2017, accorderait l'immunité judiciaire à toute personne, y compris civile, qui agirait contre des terroristes ou des personnes associées à la tentative de coup d'état de juillet 2016 (*Freedom House*, janvier 2018).

5 Système judiciaire et droits de la défense

L'exécutif a renforcé ces dernières années son contrôle et son influence sur le système judiciaire et sur les procureurs. L'indépendance du système judiciaire ainsi que son efficacité et sa qualité en ont pâti. Selon *David Kaye*, les changements structurels apportés au système judiciaire, avant même l'état d'urgence de juillet 2016, ont sapé l'indépendance de celui-ci (CDH, 7 juin 2017). Selon la CE, la pression politique exercée sur les juges et procureurs, ainsi que le limogeage d'un large nombre de juges depuis la tentative de coup d'État de juillet 2016, a eu un effet négatif significatif sur la qualité et l'efficacité du système judiciaire, mais également sur son indépendance vis-vis du pouvoir exécutif. Cette indépendance a été encore plus mise à mal par les changements constitutionnels en relation avec le *Haut conseil de la magistrature* (« *Council of Judges and Prosecutors* » - CPJ). Celui-ci a continué à suspendre et transférer un grand nombre de juges et procureurs sans leur consentement. Entre juillet 2016 et avril 2018, la CE estime que 4 399 juges et procureurs ont été démis de leurs fonctions. Le gouvernement les a remplacés par 4 680 nouveaux juges et procureurs qui, pour la plupart, ont bénéficié d'une procédure de sélection accélérée et simplifiée (CE, 17 avril 2018).

En juillet 2018, le parlement a adopté une loi qui renforce les pouvoirs du gouvernement et prolonge d'une certaine manière l'état d'urgence. Les autorités peuvent limoger les juges et autres fonctionnaires de manière arbitraire. Un suspect peut être gardé en détention 12 jours sans inculpation. Selon *Al-Jazeera*, le parlement turc a ratifié fin juillet 2018, ou six jours après la fin de l'état d'urgence, un projet de loi qui conserve certains aspects de l'état d'urgence (*Al-Jazeera*, 25 juillet 2018). Selon HRW, la nouvelle loi qui sera en vigueur pendant trois ans, permet au gouvernement de limoger des juges et autres fonctionnaires de manière arbitraire. Par ailleurs, les autorités peuvent limiter les mouvements à l'intérieur du pays et interdire les réunions publiques. Les personnes dont les droits sont violés par cette loi ne peuvent pas formuler de recours ou obtenir réparation (HRW, 20 juillet 2018). Selon *Al-Jazeera*, cette loi, proposée par le *Parti pour la justice et le développement* (AKP), le parti au pouvoir, renforce sensiblement les pouvoirs du gouvernement, notamment sa capacité à détenir les suspects et à imposer l'ordre public (*Al-Jazeera*, 25 juillet 2018) Selon le site d'information *Hurriyet Daily News*, la période de détention des suspects est de quatre jours, avec la possibilité de renouveler cette détention deux fois, ce qui porte la durée maximale à douze jours (*Hurriyet Daily News*, 24 juillet 2018). Selon RSF, ces mesures ne font que prolonger l'état d'urgence et les nouvelles dispositions continuent de violer des droits humains fondamentaux comme la liberté de penser, d'expression, de réunion et le droit de prendre part à des manifestations pacifiques. Elles représentent surtout une menace pour les citoyennes et citoyens qui ne sont pas un danger pour le gouvernement turc mais en sont simplement critiques ou qui défendent les droits humains (RSF, 24 août 2018).

Les inculpations, en particulier dans des cas de terrorisme, sont souvent basées sur des preuves fragiles ou sur des allégations d'autres détenu-e-s ou encore des témoignages secrets. Selon le dernier rapport annuel de *Freedom House*, l'érosion à long-terme des garanties d'application régulière de la loi (« due process »), s'est accélérée pendant l'état d'urgence. Les inculpations sous le couvert des lois anti-terroristes sont souvent basées sur des preuves fragiles et circonstancielles, des témoignages secrets ou une culpabilité par association. Un décret, datant de décembre 2017, supprime l'exigence que les accusé-e-s prennent connaissance de toutes les preuves de l'accusation et aient un avocat à leur côté. Dans de nombreux cas, les avocats défendant des personnes accusées de terrorisme ont eux-mêmes été arrêtés. La détention préventive est monnaie courante (*Freedom House*, janvier 2018). La CE note que les inculpations ne reflètent souvent que des allégations qui ne sont pas corroborées par des preuves crédibles. Celles-ci sont souvent basées sur des déclarations faites par des personnes accusées dans d'autres cas ou sur des témoignages secrets. Parfois les preuves apportées par la défense ne sont même pas incluses dans l'évaluation de la cour. La CE exprime de sérieux doutes quant à la qualité des décisions judiciaires, aussi bien en regard du raisonnement légal invoqué que des preuves présentées, en particulier dans les cas liés au terrorisme (CE, 17 avril 2018). Selon HRW, les enquêtes et les poursuites pour des motifs liés au terrorisme sont souvent dénuées de preuves et ne respectent souvent pas les procédures régulières (HRW, 27 mars 2018). Selon différentes sources consultées par l'OSAR en Turquie en juillet 2018, dans le cadre des lois anti-terroristes, l'accusation peut produire des « témoins secrets » qui peuvent témoigner sans dévoiler leurs identités. La défense peut en principe poser des questions, mais ces témoins ne sont pas obligés de répondre. Par ailleurs, toujours selon ces mêmes sources, des informations anonymes fournies via une application pour smartphone et un site internet dédié aux dénonciations, déjà évoquées plus haut, pourraient également suffire à mener à une condamnation.

Droits de la défense limités. Peu ou pas de possibilité pour les avocat-e-s de rencontrer leurs client-e-s confidentiellement. Client-e-s et avocat-e-s souvent même pas informé-e-s des chefs d'accusation. Avocat-e-s victimes de harcèlement ou de menaces physiques. Selon HRW, citant plusieurs avocat-e-s, en dépit des réformes de janvier 2017, ceux-ci et celles-ci ont continué à avoir des opportunités limitées de parler de manière confidentielle à leurs client-e-s en raison de la présence d'officiers de police pendant ces rencontres. La loi anti-terroriste permet de réduire de manière légale les rencontres entre les détenu-e-s et leurs avocat-e-s pendant les premières 24 heures. Cependant, les avocat-e-s auraient rapporté que ces restrictions s'appliquaient souvent bien au-delà de cette période, contraignant les avocat-e-s à négocier avec le bureau du procureur pour assurer un accès à leurs client-e-s. De plus, les policiers-ères auraient exercé des pressions excessives sur les avocat-e-s lorsque ceux-ci ou celles-ci tentaient de contester les comptes rendus écrits des entretiens de la police dans les cas où les avocat-e-s y avaient assisté (HRW, 12 octobre 2017). Selon *David Kaye*, le décret no. 667 a rendu légal l'observation et même l'enregistrement par les policiers-ères des rencontres entre les personnes en détention provisoire et leurs avocat-e-s, en plus de limiter le choix d'un-e avocat-e pour les détenus. Les avocat-e-s rencontré-e-s par *David Kaye* lors de sa visite en Turquie ont confié que la plupart du temps, la durée des rencontres avec les détenu-e-s était très courte et qu'ils ou elles ne pouvaient pas échanger de documents avec leurs client-e-s. Par ailleurs, ils et elles n'étaient en général pas informés des charges retenues contre eux, ce qui rendait la préparation de toute défense très difficile. D'autres limitations des droits de la défense incluaient la possibilité pour les juges de remplacer les avocat-e-s, l'impossibilité

pour les détenu-e-s d'avoir accès à des ouvrages légaux et des droits de visites des familles limités. Les avocat-e-s elles/eux-mêmes confiaient faire l'objet de harcèlement en lien avec leur travail et parfois d'enquête ou de contrôle fiscal de la part du gouvernement (CDH, 7 juin 2017). Selon HRW, les avocat-e-s étaient parfois inquiets-êtes pour leur propre sécurité physique. De manière générale, ceux-ci ou celles-ci se plaignaient de l'absence de soutien institutionnel des associations du barreau et de l'*Union des barreaux de Turquie*, qui les empêchait de protéger les droits humains des détenu-e-s sans peur de représailles (HRW, 12 octobre 2017). Selon différentes sources consultées par l'OSAR en Turquie en juillet 2018, dans le cas d'accusations pour terrorisme, les droits de la défense sont réduits de manière drastique. Le nombre d'avocat-e-s que l'accusé peut engager est par exemple limité. Les avocat-e-s n'ont en général pas accès au dossier dans la phase préliminaire (pré-procès). Pendant la phase de mise en accusation ou pendant le procès, l'accès au dossier reste limité aux déclarations de l'accusé. Les accusé-e-s peuvent également se voir interdire des droits de visite de la famille ou être placé-e-s en détention solitaire.

Un système de recours horizontal qui limite les possibilités de contestation et ne satisfait pas aux normes internationales. Selon le rapport de *David Kaye*, le système des « juges de paix criminelle », qui date de 2014, simplifie les cas de telle manière que les possibilités d'appel et de contestation des décrets urgents et des mesures prises dans le cadre de ces décrets sont limitées. Ces juges décident de mesures telles que les arrestations, la pré-détention, les perquisitions et les examens physiques du suspect et seul-e un-e autre juge de paix criminelle peut se charger des réexamens en cas de recours. Ce système de recours horizontal ne satisfait pas aux normes internationales et prive les particuliers d'une procédure équitable et du droit à un procès équitable (CDH, 7 juin 2017). Pour la CE, les pouvoirs étendus des « juges de paix criminelle » sont un motif d'inquiétude. Ces pouvoirs incluent l'émission de mandats de perquisitions, la décision de détenir des individus ou d'ordonner le blocage de sites internet. Ces décisions ne peuvent pas être remises en cause et revues par une juridiction supérieure (CE, 17 avril 2018).

6 Sources

AI, 22 février 2018:

« Civil society representatives, as well as the general population, widely practised self-censorship, deleting social media posts and refraining from making public comments for fear of dismissal from their jobs, closure of their organizations or criminal prosecution. Thousands of criminal prosecutions were brought, including under laws prohibiting defamation and on trumped-up terrorism-related charges, based on peoples' peaceful exercise of their right to freedom of expression. Arbitrary and punitive lengthy pre-trial detention was routinely imposed. Confidential details of investigations were frequently leaked to government-linked media and splashed across the front pages of newspapers, while government spokespeople made prejudicial statements regarding cases under investigation. Prosecutions of journalists and political activists continued, and prosecutions of hu-

man rights defenders sharply increased. International journalists and media were also targeted.

Criticism of the government in the broadcast and print media largely disappeared, with dissent mainly confined to internet-based media. **The government continued to use administrative blocking orders, against which there was no effective appeal, routinely, to censor internet content.** In April, the Turkish authorities blocked all access to the online encyclopedia Wikipedia due to a page that cited news reports alleging links between the Turkish government and several armed groups in Syria. Wikipedia refused to edit the page. The website remained blocked at the end of the year. [...]

Instances of torture and other ill-treatment, especially in police custody, continued to be reported, although at a markedly lower level than in the weeks following the July 2016 coup attempt. The Turkish authorities continued to deny permission for the European Committee for the Prevention of Torture to publish its report on torture allegations following the coup attempt. There was no effective national preventive mechanism with a mandate for monitoring places of detention. There were no available statistics regarding investigations into allegations of torture. There was no evidence that allegations of torture were being effectively investigated.

In August, NGOs reported that soldiers and police officers beat at least 30 people in the village of Altınsu/Şapatan in Hakkari province in southeast Turkey following a clash with the PKK in which two members of the security forces died. Witnesses reported that villagers were taken out of their homes, arbitrarily detained and beaten in the village square, and that 10 of them were taken into police custody. Images of the villagers' injuries resulting from their beatings were shared on social media. A statement from the Governor's office denied the allegations of torture, and maintained that news reports supporting the allegations were "terrorist propaganda". » Source: Amnesty International (AI), Amnesty International Report 2017/18 - The State of the World's Human Rights - Turkey, 22 février 2018: www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/.

Al-Jazeera, 25 juillet 2018:

« Turkey's parliament has ratified a tough anti-terrorism bill proposed by the ruling party, six days after the two-year-long state of emergency ended.

The new anti-terror law, which was passed on Wednesday, strengthens the authorities' powers in detaining suspects and imposing public order.

The new legislation allows authorities to control who can enter and exit an area for 15 days for reasons of security, while suspects can be held without charge for 48 hours or up to four days if there are multiple offences.

The measure drafted by President Recep Tayyip Erdogan's Justice and Development Party (AKP) retains aspects of emergency rule and will be valid for three years.

It also authorizes the government to dismiss personnel of Turkish Armed Forces, police and gendarmerie departments, public servants and workers if they are found linked to a terror organization.

Governors of the country's 81 provinces retain some emergency powers including restricting freedom of assembly.

The opposition had criticized the draft legislation as a ploy to make "emergency rule permanent".

The government declared a state of emergency for the first time on July 20, 2016, following a coup by a section of the military to topple the government and unseat President Recep Tayyip Erdogan.

The coup attempt left 251 people dead and nearly 2,200 injured.

The state of emergency ended after the government allowed it to lapse on July 19. » Source: Al-Jazeera, Turkey parliament approves new anti-terror law, 25 juillet 2018: www.aljazeera.com/news/2018/07/turkey-parliament-approves-anti-terror-law-180725152308059.html.

BBC, 18 juin 2018:

« A large number of human rights activists, lawyers and journalists are also behind bars.

The Turkey-based Platform for Independent Journalism runs a website which lists more than 150 journalists and media workers who have been detained or imprisoned since July 2016 and are currently still in jail.

Mr Erdogan was questioned about the jailing of journalists during a joint press conference in London last month with the UK Prime Minister Theresa May. His response was typically robust.

"You have to make a distinction between terrorists and journalists," he said. "Are we supposed to call them journalists just because they carry credentials and ID cards?" » Source: BBC, Reality Check: The numbers behind the crackdown in Turkey, 18 juin 2018: www.bbc.com/news/world-middle-east-44519112.

CE, 17 avril 2018:

« Judiciary and fundamental rights [...]

*Turkey is at an early stage of applying the *acquis* and European standards in this area. There was serious backsliding in this area and the recommendations in the previous report were not implemented. **Continued political pressure on judges and prosecutors and collective dismissal of a large number of judges and prosecutors following the 2016 attempted coup had a significant negative effect on the independence and the overall quality and efficiency of the judiciary.** There has been no progress in addressing the many gaps in the Turkish anti-corruption framework. Corruption remains widespread and is an issue of concern. **Fundamental rights have been considerably curtailed under the state of emergency and pursuant to the decrees issued under it. As a result, there was no progress on the outstanding issues identified in previous reports. On the contrary, further backsliding continued in all areas of human rights, most notably on freedom of expression,***

freedom of assembly and association, protection of human rights defenders, property rights and procedural rights. **Emergency decrees also removed crucial safeguards protecting detainees from abuse in a context where allegations of ill-treatment and torture increased.** [...]

Turkey is at an early stage in this area. **There has been serious backsliding and the independence of the Turkish judiciary was severely undermined following, among other issues, the dismissal and forced removal of 30 % of Turkish judges and prosecutors following the 2016 attempted coup.** These dismissals had a chilling effect on the judiciary as a whole and risk widespread self-censorship among judges and prosecutors. **No measures were taken to restore legal guarantees ensuring the independence of the judiciary. On the contrary, constitutional changes in relation to the Council of Judges and Prosecutors (CJP) have further undermined its independence from the executive.** No changes to the institution of criminal judges of peace were made. No measures were taken to address concerns regarding the lack of objective, merit-based, uniform and pre-established criteria for recruiting and promoting judges and prosecutors. The Commission's 2016 recommendations therefore remain valid. [...]

While the principles of independence and impartiality are set out in the amended Constitution, the CJP continued to engage in large-scale suspensions and transfers of judges and prosecutors without their consent. There is a need for legal and constitutional guarantees to prevent judges and prosecutors from being transferred against their will, except where courts are being reorganised. **In total, since the attempted coup, 4 399 judges and prosecutors have been dismissed from their positions of which 454 were later reinstated to their positions by the CJP.** There are currently over 4 000 judges and prosecutors against whom legal action has been taken (dismissals or suspension). **Judges and prosecutors who were in pre-trial detention, remained without an indictment for more than a year on average.** [...]

No changes to the institution of 'criminal judges of peace' were made. **The perceived influence of the executive over their decisions and their jurisdiction and practice continue raising serious concerns.** These particularly relate to their extensive powers, such as to issue search warrants, detain individuals, block websites or seize property, with considerable financial consequences; and to the fact that objections to their decisions are not reviewed by a higher judicial body but by another single-judge institution. Their rulings increasingly diverge from European Court of Human Rights case-law and rarely provide sufficiently individualised reasoning. The recommendations of the Venice Commission in its March 2017 opinion should be urgently implemented. [...]

Following the wave of dismissals after the attempted coup, vacancies are gradually being filled, by allowing the majority of candidates for positions as judges and prosecutors to enter the system through a fast track procedure, after the previous requirement for two years of training was waived. **4 680 candidate judges and prosecutors were integrated in the judicial and administrative jurisdictions since the attempted coup, following an accelerated and untransparent selection process, which raised questions as to the application of the merit-based criteria.** 31 % of them were lawyers. **Concerns remain over the lack of objective, merit-based, uniform and pre-established criteria for recruiting and promoting judges and prosecutors. The CJP is not sufficiently independent from the executive and the Ministry of Justice runs the selection boards for new judges and prosecutors**

and manages their yearly appraisal. The CJP itself plays no role in the selection boards (nor does the Justice Academy), even though it takes the final decision on recruitment. [...]

Frequent transfers of judges and prosecutors have negatively affected the quality of justice. Indictments often reflect allegations and are not supported by credible evidence. These indictments, which are often based on statements by people who have been accused in other cases or by secret witnesses, raise serious concerns. In some cases, evidence presented by the defence is not included in the court's assessment. Overall, there are serious concerns regarding the quality of judicial decisions, particularly in terrorism-related cases, in relation to their legal reasoning and the factual evidence they are based on. [...]

The legal framework includes general guarantees of respect for human and fundamental rights. However, these have been undermined by a number of emergency decrees and need to be effectively implemented. There was further serious backsliding in the areas of freedom of expression, freedom of assembly, freedom of association, and procedural and property rights. Severe restrictions were imposed on the activities of journalists, human rights defenders and critical voices on a broad scale. Measures adopted under the state of emergency also removed crucial safeguards protecting detainees from abuse, thereby augmenting the risk of impunity for the perpetrators of such abuse, in a context where allegations of ill-treatment and torture have increased. Enforcement of rights is hindered by the fragmentation and limited independence of public institutions responsible for protecting human rights and freedoms and by the lack of an independent judiciary. There was no progress on any of the outstanding issues identified in previous reports. [...]

The situation with regards to the prevention of torture and ill-treatment remains a source of serious concern. Several credible reports from human rights organisations have alleged that the removal of crucial safeguards by emergency decrees has augmented the risk of impunity for perpetrators of such crimes and has led to an increase in the number of cases of torture and ill-treatment in custody. The handling of complaints is also reported to be ineffective and allegedly entails a risk of reprisals. After his visit to Turkey in late 2016, the UN Special Rapporteur on torture also voiced concerns on Turkey as an 'environment conducive to torture'. [...]

Turkey is at an early stage in this area and the serious backsliding continued. The scope of restrictive measures adopted under the emergency decrees has extended over time to many opposition voices in the media and in academia, contrary to the principle of proportionality. Freedom of expression has come under serious strain. Legislation and practice do not comply with European Court of Human Rights case-law. Criminal cases against journalists, human rights defenders, writers, or social media users, the withdrawal of press cards, and the closure of numerous media outlets or the appointment by the government of trustees to administer them, are of serious concern. These are mostly based on selective and arbitrary application of the law, especially provisions on national security and the fight against terrorism. The high number of arrests of journalists - over 150 journalists remain in prison - is of very serious concern. The Internet Law and the general legal framework continue to enable the executive to block online content without a court order on an inappropriately wide range of grounds. The judicial control for requests relating to content takedowns or blocking content continued to rely on individual decisions by

criminal judges of peace. A large number of media workers (journalists, engineers, sound and image technicians, etc.) were laid off in 2016 (2 708) and 2017 (166). [...]

The current legal framework and practice do not guarantee the exercise of freedom of expression in the media and internet. Legislation on anti-terrorism, on the internet and on intelligence services impede freedom of expression and run counter to European standards. The Criminal Code provides for prison sentences for insulting the President and senior politicians. Prison sentences are also provided for insults to religion. In addition to prison terms, high fines have a deterrent effect on media reporting. Legislation on hate speech is not in line with European Court of Human Rights case-law. [...]

The government continued to issue emergency decrees ordering the closure of TV channels and radio stations, initially mainly for alleged links to the Gülen movement, but over time extending these to a number of channels broadcasting in the Kurdish language, an Alevi channel and some opposition channels. Although 25 media outlets were authorised to reopen, 175 media outlets remained closed down. The OSCE/ODIHR concluded that the constitutional referendum 'took place on an unlevel playing field' and that restrictions on the media reduced voters' access to a plurality of views. **The trend of prosecutions of journalists, writers, social media users and other citizens, even children, for insulting the President of Republic continued. Such cases often end with prison sentences, suspended sentences or punitive fines. The increased use of harsh rhetoric against any form of critical voice by public officials, including at the highest level, is of particular concern. This restrictive and intimidating environment leads to increased self-censorship and is not in line with the emerging European consensus on decriminalising defamation of heads of state, or limiting this offence to the most serious forms of verbal attacks, while restricting the range of sanctions to exclude imprisonment.** Regarding the internet, Turkish access to Wikipedia has been blocked since April 2017. **Twitter Transparency reported over 2700 removal requests and 9 200 accounts reported by Turkish authorities in the first half of 2017. According to unofficial sources, some 110 000 websites have been banned, only 2.6 % of which were on the basis of a court decision.** In one case, the Constitutional Court ruled to reverse a local court's decision to ban access to a news website. There have been a growing number of people sentenced to prison for blasphemy. Independent artists have also been negatively affected by pressure from authorities and reduced public funding. In many Kurdish municipalities, there was increased pressure from trustees appointed in place of elected officials on the production of art. Source: Commission européenne (CE), Turkey 2018 report, 17 avril 2018, p.22-34: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.

CDH, 7 juin 2017:

« Anti-terrorism: The Penal Code, Code of Criminal Procedure, and Anti-Terrorism Law limit Constitutional guarantees. Several provisions of the Anti-Terrorism Law (Law no. 3713) concern membership in and propaganda supporting terrorist organizations, yet key terms are left undefined. The law does not define acts that would constitute terrorism but covers:

“. . . any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of

the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.”

Article 7(2) permits punishment of a term of one to five years imprisonment for those who make “propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations’ methods which contain violence, force or threat. The provision also increases the punishment by half for propaganda expressed via press and publication. [...]

The state of emergency decrees adopted in the aftermath of the coup attempt are far-reaching and give authorities wide discretionary powers to derogate from human rights obligations, without providing adequate channels for judicial review and appeal. The emergency decrees apply to anyone “assessed to be” a member of a terrorist organization, as well as to anyone acting in union or contact with such organizations. The decrees lack criteria for assessing membership or contact and leave overly broad discretion to authorities responsible for their execution, waiving ordinary administrative safeguards. The lack of criteria for assessing membership also applies to the procedure by which the High Council of Judges and Prosecutors (HSYK), the High Courts and Constitutional Court are empowered to dismiss judges and prosecutors. The decrees do not specify criteria on which such assessments are to be based, nor do they require individualised reasoning. The persons concerned are not provided with evidence against them; many are unaware of investigations against them. The decrees also facilitate impunity and lack of accountability by affording full legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees. [...]

On the basis of emergency decrees, over 100 media outlets were reportedly closed during the first six weeks of the state of emergency. Since 15 July 2016 and the time of the writing of this report, reports indicate that at least 177 media outlets have been closed; 231 journalists have been arrested (over 150 journalists are in prison); nearly 10,000 journalists and media workers have been dismissed; and the press cards of at least 778 journalists have been cancelled. **Publications taking seriously investigative journalism and their role as a public watchdog frequently face harsh penalties under anti-terrorism, insult and state-of-emergency laws.** Many of the closures affect outlets allegedly connected to the Gülenist movement, such as the large circulation Zaman, but many others have involved outlets without any such evident connections. While the situation has intensified in the period since the coup attempt, the assault on the press began well before July 2016.

In meetings with the Special Rapporteur, the authorities stressed that no journalist is prosecuted for “being a journalist”, but for having committed a crime. However, as seen below, examples of journalist arrests and prosecutions demonstrate **an expansive definition of crime interfering with core values of freedom of expression.** [...]

At the time of the Special Rapporteur’s visit, an estimated 155 journalists and media workers were imprisoned, in most cases based on vague charges and with either very little or no evidence presented or publicly available. The figures may not reflect those who were released

but continue to face charges and potential future imprisonment. What follows is a small sample of illustrative cases brought to the attention of the Special Rapporteur. [...]

All individuals face censorship online, with a serious impact on the public's right to seek, receive and impart information and ideas regardless of frontiers. In December 2016, the Interior Ministry stated that the authorities had opened investigations into 10,000 people over social media posts, while 3,710 persons were detained for questioning and 1,656 suspects were formally arrested, over the previous six months. [...]

As of March 2017, over 100,000 websites had reportedly been blocked in Turkey. The Government has blocked access to URLs including pro-Kurdish websites and news sources, as well as these outlets' Twitter accounts. The Supreme Electoral Council of Turkey (YSK) blocked access to over 90 URLs for sharing polls before the elections. The TIB blocked access to five of the most commonly used LGBTI websites by the application of article 8 of Law no. 5651. Following an order by the Ankara Criminal Court of Peace in March 2015, 49 URLs were banned. [...]

Despite national and European court rulings against the blocking of access to Twitter and YouTube, first instance courts continue to order such blockings on the basis of national security justifications. **On two occasions in April and July 2015, Criminal Peace Judges briefly blocked Facebook, Twitter and YouTube following wide circulation of images related to terrorist acts, finding they amounted to "terrorist propaganda".** [...]

Representatives of civil society emphasized that the deterioration of the right to freedom of expression does not result solely from the state of emergency. **Pressures on civil society organizations limit the ability of individuals to enjoy the freedom of expression, whether individually or as a collective.** On 11 November 2016, 370 NGOs operating in Turkey were suspended under emergency decree, for alleged links with terrorist organizations. The Ministry of Interior assured the Special Rapporteur that all suspensions would be individually reviewed, but on 22 November 2016, all of the suspended NGOs, plus an additional five, were permanently closed and their assets seized under emergency decree no. 677. **This brought the number of closed NGOs since the attempted coup to 1,495.** According to figures provided by the Government, 187 associations and 21 foundations have been reopened by decree laws. During the mission, the Special Rapporteur met with representatives of artistic and cultural centres, women's rights organizations, children's rights organizations, and organizations working toward equality on the basis of sexual orientation and gender identity. [...]

Article 19(3) requires not only clarity and precision in restrictions but also the availability of independent mechanisms to enable individuals to challenge them. In the present context, the judiciary appears to be increasingly unavailable to those charged under the Anti-Terrorism and emergency laws. Nor does it appear available to the tens of thousands of individuals who have lost their employment according to vague accusations of association with the Gülenist movement and Kurdish organizations. The following elements call into question the legality of the restrictions applicable to freedom of expression.[...]

The Special Rapporteur is concerned about structural changes to the judicial system which undermine the independence of the judiciary, even those that predate the emergency declared in 2016. Pursuant to Law No. 6545 of 2014, the system of Criminal Judi-

capture of Peace (or Criminal Peace Judges) streamlines cases in such a way as to limit the ability to appeal and challenge emergency decrees and measures taken under such decrees. The Criminal Peace Judges decide upon measures such as arrest, pre-trial detention, search, seizure, and physical examination of the suspect. According to the Code of Criminal Procedure, article 268(3)(a), the appeal of a decision by a Criminal Peace Judge shall be reviewed by another Criminal Peace Judge. The system of horizontal appeal falls short of international standards and deprives individuals of due process and fair trial guarantees. The Special Rapporteur was alerted to several examples indicating that this system does not take into account case-law in other Turkish courts, including the Constitutional Court that may be consistent with international human rights standards. [...]

Since 2014 the executive branch has strengthened its control of the institutions of the judiciary and prosecution, including by arrest, dismissal and arbitrary transfer of judges and prosecutors, as well as threats against lawyers. This began following the split between the ruling Justice and Development Party (AKP) and the Gülen movement, which had been closely allied with the AKP movement until 2013.

Following the coup attempt, authorities launched administrative investigations into the judiciary, dismissing an alarming number of judges and prosecutors on grounds of affiliation with the Gülen movement. In the first five months following the state of emergency, 3,626 judges and prosecutors were removed under emergency decree. At the time of the Special Rapporteur's visit, only 198 had been reinstated. Several dozen judges, including one judge serving in the UN Mechanism for International Criminal Tribunals (MICT), Judge Aydin Sedaf Akay, have been detained, even after the MICT ordered Turkish authorities to cease all legal proceedings against Judge Akay and to take all necessary measures to ensure his release from detention. The Constitutional Court expelled two of its own judges. In February 2017, another 227 judges and prosecutors were dismissed by the Board of Judges and Prosecutors following the inclusion of their names in lists annexed to emergency decrees. By emergency decree 667, members of the judiciary who were dismissed are entitled to file an action directly with the Council of State. [...]

Between the declaration of the state of emergency and December 2016, the Constitutional Court received approximately 60,000 applications for judicial review, many for claims in connection with arrests, pre-trial detention and employment dismissals often connected to asserted membership in or beliefs associated with Gülenist or other organizations. During approximately the same period, more than 36,000 persons were jailed pending trial, and more 110,000 have been dismissed from public service. However, **following the court's decision of 12 October 2016 with regards to emergency decrees 668 and 669, the possibility for individuals to challenge the constitutionality of measures taken under emergency decrees has been, at best, made exceptionally difficult.** [...]

Emergency decree 667, the first declared following the attempted coup, increased the amount of time a detainee could be held without charge from four to thirty days (article 6a). Article 19 of the Constitution allows for a maximum of four days and an extension of this period during a state of emergency. However, in the case of *Aksoy v. Turkey*, the ECtHR held that detention of fourteen days without judicial review, even during a legitimate state of emergency, violated the state's human rights obligations. **Decree 667 also provided for officials to observe or even record meetings between pre-trial detainees and their law-**

yers, in addition to restricting the choice of lawyers (article 6d). Decree 684 reduced the maximum period for detention to seven days from the arrest, excluding the time spent to take the suspect to the nearest court.

The Special Rapporteur visited Silivri prison, as noted above, where lawyers were permitted only very brief meetings each week. During these brief meetings, they are unable to exchange documents, and all conversations are allegedly monitored by the prison. Lawyers with whom the Special Rapporteur met explained that in most cases neither they nor their clients were informed of the specific charges, making it difficult to prepare a defence. Individuals in detention were also unable to see their lawyers until shortly before being brought to court or being interrogated, adding an additional challenge for due process.

Under the state of emergency decrees, judges can order that lawyers be replaced. Detained persons in many instances do not have access to legal and other books and cannot make telephone calls. Access to family members is also restricted. Lawyers representing detained persons reported harassment pursuant to the course of their work. The Government has launched tax record investigations into a number of lawyers, and many are investigated and detained.» Source: Conseil des droits de l'homme (CDH), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey*, 7 juin 2017, p.5-19: www.ohchr.org/en/hrbodies/hrc/regularsessions/session35/documents/a_hrc_35_22_add_3_e.docx.

Daily Trust, 25 septembre 2018:

« The Turkish government has investigated 430 social media accounts and taken legal action against 344 users over the last week (Sept.17-Sept.24) on accusations of disseminating propaganda for alleged “terrorist organizations,” the Turkish Interior Ministry announced on Monday.

“Legal action has been taken against 344 people and 430 social media accounts that propagandize for terrorist organizations, promote these organizations, openly declare that they are affiliated with terrorist organizations, incite people to enmity and hostility, insult state authorities, make attempts against the state’s indivisible integrity and the safety of society or engage in hate speech,” said the statement.

According to a report by Turkey’s state-run Anadolu news agency on July 21, police teams under the command of the cybercrime unit have determined the existence of 126,000 social media accounts related to alleged terrorist organizations in the last two years. » Source: Daily Trust, Turkey: Govt prosecutes 344 over social media posts, 25 septembre 2018: www.dailytrust.com.ng/turkey-govt-prosecutes-344-over-social-media-posts.html.

Dutch News, 5 octobre 2018:

« The Dutch Christian Democrats have raised concerns about a telephone app where it believes Dutch people of Turkish origin could denounce those criticising the Turkish government. In a press release on Friday, the CDA announced that it has raised the

matter with the Dutch government, after reports of the existence of such an app in Germany. It claims that the app, EGM Mobil, was made by the Turkish police to report all sorts of concerns but if somebody is reported for slander through it, they could encounter problems when travelling in Turkey. A controversial law in that country makes 'public denigration of Turkishness' and Turkey's government an imprisonable crime, including by a Turkish citizen in another country. CDA spokesperson Pieter Heerma said that the party is asking for action on access to the app: 'This is disturbing and undesirable. We want to know the possibilities to take down this app as soon as possible.' In 2016 Dutch columnist Ebru Umar was temporarily prevented from leaving Turkey in connection with sending two tweets deemed insulting to Turkish president Recep Tayyip Erdoğan. » Source: Dutch News, Concerns raised about Turkish police report app, 5 octobre 2018: www.dutchnews.nl/news/2018/10/concerns-raised-about-turkish-police-report-app/.

Frankfurter Allgemeine, 25 septembre 2018:

« Erdogan-kritische Türken werden in Deutschland offenbar mithilfe einer App der Zentralbehörde der türkischen Polizei denunziert. Die Smartphone-Anwendung, über die das ARD-Magazin „Report Mainz“ am Dienstag berichtete, heißt „EGM Mobil“. Die Abkürzung EGM steht für „Emniyet Genel Müdürlüğü“, die Zentralbehörde der türkischen Polizei. Die App steht im Google-Play-Store und im App-Store von Apple zum kostenfreien Download zur Verfügung. Sie ermöglicht es laut „Report Mainz“, kritische Kommentare türkischstämmiger Personen in sozialen Netzwerken direkt bei den türkischen Behörden anzuzeigen.

Im Google-Play-Store wird die Anwendung auf Türkisch allerdings ganz harmlos als Möglichkeit beworben, Dienste der türkischen Polizei zu nutzen, etwa um Online-Benachrichtigungen für Parkplatz-Abfragen zu erhalten oder um auf Beschwerdeformulare zuzugreifen. Wie viele Personen in Deutschland das System schon genutzt haben, ist dem Fernsehmagazin zufolge nicht bekannt. Die entsprechenden App-Stores hätten auf Anfrage keine Auskunft gegeben. Im Google-Play-Store ist aber aufgeführt, dass die App bereits mehr als 100.000 Mal installiert worden sei.

Die türkische Polizei geht seit Monaten auch im Internet verstärkt gegen Regierungsgegner vor. Dies belegen die Zahlen, die das türkische Innenministerium dazu wöchentlich ausweist. Nach Recherchen von „Report Mainz“ wurden in der Türkei allein im laufenden Jahr mehr als 20.000 Verfahren wegen regierungskritischer Äußerungen in sozialen Netzwerken eingeleitet. Zahlreiche Fälle beruhten auf Hinweisen bezahlter und freiwilliger Denunzianten.

Im Interview mit „Report Mainz“ schilderte ein in Deutschland lebender Türke, wie er wegen eines Facebook-Eintrags, in dem er den türkischen Staatspräsidenten Recep Tayyip Erdogan kritisiert hatte, mithilfe der EGM-App denunziert worden sei. „Ich habe Kommentare geschrieben zu Erdogan – er sei ein Diktator und so weiter. Eines Tages erhielt ich eine Nachricht per Facebook, in der stand: Ich habe dich angezeigt, und das nächste Mal, wenn du in die Türkei kommst, gibt es für dich keine Rettung.“ Der unbekannte Denunziant habe dem Mann zudem einen Screenshot der von ihm über die App erstatteten Anzeige zugeschickt.

Der Vertrauensanwalt des türkischen Konsulats München, Serdal Altuntas, verteidigte im Gespräch mit „Report Mainz“ die Entstehung der App. Er habe dieses Verfahren immer wieder bei Gesprächen in der Türkei und in Deutschland vorangetrieben. „Denn es kann nicht sein, dass jemand, der hier in Deutschland eine strafbare Handlung eines Türkischstämmigen gefunden hat, diese erst in der Türkei zur Strafanzeige bringen darf“, zitierte das Magazin den Anwalt.

Deshalb habe er sich für einen rechtlichen Rahmen eingesetzt, der schnellere Abläufe und Anzeigen „von überall aus der Welt aus“ ermögliche. Dieser sei nun auch gegeben, sagte Altuntas „Report Mainz“. Es könne nicht sein, „dass hier in Deutschland jemand für die Terrororganisation PKK Rekrutierungen macht oder auch Gelder sammelt, Propaganda macht und die Türkei kriegt davon gar nichts mit“.

Der Geheimdienstfachmann Erich Schmidt-Eenboom kritisierte die App scharf und forderte die deutschen Behörden auf, einzugreifen. „Diese App der türkischen Polizei ist nichts anderes als eine digitale Gestapo-Methode, die nationalistische Fanatiker aufstacheln, politische Gegner Erdogans in die Fänge seines Unterdrückungssystems zu treiben“, sagte er im Gespräch mit „Report Mainz“. Denunziationen über die EGM-App stellten schwere Verstöße gegen die öffentliche Sicherheit und Ordnung dar. Die Ausländerbehörden stünden „in der Verantwortung, solche Denunzianten auszuweisen“.

Am Freitag wird Erdogan in Berlin erwartet. Der Staatsbesuch ist umstritten, nicht nur wegen der wiederholten verbalen Attacken des türkischen Präsidenten auf Deutschland, sondern auch wegen der weiterhin in der Türkei inhaftierten Deutschen und des harten Vorgehens der türkischen Regierung gegen ihre Kritiker. Angesichts der 3,5 Millionen Menschen mit türkischen Wurzeln in Deutschland sei das Verhältnis „einzigartig, aber nicht einfach“, hieß es vor dem Besuch aus dem Umfeld des Bundespräsidenten Frank-Walter-Steinmeier. Dieser wird Erdogan am Freitagmorgen mit militärischen Ehren empfangen. » Source: Frankfurter Allgemeine, So werden Erdogan-Kritiker in Deutschland per App denunziert, 25 septembre 2018: www.faz.net/aktuell/feuilleton/medien/erdogan-kritiker-in-deutschland-offenbar-per-app-in-tuerkei-angezeigt-15805950.html.

Freedom House, janvier 2018:

« The Turkish government’s sprawling crackdown on its real and suspected opponents, touched off by a coup attempt in July 2016, continued throughout 2017.

Using emergency powers and vaguely worded terrorism laws, the authorities had suspended or dismissed more than 110,000 people from public-sector positions and arrested more than 60,000 people by year’s end. **Extensive use of pretrial detention meant that many suspects were held behind bars for long periods without due process. There was increasing evidence of extrajudicial “disappearances” and routine torture of political detainees.** In June and July, officials arrested a number of leading human rights activists on terrorism charges. Osman Kavala, perhaps Turkey’s most prominent civil society leader, was detained in October and eventually charged with attempting to overthrow the constitutional order. Since the attempted coup, at least 1,500 civil society organizations have been summarily closed and their property confiscated. The prosecution of journalists and closure of media outlets continues. **Arrests based on messages shared via social media are com-**

mon, leading to widespread self-censorship and a general chilling effect on political discourse.

In April 2017, a government-backed package of constitutional amendments was formally approved through a referendum. When fully implemented in 2019, the changes will radically increase the power of the presidency and reduce democratic checks and balances. The referendum was conducted on a manifestly uneven playing field, particularly in light of the ongoing state of emergency and related restrictions on the media, the opposition, and civil society. Moreover, the Supreme Electoral Council (YSK) intervened in ways that seemed to favor the government and cast serious doubt on the integrity of the tabulation process. [...]

Many Turkish citizens continue to voice their opinions openly with friends and relations, but more now exercise caution about what they post online or say in public. Not every utterance that is critical of the government will be punished, but the arbitrariness of prosecutions, which often result in pretrial detention and carry the risk of lengthy prison terms, is increasingly creating an atmosphere of self-censorship. [...]

A long-term erosion of due process guarantees has accelerated under the state of emergency. Antiterrorism charges brought since the coup attempt often rely on the weakest of circumstantial evidence, secret testimony, or an ever-expanding guilt by association. A decree issued in December 2017 apparently removed requirements that defendants hear all the evidence brought against them and have a defense attorney present during trial. In many cases, lawyers defending those accused of terrorism offenses have been arrested themselves. Lengthy pretrial detention has become routine. An October report by Human Rights Watch detailed evidence that security forces were carrying out disappearances and using secret detention sites. Under emergency rules, suspects can be held for up to 14 days without judicial review, down from 30 in the initial aftermath of the coup attempt. Authorities can also detain individuals for up to 24 hours without access to a lawyer, though police have reportedly breached this limit in practice. [...]

Torture has become increasingly common, according to human rights organizations, and an emergency decree issued in December 2017 appears to grant legal immunity to any person, including civilians, who takes action against terrorists or others associated with the 2016 coup attempt.

More than 3,000 people have been killed in fighting between security forces and the PKK since the end of a cease-fire in July 2015. The conflict, which has included bombings and assassinations, is concentrated in the rural southeast, though until the second half of 2016 there was also significant urban fighting. Turkey faces a separate terrorist threat from the Islamic State (IS) militant group. A gunman linked to IS attacked an Istanbul nightclub in January 2017, killing 39 people. » Source: Freedom House, Freedom in the world 2018 - Turkey, janvier 2018: www.ecoi.net/en/document/1426448.html.

FP, 24 mars 2016:

« But in recent months, “terrorism” has also come to mean making statements the Turkish government doesn’t agree with. Dissenting voices — journalists, lawyers, aca-

demics, and opposition politicians — have been arrested for disseminating propaganda on behalf of a terrorist organization.

*From reports about clashes in the southeast to petitions calling for peace and, most recently, carrying invitations for a Kurdish New Year's celebration, **anything that appears to challenge government policy toward the "Kurdish issue" is quickly labeled "terror propaganda" — a phrase derived from Turkey's broad anti-terror law, which criminalizes "making propaganda in connection with [terror] organizations."***

For Turkey's president, however, that's still not enough. Last week, Recep Tayyip Erdogan called for the definition of terrorists to be expanded to include "supporters of terrorism," raising fears of an even greater crackdown.

"Their titles as an MP, an academic, an author, a journalist do not change the fact that they are actually terrorists," Erdogan said last Tuesday. "It's not only the person who pulls the trigger, but those who made that possible who should also be defined as terrorists."

There was no difference, he added, between "a terrorist holding a gun or a bomb and those who use their position and pen to serve the aims."

On the next day, three scholars were arrested for "terror propaganda" after reading out a declaration criticizing the government's military operations in southeastern Turkey. An Istanbul court said the statement amounted to "tacit approval" of the PKK's actions.

A British professor who came to show support for the detained academics was also arrested and eventually deported — apparently, he wrote, because he carried invitations to a Newroz celebration hosted by HDP, a pro-Kurdish political party.

The HDP is another thorn in the government's side that finds itself frequently accused of terror propaganda. The party became the third-largest in parliament last year at the expense of Erdogan's ruling AKP, but now its legislators could be arrested and charged if the government succeeds in lifting their legislative immunity. » Source: Foreign Policy (FP), In Erdogan's Turkey, Everyone Is a Terrorist, 24 mars 2016: <https://foreignpolicy.com/2016/03/24/in-erdogans-turkey-everyone-is-a-terrorist-kurds-pkk-terrorism/>.

FT, 23 janvier 2018:

« Turkey has arrested scores of people for "spreading terrorist propaganda" in a crackdown against criticism of Ankara's offensive against a Kurdish-held enclave of north-west Syria. Prominent journalists and two Kurdish opposition politicians are among 91 people detained since the assault on Afrin was launched at the weekend, the state-run Anadolu agency said. The crackdown is likely to exacerbate international concerns about freedom of expression in Turkey, and hinder Ankara's efforts to mend relations with Europe. The Afrin intervention, codenamed Operation Olive Branch, has already further strained ties between Turkey and the US, which arms and trains Syrian Kurdish-led militias that it deems vital partners in the war against Isis.

Turkey considers the Syrian Kurdish fighters to be an extension of a terrorist group and its military operation is aimed at clearing militias from the enclave that sits along the Turkish

border. Recep Tayyip Erdogan, Turkish president, had warned that the Kurdish forces were trying to form a “terror corridor” along the border.[...]

The wave of arrests of social media users follows a broader crackdown on “terror propaganda” that was launched in 2015 after the collapse of a peace process with the Kurdistan Workers’ party (PKK), which has waged an insurgency against the Turkish state for more than 30 years.

The crackdown accelerated after an attempted coup in July 2016 that Ankara blames on Fethullah Gulen, a Turkish cleric living in the US. Hundreds of Kurdish media outlets and civil society groups have since been forced to close. The co-leaders of the leftist, pro-Kurdish People’s Democratic party (HDP) have been in jail for more than a year on accusations of links to the PKK.

Those arrested in recent days include Nurcan Baysal, a prominent author and activist, and two HDP officials. Emma Sinclair-Webb, Turkey director of Human Rights Watch, said that “nothing in Baysal’s tweets advocates violence”.

Ayhan Bilgen, a HDP spokesman, said the crackdown was targeting “those who side with peace”. “Journalists are having their doors rammed down without anyone knocking and they are being detained as if there were an army or ammunition inside,” he told a news conference. “This shows how people are afraid of keyboards, pens, words and writing.” **Binali Yildirim, Turkish prime minister, said social media users who portrayed Turkey’s operation as an attack on Kurds — rather than Kurdish militias — were committing “the biggest villainy”. “Social media does not mean irresponsible media. We started holding those accountable for the crimes being committed here,” he said.** » Source: Financial Times (FT), Turkey arrests scores over social media ‘propaganda’ on Syria offensive, 23 janvier 2018: www.ft.com/content/15748584-0055-11e8-9650-9c0ad2d7c5b5.HH.

Guardian, 11 décembre 2017:

« Last week the trials began in Istanbul of those who signed the Academics for Peace petition in January 2016. A total of 148 trials are scheduled through to May 2018, with new trials expected to be announced in the near future. Each focuses on a single individual, but the indictment is the same for all of them. If they are found guilty, each signatory faces a prison sentence of up to seven-and-a-half years.

In the petition, entitled “We will not be a party to this crime”, more than 2,000 signatories sought a negotiated solution to the military conflict between the Turkish state and the Kurdistan Workers’ party (PKK). At a time of heavy clashes in Turkey’s Kurdish-populated towns, the petitioners objected to the continuation of violence against the Kurdish people, called for an end to the round-the-clock curfews that deprived the population of necessary provisions, and asked that the Turkish government resume talks with the PKK that the government itself had previously inaugurated. The petition referenced violations of international law and basic democratic principles, and accused the government of “deliberate and planned massacre and deportation”.

Nearly 500 academics who signed have already lost their positions with no prospect of working again; some are now subject to travel bans; and some had their passports revoked, preventing them from working in Turkey or abroad.

What is the substance of the indictments? **The public prosecutor accuses the academics of “making propaganda for a terrorist organisation” under article 7/2 of the Turkish anti-terror act. The petition’s call to cease violence and comply with international law is taken by the state to be “propaganda” for the PKK.** The indictment offers no careful reading of the actual petition. Most strange, then, that the indictment begins with the petition, citing it verbatim, and then concludes, without any argument, that it is a declaration that supports the PKK.

This is a wilful distortion and reversal of the clear meaning of the petition. In fact, the petition calls for a peaceful settlement, therefore it clearly does not affirm the violent aims and actions of any Kurdish group. And yet that word “peace” becomes code for “terrorism”.

The steps by which the indictment distorts the petition seem to be these: (1) in calling for the cessation of violence against the Kurdish people, the signatories are taking sides with the Kurds; (2) the Kurds are regarded as terrorists, so taking sides with them is to ally with terrorism; (3) the call for a peaceful solution involves negotiating with terrorists; (4) a call for negotiation with terrorists constitutes propaganda for a terrorist organisation. Thus, (5) a petition to cease violence and enter into negotiation to achieve peace and to comply with national and international laws protecting human rights is nothing more than propaganda for Kurdish violence.

The indictment thus reverses the petition’s accusation of state violence. It is the signatories who are considered to have broken the law by “organising defamation campaigns against the Republic of Turkey, its government, judiciary, army and security forces using press and media...” It is the signatories who by carrying out their propaganda campaign “for the armed terrorist organisation PKK ... legitimises or promotes its methods including coercion, violence and threats.”

Suddenly, those who call for peace rather than violence, those who oppose massacres as crimes against humanity, are themselves accused of advancing a violent agenda.

The use of media to circulate the claims of the petition internationally becomes an item in the indictment itself. The indictment claims that there were no massacres and that no curfews led to perilous food shortages, even though those facts are corroborated by Amnesty International and Human Rights Watch. Thus **the petition is cast by the indictment as “false news”.** In this mirror-play, the indictment renames state violence as necessary security for the “residents” in Kurdish areas, dismissing the petition’s appeal to international law to protect the lives of those very “residents” as defamatory propaganda.

The proponents of the petition are accused of “spread(ing) false, baseless and malicious news through disinformation and information pollution, target(ing) the Republic of Turkey, its government, its army and security forces.” They accuse the peace petitioners of making “war” through the media, but their war is now taking shape in a series of show trials, made for mass media consumption.

Advertisement

Curiously, the call to include international observers to make sure human rights are honoured and to participate in peace talks is interpreted in the indictment as “an assault” on Turkish state sovereignty. Recep Tayyip Erdoğan, the president, initiated this line of thinking when he lambasted the petition’s call for international observers as the product of a “mandatist” mentality, a misrepresentation that is most provocative in a world where international norms of human rights have indeed been mobilised for interventionist aims, often with catastrophic consequences.

Further, Turkey’s long history of desire for and rejection by Europe, and the protracted process of seeking admission to the EU, have created widespread resentment toward international powers. The petition’s invocation of the international, however, is not interventionist: it calls upon the utopian potential that international human rights norms have sometimes offered to struggles for human dignity that require a counterpoint to state violence.

International solidarity is once again crucial at this time when our colleagues in Turkey are facing criminal trials. It can take the form of supporting dismissed scholars financially, and calling on professional organisations and higher education institutions at both the national and international level to undersign and heed our colleagues’ call for solidarity, whether through a targeted boycott or a different campaign.

It remains imperative to keep a close eye on the proceedings and, despite the risk to those involved, to call for lawyers’ associations and human rights and educational organisations to sponsor delegations to Turkey to observe the trials over the next months. It is important that they report on how these proceedings go and what actions can be taken to defend our colleagues who are suffering state retaliation for expressing their dissenting view – and their wish for peace. » Source: The Guardian, In Turkey, academics asking for peace are accused of terrorism, 11 décembre 2017: www.theguardian.com/commentisfree/2017/dec/11/erdogan-turkey-academics-terrorism-violence-kurdish-people.

Guardian, 23 juillet 2017:

« A former British soldier who fought against Islamic State in Syria has been arrested with his girlfriend and her mother on holiday in Turkey after being accused of posting pro-Kurdish propaganda on Facebook.

Joe Robinson, 24, from Accrington, Lancashire, was on holiday in the town of Didim, about 62 miles (100km) north of Bodrum, south-west Turkey, when police raided the resort in which he was staying with his Bulgarian girlfriend and her mother.

Mira Rojkan, who has since been released, said police swooped as the three relaxed on the beach, confiscating their mobile phones, computers and other digital material before taking them away for interrogation.

After taking them to a local police station for questioning, Turkish authorities released Rojkan, a law student at the University of Leeds, and her mother, but have accused Robinson with “being a member of a terrorist organisation”, according to Rojkan.

In a text message to the Guardian on Friday, Rojkan confirmed that her boyfriend is in prison. "It was just awful. They said someone had sent them an email saying we were terrorists about to do something in Turkey. They wouldn't say who it was from. It is absolute nonsense. They arrested us on the beach while we were vacationing with my mother."

Rojkan, who lives in Leeds with Robinson, ended the short conversation explaining that she needed to keep her phone free.

A Foreign Office spokesperson said: "We are aware of the detention of a British national in Turkey and have requested consular access."

Robinson, who toured Afghanistan with the Duke of Lancaster's Regiment in 2012, travelled to Syria two years ago and served as a combat medic alongside the People's Protection Units of Syrian Kurdistan (YPG) against Isis militants during one of the civil war's bloodiest periods.

It is believed he stands accused of sharing photographs of himself wearing a YPG uniform and other material relating to the Kurdish militia.

Turkey has long argued that the US-backed YPG is a terrorist organisation affiliated with its own Kurdish insurgent group, the Kurdistan Workers' party (PKK), which has waged an insurgency against the Turkish state for decades. The YPG denies any affiliation to the PKK.

Mark Campbell, a Kurdish rights campaigner and co-chair of the Kurdish Solidarity Campaign, said: "Unfortunately, Joe has gone on holiday to Turkey not realising the kind of state it has now become.

"Turkey continues to criminalise the Kurdish question and has jailed tens of thousands of Kurdish people, including elected MPs and mayors, simply for peacefully campaigning for Kurdish rights."

Robinson travelled to Syria in November 2015 after growing increasingly incensed by both Isis's gory propaganda videos and what he saw as Britain's inaction in Syria. He told his family he was joining the French Foreign Legion and returned to the UK after five months.

But upon landing at Manchester airport, he was arrested on suspicion of terrorism offences. After spending 10 months on police bail, all charges were dropped. After his release : "I'm just happy that the restrictions placed on me have been dropped and that I can finally move on with my life.

"I went to Syria to fight against terrorism and to protect the civilians caught up in the fighting who have had to endure the most horrendous experiences and living conditions imaginable.

"I love my country, I am ex-military and served my country in the Afghanistan conflict, but to be accused of terrorism by the same country I fought for for simply trying to help those in need has been extremely harrowing and made me think twice about the morals of the government in the UK." » Source: The Guardian, Former British soldier held in Turkey over 'pro-Kurdish propaganda', 28 juillet 2017: www.theguardian.com/world/2017/jul/28/former-british-soldier-held-in-turkey-over-pro-kurdish-propaganda.

HRW, 20 juillet 2018:

« A draft law being rushed through Turkey's parliament will preserve many of the abusive powers granted to the president and executive under the country's recent state of emergency, which formally ended on July 18, 2018, Human Rights Watch said today.

The proposed law will allow authorities under the presidency, for the next three years, to dismiss judges and all other public officials arbitrarily. It also would allow the authorities to restrict movement within Turkey, ban public assemblies, and allow police to hold some suspects for up to 12 days without charge and repeatedly detain them in the same investigation. The bill does not provide adequate court oversight of use of these powers or meaningful redress for victims where use of these powers violates their rights.

“The end of Turkey's state of emergency should have been a good sign for human rights, but the draft law makes clear that the government's plan is to end it in name only,” said Hugh Williamson, Europe and Central Asia director at Human Rights Watch. “The government should scrap this law and fully restore human rights and the rule of law in Turkey.”

The two-year state of emergency was imposed following a 2016 violent coup attempt in which 250 people were killed. During it the government was allowed to rule by decree without adequate oversight by parliament or the courts. Turkish authorities dismissed over 130,000 public officials for alleged coup or terrorism links, with courts holding around 77,000 in pretrial detention on those charges, while many more were put on trial. Many media outlets were closed down

An April 2017 referendum approved an executive presidency with weakened judicial and parliamentary checks. Those constitutional changes came fully into force following June 2018 snap elections, giving the presidency many powers equivalent to those under the state of emergency on a permanent basis.

The draft law, which Turkey's parliamentary justice commission began to review on July 19, would further normalize the emergency powers, Human Rights Watch said. The law is expected to be submitted to Parliament's general assembly and become law in the coming days, despite strong resistance from the parliamentary opposition.

The 23-article bill states in its introduction that its purpose is to “effectively combat existing terrorist organizations in ordinary times” and prevent coup attempts to “protect fundamental rights and freedoms enshrined in the constitution.” However, some of its main provisions directly conflict with and undermine fundamental human rights protections.

The draft law gives the government authority for three years to dismiss from office any public official, judge, prosecutor, military personnel, or police officer “assessed to have been members of or acted in union with or been in contact with terrorist organizations or structures, entities or groups that the National Security Council has decided are engaged in activities against national security.”

*As happened under the state of emergency, those dismissed are likely to be criminally investigated on the same grounds. This measure as it concerns judges and prosecutors ensures that **political control of the judiciary will be even further enhanced and that the threat of dismissal and prosecution can be held over the head of any court that might issue an independent ruling displeasing the executive.***

It offers the greatest scope for the president to perpetuate the arbitrary and disproportionate measures imposed during two years of state of emergency. Those dismissed will be permitted to appeal only to the same authority that dismissed them. The draft law also permits confiscating their passports, cancelling their spouses' passports, and gathering information about their spouses and children.

The draft law allows for severe restrictions to be imposed on the rights to freedom of movement and assembly on vague public order grounds. It would give provincial governors – now appointed by the president – wider powers to limit people deemed to impede or disrupt public order or security from entering or leaving certain locations in their provinces for up to 15 days and to prevent all movement or assemblies at particular locations or times on the same grounds. These are powers typically only available during a state of emergency, though there was little need to invoke them over the past two years as most people were too intimidated to protest.

While such powers could be used for legitimate aims, such as preventing armed insurgency, there is nothing to prevent them from being arbitrarily and discriminately applied to people exercising the right to peaceful protest and assembly or to any form of travel within Turkey.

The law includes a measure permitting police over the next three years to detain suspects repeatedly for the same offense in order to take additional statements, with a prosecutor's consent. This practice, strengthening the role of the police, was also permitted by decree during the state of emergency, and was used often.

Extending this state of emergency measure for another three years could mean that for some suspects (whether held in pretrial detention or at liberty while under criminal investigation), police custody could become a rotating door, leaving suspects at greater risk of abuse in detention. In an October 2017 report Human Rights Watch documented two cases of people taken from pretrial prison detention back into police custody for prolonged periods and tortured.

Another measure initially valid for a three-year period would allow police to detain people arrested on suspicion of terrorism offenses and other crimes against the state for up to 12 days before being charged. Initial police custody would be for two to four days, but it could be extended twice if the person is taken before a judge. This is almost as long as under the state of emergency, which was 7 days extendable to 14. The law cites as justification the problematic example of the UK, where detention in certain circumstances is provided in law for up to 14 days.

Prolonged police custody, even if approved when the suspect is brought before a judge, is particularly alarming given the evidence in Turkey that torture and ill-treatment in police custody has again become a serious concern since the failed coup.

Prosecutors have shown no willingness to conduct effective investigations into such allegations or take steps to deter the practice and protect suspects.

The draft law also reduces the frequency with which a judge must review pretrial detention with the person or his lawyer present. Currently detention is reviewed every 30 days with the detainee's lawyer present and the detainee present at least by video link (SEGBIS). Under the draft law, the court would review a case file every 30 days, but presence of the person via video or in person would only be required every 90 days. This could not only limit the chances of a detainee being released, undermining their right to liberty, but it also would place the detainee at greater risk of abuse, as they will not be physically seen by a judge on a periodic basis.

"The powers to dismiss any judge, to ban any assembly by restricting peoples' movement, and to arrest people over and over again for the same offense in this draft law are evidence that the state of emergency will continue in all but name," Williamson said. "The state of emergency may have ended but so has the rule of law. » Source: Human Rights Watch (HRW), Turkey: Normalizing the State of Emergency, 20 juillet 2018: www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency.

HRW, 27 mars 2018:

« Turkish authorities have detained and prosecuted large numbers of people in recent weeks over social media posts criticizing Turkey's military operation in the northwest Syrian district of Afrin, Human Rights Watch said today. The crackdown violates the right to peaceful expression.

According to the Turkish Interior Ministry, authorities detained 648 people between January 20 and February 26, 2018, over social media posts criticizing Turkey's military operations in Afrin. Authorities held another 197 people for expressing criticism in other forms, including street protests or expressing solidarity with protesters on social media. The Interior Ministry has indicated that more criminal investigations have been opened since the end of February.

"Detaining and prosecuting people for tweets calling for peace is a new low for Turkey's government," said Hugh Williamson, Europe and Central Asia director at Human Rights Watch. "Turkish authorities should respect people's right to peacefully criticize any aspect of government policy, including military operations, and drop these absurd cases."

This most recent social media crackdown has targeted a wide range of people, affecting journalists; human rights activists; politicians, including four members of parliament from the pro-Kurdish HDP opposition party; members of nongovernmental organizations; academics; construction workers; physicians; and high school and university students.

Human Rights Watch has examined in detail five cases of criminal investigations and prosecutions over tweets related to Afrin, involving a journalist, a politician, a documentary maker, an LGBT activist, and a member of a human rights organization, as well as one conviction of a physician for an earlier case of nonviolent speech on social media. Human Rights Watch examined interrogation protocols, indictments, and court rulings, and interviewed three peo-

ple who are under criminal investigation for sharing nonviolent content on social media, as well as 10 human rights lawyers working on social media cases.

After examining the cases, Human Rights Watch believes that some of the police raids and criminal investigations are being used as a form of punishment rather than out of genuine belief that criminal behavior has occurred. Even if a case does not go to trial or ends in acquittal, people labeled as terrorism suspects face adverse consequences due to police investigations and criminal proceedings, including possible loss of employment and social exclusion.

On February 7, Harlem Désir, the Organization for Security and Co-operation in Europe's representative on media freedom, criticized the detention of hundreds of social media users for their opposition to the Afrin operation as "unacceptable." The European Parliament condemned Turkish authorities' repression of dissenting views on the military incursion in a resolution on February 8.

In addition to police action over social media posts relating to the Afrin operation, the police have targeted people and groups for publishing statements and organizing news conferences to protest the offensive. They include 11 senior members of the Turkish Medical Association (TTB), including its chairman, Raşit Tükel; Mithat Can, the 73-year-old head of the Hatay branch of the Human Rights Association (IHD); and senior members of the rights group People's Houses, including its co-chair, Dilşat Aktaş, all of whom are currently under criminal investigation.

Human Rights Watch has repeatedly criticized the arbitrary use of overbroad antiterrorism legislation in Turkey to punish nonviolent activities, including critical writing and online activism, in violation of the right to freedom of expression. Human Rights Watch research has also found that investigations and prosecutions for terrorism-related offenses in Turkey often lack concrete evidence and fail to adhere to due process.

The criminalization of peaceful speech on the internet has a chilling effect on social media use and has led to increased self-censorship. According to a 2017 report by the Reuters Institute for the Study of Journalism, the use of Facebook and Twitter in Turkey have both declined, possibly due to fears of government surveillance. Some of those Human Rights Watch interviewed said that people in Turkey now think twice before posting or reacting to online content criticizing the government.

According to transparency reports published by Twitter, Turkey was the world leader in requests to remove accounts or content – so-called "take down" requests – between 2014 and mid-2017. **According to the nongovernmental organization Freedom House, internet freedom in Turkey has steadily deteriorated, with its Freedom Net Overall Score slipping by 21 points, from 45 in 2011 to 66 in 2017, with the higher score meaning more violations.**

"There is no justification for Turkish authorities using the criminal justice system against peaceful critics," Williamson said. "The Turkish government needs to tolerate dissenting views in society, even if they are sharply opposed to its own." [...]

Social Media Crackdown

Turkey has a long tradition of misusing the criminal justice system and overbroad terrorism laws to prosecute journalists, activists, and other government critics. Prosecutors have repeatedly applied articles of the law such as, “inciting hatred and enmity among the population,” and “spreading terrorist propaganda” to intimidate and silence peaceful dissent both on- and offline.

Due to sustained government attacks on independent and critical media, Turkish citizens have increasingly taken to social media to get and share information, which in turn has prompted increased online surveillance and censorship by the authorities.

The recent detention and prosecution of online critics intensifies a crackdown on freedom of speech online that has been going on for several years. Internet censorship also has an extended history in Turkey. Human Rights Watch has documented the arbitrary and disproportionate blocking of entire websites in violation of the right to freedom of speech and the right to access information online. Following the start of Turkey’s military operation in Afrin on January 20, peaceful speech on social media has become the main target for arbitrary terrorism charges and criminal investigations.

The northwest Syrian district of Afrin is under the control of the Syrian Kurdish political party, the Democratic Union Party (PYD), and their armed forces, the People’s Protection Units (YPG), which the Turkish government regards as a terrorist organization. On March 18, the Turkish government claimed that it had taken control of Afrin city.

Human Rights Watch interviews with lawyers suggest that people who make critical statements on social media are increasingly being investigated for an alleged “membership of an armed terrorist organization,” rather than association or propaganda offenses, with the evidence cited against them consisting of nothing but their opinions expressed on social media, shared use of hashtags, or the fact that they are part of the same civil society group. Suspects under investigation on charges of membership in armed organizations are more frequently placed in pretrial detention, due to the gravity of the charge, and face longer sentences if found guilty.

A prominent human rights defender and medical doctor, Ömer Faruk Gergerlioğlu, was sentenced by the 2nd Kocaeli Heavy Penalty Court to two years and six months in prison on February 21 for social media posts about the Kurdish issue and the breakdown of the peace process in 2015. He has appealed the verdict.

The evidence cited against him consisted of several posts promoting an end to the Turkish-Kurdish conflict and demanding peace on his social media accounts in 2016. None of them advertised or encouraged violence. The one tweet cited in the detailed ruling, seen by Human Rights Watch, consisted of a link to a news article published on the Turkish online news website T24 illustrated with a photograph of three armed PKK militants and headlined: “PKK: If the government takes a step forward, peace will come in one month.” The judge listed the headline and the photograph, both editorial choices made by T24, as reasons for a terrorism propaganda conviction. The detailed ruling also falsely identifies Gergerlioğlu as the author of the article.

Gergerlioğlu was the subject of an intense smear campaign by pro-government media during the criminal investigation and trial, and was dismissed from his job at the Izmit Seka State Hospital before his conviction. Gergerlioğlu told Human Rights Watch: "I have always promoted peace. During the peace process I was praised by the government for saying this, and now I was turned into a criminal for still saying the exact same things." » Source: Human Rights Watch (HRW), Turkey: Crackdown on Social Media Posts, 27 mars 2018: www.hrw.org/news/2018/03/27/turkey-crackdown-social-media-posts.

HRW, janvier 2018:

« Cases of torture and ill-treatment in police custody were widely reported through 2017, especially by individuals detained under the anti-terror law, marking a reverse in long-standing progress, despite the government's stated zero tolerance for torture policy. There were widespread reports of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations.

There were credible reports of unidentified perpetrators believed to be state agents abducting men in at least six cases, and holding them in undisclosed places of detention in circumstances that amounted to possible enforced disappearances. At least one surfaced in official custody and three others were released after periods of two to three months. The men had all been dismissed from civil service jobs for Gülenist connections. » Source: Human Rights Watch (HRW), World Report Turkey, 18 janvier 2018: www.hrw.org/world-report/2018/country-chapters/turkey.

HRW, 12 octobre 2017:

« In Turkey today, people accused of terrorism or of being linked to the July 2016 attempted coup are at risk of torture in police custody. There has been a spate of reported cases of men being abducted, some of whom were held in secret detention places, with evidence pointing to the involvement of state authorities.

Based on interviews with lawyers and relatives, and on a review of court transcripts, this report looks in detail at ten cases in which security forces tortured or ill-treated a total of 22 people, and an eleventh case in which police beat scores of villagers, 38 of whom lodged formal complaints of torture.

The report also presents details of five individual cases of abduction that likely amount to enforced disappearance by state authorities since March 2017. Enforced disappearance occurs when state authorities take a person into custody, but deny it or refuse to provide information about the disappeared person's whereabouts.

Torture and ill-treatment

*The 11 cases of torture or ill-treatment Human Rights Watch includes in this report represent a fraction of the credible cases reported in the media and on social media. **Such reports indicate that torture and ill-treatment in police custody in Turkey has become a widespread problem. Official figures show that in the past year well over 150,000 people have passed through police custody accused of terrorist offenses, membership of armed groups, or involvement in the attempted coup in July 2016. The highest number of***

detentions concerns people suspected of links with the group the government and courts in Turkey refer to as the Fethullahist Terror Organization (FETÖ), associated with US-based cleric Fethullah Gülen. The government says this group was behind the attempted coup. **The second largest group concerns people with alleged links to the armed Kurdistan Workers' Party (PKK/KCK). Cases reported to Human Rights Watch show that it is people detained on these two grounds who are at greatest risk of torture.**

*In all 11 cases of torture presented in this report, which altogether involve scores of individuals, Human Rights Watch gathered accounts of severe beatings, threats, and insults. **Human Rights Watch heard accounts of detainees stripped naked, and in some cases of detainees being threatened with sexual assault, or being sexually assaulted. In many cases, the torture appeared to be aimed at extracting confessions or forcing detainees to implicate other individuals.** Detainees who alleged torture were brought before doctors for routine medical reports, but either the doctors showed no interest in physical evidence of torture or the presence of police officers inhibited them from conducting proper medical examinations and made it hard for detainees to describe their injuries or speak about treatment in custody.*

*In October 2016, Human Rights Watch published a report on the impact of the **removal of safeguards against torture and ill-treatment under the state of emergency that was imposed in Turkey after the attempted coup.** For example, the government extended the period of police detention to 30 days and restricted the right of detainees to meet with lawyers. The report documented incidents of torture that followed the introduction of these measures. In January 2017, the cabinet issued a decree lifting some of the most severe of these restrictions on detainees' rights. However, the **evidence presented in this report indicates that in spite of the easing of restrictions on detainees' rights, the abuse of detainees in police custody has continued.***

*Although the government of President Erdoğan publicly asserts a zero tolerance for torture, **there remains a climate of impunity for the torture and mistreatment of detainees. Human Rights Watch is not aware of any serious measures that have been taken to investigate credible allegations of torture, much less hold perpetrators to account.** Human Rights Watch discussed the cases of torture documented in its October 2016 report directly with the Turkish government. However, a year later, lawyers and families have informed Human Rights Watch that there has yet to be any sign that prosecutors have conducted effective investigations into two complaints by named individuals examined in the October report, or complaints by three individuals identified in the report by their initials.*

Several individuals whose cases are examined in this latest report also told prosecutors or courts they had been ill-treated. Most of their allegations appear to have been ignored or sidelined. There are scant indications that prosecutors are taking the initiative proactively to investigate abuse when they encounter suspects who show signs of having been subjected to ill-treatment.

*These developments should be seen in the context of the government's moves since the July 2016 coup attempt to further undermine the already compromised independence of the judiciary. **Mass dismissals and prosecutions of judges and prosecutors over alleged Gülenist links and tighter executive control over the judiciary make it increasingly unlikely***

that prosecutors and judges concerned about their own job security will risk investigating such crimes.

Abductions and Enforced Disappearances

This report also presents details of five cases of abductions which likely amount to enforced disappearances. In one case a man was abducted in Ankara and subsequently found in police custody, after having been held at a secret location for 42 days, during which time he alleges he was tortured. The facts of his case strongly indicate that he was the victim of an enforced disappearance, and was abducted and held in unacknowledged detention with at least the acquiescence of Turkish state agents.

Human Rights Watch documented four other cases of people who were abducted in contexts that lead to the conclusion that they too should be presumed to be victims of enforced disappearances.

Human Rights Watch has information about a sixth case – a man who went missing and was held at a secret place of detention for over two months before being released. We have not presented the details of the case in this report for the individual's own safety.

In most of the cases of abduction documented, witnesses reported the victims were abducted in broad daylight in the street by men who declared to passersby they were from the police. In three cases the same type of vehicle, a VW Transporter, was used to abduct the men. In all cases, the relatives of the disappeared men had difficulty lodging formal complaints with the authorities or with receiving information about the investigation. In one case witnesses to the abduction told relatives they called the police, who said they could not intervene because the individual's apprehension seemed to have been handled by the anti-terror branch of the police.

The evidence of abductions and likely enforced disappearances presented in this report is of particular concern because Turkey has a notorious history of security forces conducting enforced disappearances in the 1990s. The European Court of Human Rights issued repeated judgments that Turkey had violated the rights to liberty and security, and often the right to life of victims who were mainly Kurds, and had forced their families to endure inhuman and degrading treatment.

In August, Human Rights Watch wrote an open letter to the minister of justice, seeking information about the status of investigations into four abductions, but had received no response at this writing. In several cases, families of victims have applied to the European Court of Human Rights, complaining of lack of an effective investigation into the abductions.

Constraints on Lawyers

Despite the January 2017 reforms, several lawyers told Human Rights Watch that they had limited opportunity to speak to their clients in confidence because police officers were often present during their meetings with detainees. Under Turkey's Anti-Terror Law, lawyers' meetings with clients in police detention can be legally restricted for the first 24 hours. However, lawyers reported that in some cases the police still attempted to bar access beyond that period, forcing them to apply to the prosecutor's office to negotiate access.

Some lawyers also reported that they had come under undue pressure from the police when they challenged official written police accounts of police interviews with their clients, at which they (the lawyers) had been present.

Most lawyers interviewed by Human Rights Watch expressed **concerns for their own safety**. Several commented that provincial bar associations and the Union of Turkish Bar Associations were not offering the support to lawyers they needed, and were not willing to support efforts to document and lodge complaints about detainees' allegations of ill-treatment. **Without the institutional support of bar associations and the Union of Turkish Bar Associations to which they belong, the ability of lawyers to protect the human rights of detainees without fear of reprisals is limited.**

In November 2016, the government issued a decree under the state of emergency, closing down three Turkish lawyers' associations which had played an important role in promoting fair trial standards and the rights of detainees and defendants.

Several hundred lawyers are in pre-trial detention, the majority accused of links to the group the government and courts in Turkey refer to as the Fethullahist Terror Organization (FETÖ).
» Source: Human Rights Watch (HRW), In Custody : Police Torture and Abductions in Turkey, 12 octobre 2017: www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey.

Hurriyet Daily News, 24 juillet 2018:

« The Turkish Parliament has begun deliberations on a legislative bill that introduces new measures in the fight against terrorism in a bid not to create any deficiencies after lifting the state of emergency that has been in place since July 2016.

The 29-article bill that was submitted to parliament by the Justice and Development Party (AKP) has been endorsed at the relevant parliamentary commissions last week through a majority of votes from the AKP and the Nationalist Movement Party (MHP).

The proposal stipulates new measures in criminal and military laws that deal with security and judicial matters concerning the "struggle against terror" and is envisaged to be in force for the upcoming three years.

According to the bill, the maximum detention period of suspects who are accused of committing crimes against state integrity, organized crime and terrorist crimes, will be four days with an option to extend this period for two times, making it 12 days maximum if deemed necessary.

With the first state of emergency decree, the maximum detention period was regulated as 30 days without a hearing, which was later reduced to seven days with an option to extension, following criticisms.

With the bill, governors will be able to prohibit individuals from exiting and entering a defined area for 15 days on security grounds where the public order or safety has deteriorated or there are serious indications that will deteriorate in such a way that will stop or divert daily

life. They will also be able to prohibit carrying and transporting all kinds of weapons and ammunition, even if they are licensed.

In addition, officials of the Turkish Armed Forces (TSK), police department, gendarmerie as well as public servant and workers can be dismissed if they were deemed as having affiliation with a terrorist organization. Those dismissed will not be employed again in the public service, or assigned directly or indirectly.

If a court rules for their return to duty, they will be collected in a “pool” and assigned to “re-search centers” under the Defense Ministry and Interior Ministry.

For three more years, the state will continue to appoint trustees for terrorism-related institutions and companies. Gun licenses and passports of those dismissed or those suspended from duty will be canceled. The Interior Ministry will be able to cancel the passports of their spouses as well.

The state of emergency, imposed in the wake of the July 2016 failed coup, widely believed to have been orchestrated by United States-based preacher Fethullah Gülen’s network, has been extended seven times in the last two years.

On July 18, the three month period of the last state of emergency rule has come to an end since it was not renewed by the cabinet.

CHP: This bill violates constitution

This bill violates the Turkish constitution and de facto makes the state of emergency a permanent one, according to the Republican People’s Party (CHP).

“This bill is a clear violation of the constitution. This bill will permanently instate the state of emergency at the expense of placing injustice and unlawfulness,” CHP deputy leader and spokesperson Bülent Tezcan said on July 23 at a press conference.

Tezcan recalled that the Turkish constitution stipulates four days as the maximum detention period but this law increases it up to 12 days in organized crimes and clearly violates the charter.

“This bill should be rejected in parliament. Otherwise, Turkey can never establish a healthy relationship with the contemporary world,” he said.

‘Aggravated emergency rule’

With the bill, the government will have the right to confiscate and appoint trustees to private companies for three years, Tezcan said, underlining that this is a very bad message for both foreign and national investors.

“This bill contradicts with the government’s statements on normalization. This is about making abnormal a permanent norm in Turkey,” he said.

İYİ (Good) Party Antalya MP Feridun Bahşi described the bill as “aggravated” emergency rule and a violation of fundamental freedoms and rights. “Our people were waiting hopefully for emergency rule to be lifted. But this bill re-instates it in a more grave way for three years,” he said. The Peoples’ Democratic Party (HDP) stood against the bill as well.

AKP refutes criticisms

AKP deputy parliamentary group leader Bülent Turan refuted the CHP’s claims that this bill constitutes permanent emergency rule, calling all parties to endorse it in the name of the fight against terrorism.

“This bill is penned to provide continued security for the Turkish people. It is not right to call it an extension of emergency rule,” Turan said in parliament. Along with the AKP, the Nationalist Movement Party (MHP) announced its support for the bill. » Source: Hurriyet Daily News, Parliament starts discussing ‘anti-terror bill’ amid opposition criticism, 24 juillet 2018: www.hurriyetdailynews.com/parliament-starts-discussing-anti-terror-bill-amid-opposition-criticism-134919.

Hurriyet Daily News, 23 février 2017:

« Some 1,734 people have been arrested for “making terror propaganda” on social media since the failed July 2016 coup attempt, state-run Anadolu Agency has reported.

“Cyber-police” working on identifying suspects making terror propaganda online have so far detained at least 3,894 people out of 22,088 identified by police since the coup attempt.

Some 1,328 suspects have been released on probation and 1,734 have been arrested up to now.

A total of 69,937 social media accounts have been identified allegedly conducting “propaganda for terrorist organizations or terrorist acts.”

Meanwhile, 18,194 suspects are reportedly waiting for detention orders from prosecutors, while police are still working on identifying the owners of 47,849 social media accounts, according to officials.

Police have also worked to identify people who were allegedly making propaganda from abroad and have informed border gates of people detected.

Previously, 948 people were detained for allegedly providing support to terror or spreading “terror propaganda” through social media after twin bombings in the Beşiktaş district of Istanbul in December 2016 that claimed 46 lives, state-run Anadolu Agency reported on Feb. 8.

Security forces conducted operations across Turkey between Dec. 11, 2016 and Feb. 6, targeting suspects who allegedly supported terror organizations, spread “terror propaganda,” and “insulted statesmen or the security forces” through Facebook and Twitter after the attack.»

Source: Hurriyet Daily News, Over 1,700 arrested over 'terror propaganda' via social media across Turkey, 23 février 2017: www.hurriyetaidailynews.com/over-1700-arrested-over-terror-propaganda-via-social-media-across-turkey-110094.

NZZ, 1 novembre 2018:

*« Dennoch sah sich das deutsche Aussenministerium bei der jüngsten Überarbeitung seiner Reisehinweise dazu veranlasst, vor Gefahren im Zusammenhang mit dem unverändert hohen Druck auf die Meinungsäusserungsfreiheit zu warnen, solche fänden sich insbesondere in den sozialen Netzwerken. **Im Einzelfall reiche bereits das Teilen oder Liken eines regierungskritischen Beitrags, um unter dem Tatbestand der Präsidentenbeleidigung oder der Propaganda für eine terroristische Organisation belangt zu werden. Auf beides steht eine mehrjährige Haftstrafe.***

Auslöser Gezi-Protteste

*Tatsächlich wurden in den vergangenen Jahren in der Türkei mehrmals ausländische Staatsbürger, unter ihnen auch einige Deutsche, für ihre Aktivitäten auf Social Media festgenommen. Vor allem ist aber natürlich die türkische Bevölkerung selber betroffen. **Das Innenministerium veröffentlicht wöchentlich Statistiken zu sogenannten «Ermittlungen in den sozialen Netzwerken».** In der ersten Oktoberwoche wurden gegen 263 Nutzer juristische Schritte eingeleitet, die Woche drauf waren es 176.*

*In jüngerer Zeit standen dabei auch als manipulativ bezeichnete Aussagen zur Währungskrise im Fokus. In der Regel aber überwiegen Tatbestände, die unter dem Überbegriff der nationalen Sicherheit zusammengefasst werden können und die traditionell heikle Politikfelder wie die Kurdenfrage, das türkische Engagement in Syrien oder das Vorgehen gegen die Gülen-Bewegung betreffen. Letztgenannte gilt in der Türkei als Drahtzieherin des Putschversuches von 2016. Als Auslöser einer stärkeren Überwachung der digitalen Kommunikation beschreibt die in New York lehrende Publizistikprofessorin Bilge Yesil in einer Studie die Protteste um den Gezi-Park im Sommer 2013, bei denen soziale Netzwerke eine grosse Rolle spielten, und ein grosser Korruptionsskandal einige Monate später.(...) Dennoch ist der Vorwurf nicht leicht zu entkräften, die Regierung nutze den Vorwand der nationalen Sicherheit auch, um gegen ihre Gegner vorzugehen. **Dies gilt insbesondere seit dem Putschversuch, in dessen Folge Zehntausende von Personen wegen angeblicher Verstrickungen mit den Putschisten festgenommen wurden. Allein wegen ihrer Aktivitäten in sozialen Netzwerken wurden in den ersten sechs Monaten nach dem Putschversuch mehr als 3700 Personen vorübergehend festgenommen, gegen 17 000 wurden Untersuchungen eingeleitet.**(...) Die Türkei erschwert aber nicht nur den Zugang zu kritischen Inhalten, sondern **überwacht auch die Nutzer sozialer Netzwerke.** Inwiefern hierfür auch westliche Technologien zum Einsatz kommen, ist Gegenstand von Debatten. **Fest steht, dass die türkische Polizei ihre Einheiten zur Bekämpfung der Cyberkriminalität massiv aufgestockt hat.** Efe Kerem Sözeri, ein Co-Autor von Professor Yesils Studie, spricht auf Anfrage von **mehreren tausend zusätzlichen Stellen.** Laut der Tageszeitung «Hürriyet» wurde auch eine Abteilung eingerichtet, die sich allein mit «Beleidigung gegen staatliche Behörden» beschäftigt. Dieser Tatbestand ist besonders geeignet, um strafrechtlich gegen Regierungsgegner vorzugehen, da Kritik schnell als Verleumdung ausgelegt werden kann.*

Aufruf zur Denunziation

Obwohl die technischen Mittel vorhanden seien, mithilfe von Algorithmen flächendeckend nach entsprechenden Inhalten zu suchen, **konzentriert man sich laut Sözeri nur schon wegen der Fülle an Material, die bei den 45 Millionen Nutzern im Land anfällt, auf populäre Konten, also solche mit vielen Followern. Dazu gehören neben politisch und gesellschaftlich aktiven Personen etwa auch Journalisten. Zudem sei die Ermittlungstätigkeit «konjunkturabhängig», das heisst, sie folgt der jeweiligen politischen Wetterlage im Land und ihren entsprechenden Feindbildern.** Seit es zwischen Ankara und Moskau ein gewisses Einverständnis in Bezug auf Syrien gebe, seien etwa prorussische Stellungnahmen kein Problem mehr.

Dennoch kann prinzipiell jeder ins Fadenkreuz der Online-Ermittler geraten. Denn die türkische Polizei setzt zusätzlich zu ihrer eigenen Überwachungstätigkeit auch auf die Mithilfe der Bürger. Diese werden aktiv aufgefordert, problematische Stellungnahmen auf Social Media zu melden. Das erste Mal geschah dies unmittelbar nach dem Putschversuch. Mittlerweile steht dafür sogar eine App zur Verfügung. Wie viele Meldungen bei der Polizei täglich auf diesem Wege eingehen und welcher Anteil davon weiterverfolgt wird, ist nicht zu ermitteln. Aber auch die deutsche Botschaft nennt in ihren Reisehinweisen explizit die Gefahr solcher Denunziationen.» Source: Neue Zürcher Zeitung, Touristen müssen mit ihren Likes auf Facebook vorsichtig umgehen, 1 novembre 2018: www.nzz.ch/international/in-der-tuerkei-kann-schon-ein-like-gefaehrlich-sein-ld.1431613.

OHCHR, février 2018:

« The UN Special Rapporteur on torture, Nils Melzer, expressed serious concerns about the rising allegations of torture and other ill-treatment in Turkish police custody since the end of his official visit to the country in December 2016.

Melzer said he was alarmed by allegations that large numbers of individuals suspected of links to the Gülenist Movement or the armed Kurdistan Workers' Party were exposed to brutal interrogation techniques aimed at extracting forced confessions or coercing detainees to incriminate others.

Reported abuse included severe beatings, electrical shocks, exposure to icy water, sleep deprivation, threats, insults and sexual assault.

The Special Rapporteur said no serious measures appeared to have been taken by the authorities to investigate these allegations or to hold perpetrators accountable.

Instead, complaints asserting torture were allegedly dismissed by the prosecutor citing a 'state of emergency decree (Article 9 of Decree no. 667)' which reportedly exempts public officials from criminal responsibility for acts undertaken in the context of the state of emergency.

"The human right to be free from torture and other ill-treatment is absolute and non-derogable, and continues to apply in all situations of political instability or any other public emergency," the Special Rapporteur said. No circumstances, however exceptional and well argued, can ever justify torture or any form of impunity for such abuse.

"Torture is not only a notoriously ineffective interrogation method, but it constitutes the most fundamental assault on human dignity and is invariably listed among the most serious international crimes, including war crimes and crimes against humanity."

Melzer said by inviting his mandate to visit the country in December 2016, soon after an attempted coup, the Government had demonstrated its commitment to its official "zero tolerance" policy on torture.

"However, the authorities' failure to publicly condemn torture and ill-treatment, and to enforce the universal prohibition of such abuse in daily practice seems to have fostered a climate of impunity, complacency and acquiescence which gravely undermines that prohibition and, ultimately, the rule of law," he said.

The Special Rapporteur also said he remained keen to engage in a "direct and constructive dialogue" with the Turkish authorities to achieve full implementation of the prohibition on torture and ill-treatment. » Source: UN Office of the High Commissioner for Human Rights (OHCHR), Turkey: UN expert says deeply concerned by rise in torture allegations, 27 février 2018: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22718&LangID=E.

Reuters, 25 juillet 2018:

« Turkish authorities arrested a German national in southeastern Turkey for allegedly spreading propaganda for Kurdish militants on social media, the state-run Anadolu news agency said on Wednesday.

Anadolu, without citing sources, said German national Dennis E. had been detained in the Arsuz district of the southeastern Turkish province of Hatay for spreading propaganda supporting the outlawed Kurdistan Workers Party (PKK) on social media.

It said the man, believed to be of Turkish origin, was later arrested. No further details were immediately available and the German foreign ministry had no immediate comment.

The PKK, which has waged a three-decade insurgency against the Turkish state, is designated a terrorist organization by Turkey, the United States and the European Union. More than 40,000 people, most of them Kurds, have died since it first took up arms in the largely Kurdish southeast.

Relations between Turkey and Germany were strained last year after Turkish authorities held German-Turkish journalist Deniz Yucel in jail, after indicting him for security offences.

Yucel was released in February, removing a key irritant in ties between the two allies, but German officials remain deeply concerned about Turkey's deteriorating record on human rights and freedoms.

Since a 2016 failed coup, more than 150,000 civil servants have been purged and 77,000 people have been charged. Turkey has also launched cross-border operations into Syria against what it says are terrorist threats by the Kurdish YPG militia, which it deems a terrorist organization linked to the PKK.

Rights groups and Turkey's Western allies have voiced concern over the crackdown, saying President Tayyip Erdogan has used the putsch as a pretext to muzzle dissent. The government, however, has said the measures are necessary. » Source: Reuters, Turkey arrests German for spreading Kurdish propaganda: Anadolu, 25 juillet 2018: www.reuters.com/article/us-germany-turkey-security/turkey-arrests-german-for-spreading-kurdish-propaganda-anadolu-idUSKBN1KF2ZX.

RFI, 9 juillet 2018:

« Dans un pays où un simple tweet peut mener en prison, de plus en plus d'internautes sont inquiétés à cause de leurs écrits en ligne. Et tout cela est très bien documenté par le ministère turc de l'Intérieur, qui publie chaque mois le nombre d'enquêtes ouvertes contre des utilisateurs de réseaux sociaux. Plus qu'un souci de transparence, c'est une façon d'intimider ceux qui seraient tentés de s'exprimer un peu trop librement sur Facebook, Twitter et ailleurs.

Le mois dernier, pas loin de 1 500 internautes ont été inquiétés à cause de leurs partages en ligne. C'est un peu moins qu'en mai, où ils étaient plus de 1600, mais la tendance sur les derniers mois – voire les dernières années, puisque cette surveillance n'est pas nouvelle – va dans le sens d'un contrôle et d'une répression accrus des réseaux sociaux.

Des dénonciations qui mènent bien souvent en prison

*C'est souvent à la suite d'une dénonciation qu'une procédure est lancée. **La plupart du temps, les personnes inquiétées risquent la prison, car les charges portées contre elles sont très lourdes : cela va de « propagande pour une organisation illégale », un grand classique, à « insulte au président », en passant par « incitation à la haine » ou même « atteinte à l'intégrité de l'Etat ».***

Absolument n'importe qui peut être poursuivi : le quidam aux 100 abonnés sur Instagram, le journaliste célèbre et ses milliers de followers sur Twitter, un député d'opposition ou même un citoyen étranger. La semaine dernière, par exemple, deux citoyens britanniques ont été interpellés dans un aéroport du sud du pays. Les policiers auraient trouvé leur comportement suspect et, contrôlant leurs réseaux sociaux, seraient tombés sur des messages soutenant les séparatistes kurdes du PKK. Ils ont été incarcérés pour propagande terroriste.

La «propagande terroriste», une notion aux contours larges

Sezgin Tanrikulu, élu du principal parti d'opposition, doit lui aussi rendre des comptes devant la justice pour une photo présentée comme une preuve de torture lors d'une opération de police, publiée avec ce commentaire : « Cette photo ne sera jamais oubliée ». Il est également poursuivi pour « propagande terroriste ». Même sort pour Sebla Küçük, une jeune traductrice qui sera jugée en novembre pour avoir partagé sur son compte Twitter des traductions de dépêches de l'agence de presse Reuters au moment de l'offensive turque contre l'enclave kurde syrienne d'Afrin. Elle risque sept ans et demi de prison.

Des affaires très diverses, donc, qui tournent parfois au tragicomique. Comme le cas de la blogueuse Pınar Karagöz, plus connue sous le nom de Pucca. Fin juin, la police a perquisitionné son domicile après un message sur Twitter où la jeune femme écrivait : « Je suis au service de Batı ». « Batı » signifiant « ouest, Occident » en turc, elle a été dénoncée par un internaute qui voyait sans doute en elle une espionne ou une traître. Sauf que, comme la blogueuse l'a expliqué ensuite sur Twitter, Batı est aussi le prénom de son fils. Une procédure judiciaire la visant est toujours en cours. » Source: Radio France Internationale (RFI), 9 juillet 2018: www.rfi.fr/moyen-orient/20180709-turquie-internet-reseaux-sociaux-propagande-terrorisme-prison.

RSF, 6 septembre 2018:

*« The end of the summer break in Turkey means the resumption of trials of journalists. **More than 50 are being prosecuted for “terrorist propaganda,” a catch-all charge that the Turkish justice system has been using for more than 25 years to silence criticism and curb debate, especially about Turkey’s Kurdish minority.***

Use of this poorly-defined charge has grown again in recent years with President Erdoğan’s increasingly autocratic tendencies and ever-tougher line on the Kurdish issue. As of 1 July, a total of 57 journalists and media workers were charged with “propaganda for a terrorist organization” or with “publishing terrorist organization’s statements.” [...]

Turkey’s terrorism law, the TMK, was adopted in April 1991, at a time of frequent armed clashes with the PKK and when Turkey was partly under a state of emergency. Article 7.2 of the law, establishing the crime of “terrorist propaganda,” has been a favourite tool of repression for all governments ever since, helping to restrict debate about the Kurdish issue.

Despite some amendments, including the insertion of a reference to violence in 2013, “terrorist propaganda” has continued to be a catch-all charge that allows the politicized justice system to prosecute journalists for the opinions they express.

After a let-up, the number of trials soared again when peace talks between the government and PKK ended in 2015 and criminalization of the Kurdish political class resumed. RSF’s Turkey representative, Önderoğlu, has himself been charged with “terrorist propaganda” along with 40 other people who took part in a campaign of solidarity with the newspaper Özgür Gündem.

The already worrying state of Turkey’s media has become critical since an abortive coup in July 2016. Around 150 media outlets have been closed, mass trials are being held and the country now holds the world record for the number of professional journalists detained. Turkey is ranked 157th out of 180 countries in RSF’s 2018 World Press Freedom Index. » Source: Reporters sans frontières (RSF), Spate of trials in Turkey on “terrorist propaganda” charges, 6 septembre 2018: <https://rsf.org/en/news/spate-trials-turkey-terrorist-propaganda-charges>.

RSF, 24 août 2018:

« The adoption of rights-restricting laws that closely mirror those in force during the state of emergency makes a mockery of the government's claim to have ended the state of emergency; if anything, it seems to be making the state of emergency more permanent.

Many of the new provisions continue to violate universally recognized human rights, including those to freedoms of thought, expression, peaceful demonstration and assembly.

Amongst the new legislation we believe violate fundamental rights and must be repealed, we would highlight:

- **The extension of detention without charge to up to 12 days via amendment of Turkey's Anti-Terrorism law;**
- *The granting of the authority to ban individuals from passage between and within provinces to provincial governors, and to forbid public assemblies at their discretion;*
- *The renewal of arbitrary authority to dismiss individuals from academic, public and judicial service, and authority to confiscate the passports of those dismissed;*
- **The relaxation of judicial review of the cases of individuals in pre-trial detention, from requiring in-person or video presentation of the detainee in court every 30 days, to requiring visual review only every 90 days.**
- **These provisions harm and restrict the rights of individuals who are not genuine security threats to Turkey's government or citizens, but who are critical of government policies or defending human rights- at a time when reconciliation would help to restore prosperity.**

We must emphasize that the concerns of neither Turkish citizens nor the international community will be addressed by simply changing the laws under which rights violations are rationalized. If Turkey's government wishes to be recognized as a responsible state that upholds human rights, it must commit to ending the specific practices and policies that violate those rights. » Source: Reporters sans frontières (RSF), Turkey: a permanent state of emergency by any name is no substitute for respecting human rights, 24 août 2018: <https://rsf.org/en/news/turkey-permanent-state-emergency-any-name-no-substitute-respecting-human-rights>.

Swissinfo, 5 décembre 2018:

« Turkish authorities have issued an arrest warrant for journalist Can Dunder as part of an investigation into protests in Istanbul in 2013 against President Tayyip Erdogan's rule, state-run Anadolu agency said on Wednesday.

Prosecutors said he played an active role in the protests and provoked public unrest through social media. They also said he supported members of a terrorist organisation against the police, the news agency said.

It is not clear how the warrant can be served because Dunder has left the country.

Dundar, a former editor of opposition newspaper Cumhuriyet, was sentenced in 2016 to five years for publishing a video purporting to show Turkey's intelligence agency trucking weapons into Syria. He was released pending appeal and went abroad.

Hundreds of thousands of people marched in 2013 to protest a plan to build a replica of an Ottoman barracks on Gezi park in the centre of the city. The protests turned into a direct challenge to Erdogan's government. » Source: Swissinfo, Turkish authorities seek arrest of journalist Dundar over 2013 protests, 5 décembre 2018: www.swissinfo.ch/eng/turkish-authorities-see-arrest-of-journalist-dundar-over-2013-protests/44597966.

Yesil et al., 2017:

« 4. Surveillance of users

*In addition to first and second generation controls, **Turkish authorities have begun to deploy third generation controls, such as surveillance and hacking. For example, the Turkish National Police used online intrusion tools and services provided by Hacking Team, an Italian surveillance company, between 2011 and 2014.***²⁹ Turk Telekom—the largest ISP that owns 80% of internet infrastructure in Turkey – has also been found to have procured deep packet inspection tools from Procera Networks, a U.S.-based company. Turk Telekom also used to work with Phorm, a targeted advertising company, and deployed its deep packet inspection tools in violation of privacy laws. **Additionally, there are other unspecified government clients that have used (and/or continue to use) mass surveillance services provided by Asoto, Netclean and Nokia Siemens Networks.**

5. Prosecution of users

An important tool in the Turkish government's arsenal to suppress critical online speech is the prosecution of social media users based on their posts that allegedly insult the state and state officials and disseminate propaganda for terrorist organizations. According to the Penal Code, insulting state officials is punishable by a prison sentence of one or two years, whereas insulting the president (i.e. Erdogan) can lead to a prison sentence of up to four years (Article 125/3a and Article 299). The Ministry of Justice statistics show that 1,953 individuals were prosecuted in 2015 on charges of insulting Erdogan, and 49 on charges of insulting state officials. According to news reports, of these cases involved social media posts by members of opposition parties, lawyers, academics, journalists, and members of NGOs. Four users were handed 10-month prison sentences each; three placed under judicial control, and fourteen arrested pending trial. The rest were detained pending prosecution or summoned for questioning. Among the high-profile cases are an anchorwoman, a former editor-in-chief, and a columnist who were prosecuted for allegedly critical tweets concerning Erdogan, the state or state officials. In addition, state institutions and private companies have begun to take legal action against social media users, exploiting Turkey's vaguely defined defamation laws. In 2015, the state-run news agency, Anadolu Ajansı, sued more than fifty artists and journalists on charges of libel. In 2016, Turkcell, one of Turkey's largest mobile network providers, sought 10,000 Turkish liras (USD 3,500) in damages from each Twitter user that tweeted the hashtag #TecavuzCell ("Rape Cell") as a means of protesting the company's sponsorship of a government-linked foundation embroiled in child abuse allegations. In addition to defamation charges, in 2015 Turkish authorities have accused more than 13,000 individuals with "disseminating terrorist propaganda" in relation to expression of political opinions or coverage of the Kurdish conflict. That same year, 36 journalists and newspaper distributors were imprisoned on charges of terrorist propaganda. Although official statements did not specify how

many of these cases involve social media posts, news reports stated that Kurdish journalists Idris Yılmaz and Vildan Atmaca were prosecuted for their pro-PKK Facebook pages, while Hayri Tunc was held in pre-trial detention for his Twitter and Facebook posts, **and Hamza Aktan was detained for retweeting a BBC post regarding military operations in South-east Turkey.**[...]

6. Prosecution of social media users and the institutionalization of “snitching”

The prosecution of social media users is not a new phenomenon, however, in the post-coup period it has escalated both in terms of its pervasiveness and severity. According to the Ministry of Interior Affairs, 3,710 people were detained for questioning between July and December 2016 with 1,656 of them arrested, 1,970 released, and 84 under detention as of this writing. Charges included “inciting the public to hatred, animosity and agitation,” “praising terrorism,” “engaging in terrorist propaganda,” “insulting state officials” and “undermining state sovereignty and public safety.” In addition, as per the statement of a member of the parliamentary commission on security and intelligence affairs, **the government purportedly set up a “Social Media Monitoring Unit” which is currently in the process of preparing legal investigation notices for 17,000 users and finding the addresses of another 45,000.** Shortly after the release of this information, a highprofile incident of social media-related prosecution occurred. Barbaros Sansal, fashion designer, LGBT activist and outspoken government critic became the target of pro-government trolls upon sharing a video message that included allegedly offensive remarks concerning the AKP, the Turkish state and society. Sansal was immediately extradited from Northern Cyprus to Turkey, only to be physically assaulted by angry mobs at the airport apron, and finally detained and arrested the next day. While online trolling played a role in bringing Sansal to the attention of law enforcement and the courts, there is no publicly available information as to how many of the above-mentioned detentions and arrests were initiated by police surveillance versus citizen informants. **In a worrisome development, in December 2016 the Turkish National Police (TNP) launched a smart phone app and a dedicated webpage that allow citizens to report social media posts they consider to be terrorist propaganda. In its public announcements, the TNP has urged citizens to share all available information concerning the harmful content, the user, and to take a screen shot of the content in case it is deleted. The news of the app was welcomed by pro-government media outlets, journalists, pundits, and online users, who wholeheartedly encouraged fellow citizens to report the alleged “social media terrorists;” becoming a symbolizing indicator of the government’s changing internet policy and the ways it is implemented.**» Source: Yesil, Bilge; Kerem Sözeri, Efe; and Khazraee, Emad, Turkey’s Internet Policy After the Coup Attempt.: The Emergence of a Distributed Network of Online Suppression and Surveillance, in: Internet Policy Observatory, février 2017, p.10-11; 16-17: <https://repository.upenn.edu/cgi/viewcontent.cgi?article=1021&context=internetpolicyobservatory>.

Yezi et al., 2017:

« There is no legislation in Turkey that prohibits online users from posting anonymously. Nor is there a law that requires them to obtain a license or register with government agencies prior to launching websites and blogs. In practice, however, freedom and anonymity of communications is lacking because of the mandatory registration of SIM cards. When purchasing a mobile or smartphone, users in Turkey must submit their national ID number, making it

possible for government agencies to “establish extensive databases of user information” and “create comprehensive profiles of individual citizens”.

In addition to this registration scheme, surveillance of online communications is facilitated through a series of legislation concerning internet activity. For example, the Internet Law of 2007 set forth the criteria for blocking websites and governing the activities of ISPs. It obliged the providers to monitor online content transmitted through their infrastructure, and required them to ban access to illegal content upon being served with a court order or an administrative notice.

The first Internet Law (as it is commonly known) was hastily amended by the AKP in February 2014 in response to the so-called damaging effects of digital communications. The increasing use of social media during the nationwide Gezi protests and the online dissemination of critical information about government corruption led the AKP government to introduce stricter provisions concerning content removal and data collection. According to the second Internet Law, ISPs are now required to collect data on users’ activities for up to two years and provide authorities with this data on demand. The law pertains to mass use providers including internet cafes and places that provide free WiFi such as universities, coffee shops, restaurants, etc. in the category of access and hosting providers, and thus requires them to obtain activity certificates, implement government’s blocking decisions, and store user data.

*To facilitate the collection of data, in 2014 the AKP also amended the Law on State Intelligence Services and the National Intelligence Agency. **The new legislation enables the intelligence agency—the MIT (known by its Turkish acronym)—to collect personal data, documents and information about individuals without a court order; obtain data from private companies, public authorities, professional organizations and other legal persons; and gain access to data stored in IT devices, equipment and hardware whether they are owned publicly or privately.***

In another blow to privacy of communications, the AKP amended several laws as part of the Homeland Security Package that was passed in 2015. For example, the new Law on the Powers and Duties of Police allows law enforcement to carry out wiretapping in urgent situations for a forty-eight-hour period without a court order (previously the time limit was 24 hours). Additionally, in so-called urgent situations the police can request user data from telecommunications companies to locate the user, and monitor and evaluate their communications. Another piece of legislation amended as part of the Homeland Security Package was the Identity Disclosure Law. As per this new legislation, car rental companies and hotels are required to keep daily records of customers’ identity and contact information, and “computerize all records and have their computer terminals connected to the computer terminals of law enforcement officials”.

The AKP government’s efforts to collect personal data and monitor online communications intensified in 2016 in the aftermath of the botched coup. The AKP government declared a State of Emergency (SoE) for a duration of three months, which it has renewed continuously. Currently in effect, the SoE enables the AKP to legislate through decree laws and without parliamentary approval.

By June 2017, the AKP government passed twenty-four decree laws, seemingly to “cleanse the army, law enforcement and state institutions from the coup planners and their affiliates;

to bring to justice those who are affiliated with terrorist organizations and threaten national security; to restore public order and safety, and to protect democracy and basic rights and freedoms". The following section takes a closer look at decree laws that expand the surveillance capabilities of the state.

Decree Law 670 facilitates the interception of digital communications of users who are under a coup-related investigation (as well as their spouses and children) and the collection of their private data from all public authorities and private companies. Decree Law 671 allows the BTK (the government agency that is responsible for regulation of telecommunications sector) to overtake any privately-held digital communications company including cable or cellular network providers to "[maintain] national security and public order; prevent crime; protect public health and public morals; or protect the rights and freedoms [of citizens]". Last but not least, and in a blow to online privacy, Decree Law 680 enables the Department of Cybercrimes to gather and intercept internet traffic on any internet-related investigation and to obtain personal information from ISPs without a court order.

In addition to the legislative measures, there are various technical tools that the authorities use for purposes of online surveillance and data collection. According to research undertaken by Citizen Lab, there is evidence of several digital spyware programs being used in Turkey, although it is not known which government agencies use(d) them, for how long, and if they conduct(ed) targeted surveillance of online users. Among these spyware programs are the following: 1) Phorm, a program that "collects information on users' online behavior without their knowledge, performs deep-packet inspection (DPI) to monitor a user's connection line, and creates a profile of the individual's online activities," 2) Package Shaper, a program used for internet filtering and surveillance; 3) Remote Control Systems that is produced by the Italian company Hacking Team, and FinFisher that is produced by the UK-German company Gamma International, both of which enable the interception of passwords and emails as well as the remote control of a device's microphone to record conversations, and 4) Deep Packet Inspection (DPI) technology provided by Procera Networks that Turk Telekom (the largest ISP in Turkey) has used since at least 2014 for mass surveillance of internet traffic. » Source: Yesil and Sözeri, Online Surveillance in Turkey: Legislation, Technology and Citizen Involvement, 2017, p.544-546: <https://ojs.library.queensu.ca/index.php/surveillance-and-society/article/download/6637/6469/>.