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TURBULENT TIMES: TURKEY AND EUROPEAN COURT OF HUMAN RIGHTS

IPI speaks to current and former lawyers about the Court's impact and challenges

This is the second in a series of four articles exploring the role of the European Court of Human Rights in defending media freedom in Turkey

In the last three decades, no other country has seen more applications to the European Court of Human Rights (ECtHR) than Turkey. Since 1989, when the government recognized the Court's jurisdiction, the Court has received more than 30,000 submissions, ranging from allegations of torture to discrimination and wrongful imprisonment.

Many of these applications have involved the Turkish media and its right to freedom of expression. These violations have included the shutting of print and online outlets, the arrest of critical journalists or bloggers and extended pre-trial detention of media professionals.

Since the July 2016 attempted coup, these figures have only risen further as human rights abuses soared. Over the past four years, Turkey has been found by the Court to have [violated](#) its citizens' rights over 400 times. More than 100 of these have related to freedom of expression (Article 10) of the Convention.

These embarrassing and sometime costly rulings have irked the government in Ankara and placed serious strain on its attitude towards Europe's top human rights court, and its respect for the Convention that underpins it. For its part, the ECtHR's delay in taking up freedom of expression



cases following the coup has raised questions about its own ability to provide timely justice for those who desperately need it.

Early years: positive changes

Despite the current strained relations, however, things haven't always been this way, Atilla Nalbant, registry head of the division at the ECtHR dealing with cases against Turkey, told the International Press Institute (IPI).

After Turkey officially recognized the ECtHR's jurisdiction in 1989, major progress was made in the field of human rights, he said. During this period, the Court gained "important legitimacy" and the Turkish legal system began to slowly transform and align itself within the European system of international law.

Among the positive developments were changes to legislation on pre-trial detention, the strengthening of safeguards for arrested persons, amendments to the Anti-Terrorism Act, and the abolishment of the controversial National Security Courts.

Though serious issues remained for the press, important steps forward were also taken in protecting Article 10 (freedom of expression) in Turkey after the turn of the century, he added.

Important here was the creation in 2012, under the auspices of the ECtHR, of the individual application system before the Turkish Constitutional Court, which allowed citizens, including journalists and bloggers, to apply for individual remedy for breaches to their constitutional rights for the first time.

Slippery slope

From 2010-11 onwards however, things began to deteriorate swiftly as then-Prime Minister Recep Tayyip Erdoğan, now president, moved to centralize power and tighten his grip on the country's democratic institutions, Dr. Ümit Kılınc a Strasbourg-based human rights lawyer and former case processing lawyer at the ECtHR, told IPI.

In the wake of the July 2016 coup attempt, the situation for media freedom worsened further still, he added. "There is a major crisis of freedom of expression in Turkey right now", he said. "Currently you cannot criticise the Turkish authorities, especially the President."

The effect of this crackdown was exceptional. Since 2016, at least 170 different media outlets including many of the country's leading daily newspapers have been forced to close across the country. Currently 94 journalists are [behind bars](#) in Turkey, making it the biggest prison for journalists anywhere in the world, a position it has held for much of the last decade.

Meanwhile, tens of thousands have been dismissed from their jobs and thousands detained or jailed on terrorist charges. Pre-trial detention measures are applied excessively, hundreds of judges have been fired and the independence of the country's courts has also been severely curtailed.



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This clampdown led to a massive surge of cases before the European Court of Human Rights. Before the attempted coup, the ECtHR had over 5000 active applications in Turkey. Since 2016, this number [increased](#) to more than 48,000, overwhelming the system and burying the Court's lawyers under a mountain of cases. This situation has been made more precarious by the failure of Turkey's own judicial system to deal with alleged violations of fundamental rights in a swift and comprehensive manner, leading applicants to argue that Turkish courts offer no adequate remedy and instead appealing straight to Strasbourg.

"Turkey has always been a serious problem for the European Court, but over the last few years the situation has reached its worst point", Vincent Berger, an attorney at the Paris Bar Association who worked for 14 years as a Section Registrar at the ECtHR and then as the Jurisconsult of the ECtHR, told IPI. The situation, he said, was "unprecedented".

Despite these challenges the ECtHR ruled against Turkey over 400 times between 2016 and 2019. As a result of the verdicts, the government has been forced to [pay millions](#) in damages to victims as part of the Court's ruling. While the Court has issued a relatively small number of rulings defending jailed journalists in this period – a significant point of criticism – these rulings have nevertheless set important precedents and helped to stem the rapid fall of press rights in Turkey.



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However, these rulings – many of which are damaging for the Turkish government - have also seen the relationship between the Court and the authorities suffer. After years of co-operation, Kiliç said, the government now sees the Court more as a burden than a benefit. “Turkish judges and prosecutors don’t care about the European Court of Human Rights’ judgements anymore”, he said. In recent years this has seen the Turkish government take a far more confrontational approach towards the Court and often does all in its power to undermine and skirt the rulings while implementing the bare minimum required by the ECtHR.

Limitations and criticism

Such developments have brought into focus the role of the European Court in handling large scale human rights abuses. Despite its overall positive effect on Turkey over the previous decades, many now question its ability to act as a reliable arbiter of justice in the country.

While some of the criticisms of the Court are understandable, others stem from misconceptions about its role, as well from flaws within the Turkish judicial system itself, Nalbant told IPI.

The primary issue here, he explained, is that the Court is not a body which can “intervene immediately”. First, he said, it is bound to apply a “strict application of the rules” to ensure all applications have first exhausted all domestic remedies in their own country.

In Turkey this means the victim’s legal challenge must have progressed all the way through to the country’s highest judicial body, the Constitutional Court. However, this process can take years and cost huge sums. Moreover, critics point out that domestic remedy must actually be available to applicants – a questionable conclusion in the case of Turkey, whose justice system has been politically compromised and whose courts have dealt with crucial fundamental rights cases in a slow and inconsistent manner. In 2019, IPI led a third-party intervention urging the Court to take up the case of jailed Turkish-Kurdish Idris Sayilgan despite the non-exhaustion of domestic remedy, arguing that the Turkish courts could not offer any meaningful redress to Sayilgan’s alleged rights violations.

Nevertheless, because the ECtHR has thus far declined to rule on whether Turkey offers adequate domestic remedy, these constraints mean that 90% of submissions from Turkey are ruled inadmissible and thrown out.

Further challenges

Another challenge is that even if these cases were able to be taken on by the Court, the reality is that it does not have the resources to handle efficiently every case, Berger told IPI. Each accepted application takes a team of lawyers and judges to reach a decision.

This has led to criticism that the ECtHR is bound by its rules to choose cases “selectively” based on the severity and urgency of the case, he said. While this works for high-profile cases involving journalists, others that don’t attract media coverage or international attention do not proceed as quickly.

Even for those whose cases do get taken on, another major issue is the speed with which decisions are made, Berger added. “Many in Turkey are disappointed by the slowness and the cautiousness of the Court”, he explained. “Sometimes cases at the ECtHR involving those held in pre-trial detention of journalists can take much more than a year to reach a judgment”. By this time however, many will have already spent a significant period of time behind bars. In other cases, new charges will be brought against an applicant, meaning they have to reapply to the Court and open an entirely new case, adding additional months to their detention period.

A further challenge for the Court is that even when it reaches landmark verdicts on violations, the Turkish government finds ways to undermine the ruling, Kiliç added. In a landmark press freedom case in 2019, for example, the ECtHR ruled in favour of journalists Mehmet Altan and Sahin Alpay, ordering Turkey to release the pair from prison after 20 months in pre-trial detention on the grounds that their rights to liberty and freedom of expression had been violated. Almost immediately however, the pair were rearrested by Turkish security forces on different charges and sent back to jail.

The same was done to Turkish human rights activist [Osman Kavala](#). In December 2019, the ECtHR ruled that Kavala had been arbitrarily detained and called for his immediate release. A court in Turkey ordered his discharge, but within hours another warrant was issued for his arrest on different indictments, sending him back to jail.

The fight for justice continues

For many, these failings show the Court is ill-suited to properly defend the country's human rights. For Mr. Nalbant, however, such criticisms are misdirected. "Because of the general frustration linked to the Turkish legal system, ordinary people have unrealistic expectations from the system of the Convention", he said.

Rather than seeing it as a mechanism for addressing individual human rights issues, some instead wrongly view the Court as a remedy for the attack on democracy in Turkey – a task for which it was neither designed, nor capable of achieving.

Despite these shortcomings however, the ECtHR continues to secure important victories for freedom of expression in Turkey. Without it, the situation for the country's persecuted journalists would undeniably be far darker.

Nonetheless, under the current system, the sad reality is that many in the Turkish media will never get justice. Ultimately, as long as the Turkish government continues to attack media freedom in its all-encompassing crackdown on dissent, human rights violations will continue.

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 - **Vincent Berger** is an Attorney at the Bar of Paris. He served for seven years as Section Registrar at the ECtHR dealing with most of the Turkish applications, and then another seven years as the Jurisconsult of the ECtHR. He is also a former expert at the Council of Europe and an honorary professor at the College of Europe (Bruges and Warsaw).
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