



## Freedom to Publish Developments in Turkey since July 2012. A Report on Progress and Shortcomings

17 May 2013

### **I: The Third Judicial Package: A False Step Forward Amounting to a Vast Pre-Publication Censorship Measure**

In recent years, the adoption of a series of legislative reform packages have failed to bring about the fundamental change required to improve the conditions for freedom of expression in Turkey in a significant and permanent manner. While the most recent judicial package - the third – was adopted in July 2012 and generated, to some extent, positive changes for publishers and writers (including the reduction of some penalties, and the conditional three-year suspension of many court cases, which had threatened the right to freedom of expression and freedom to publish for many writers and publishers), it failed to amend or repeal those definitions of crimes in law, which violate the right to freedom of expression, or are so broadly and vaguely worded that they allow for abusive prosecutions (see IPA recommendations on p. 5). While, at first sight, the conditional three-year suspension of freedom of expression cases appears to be a good measure, it may in fact only be window dressing, creating legal uncertainty for publishers, and sending a clear signal regarding limits not to be exceeded.

As part of the third judicial package, the Istanbul 2<sup>nd</sup> Criminal Court of First Instance suspended the case against the translator (Funda Uncu) and publisher (Ayrıntı publishing, Hasan Basri Çıplak) of Chuck Palahniuk's *Snuff*<sup>1</sup> in July 2012. Both Uncu and Basri Çıplak were standing trial for “acting as intermediary in the publication of indecent publications” (Article 226/2 of the Turkish Penal Code). Similarly, the same court suspended the case against publisher Irfan Sancı (Sel publishing), recipient of the “2010 IPA Freedom to Publish Prize - Special Award”, and translator Sūha Sertabiboğlu in July 2012. They were also standing trial for “acting as intermediary in the publication of indecent publications” for translating and publishing *The Soft Machine* by William Burroughs. The case against the publisher of the *Illallah* atheist calendar (Metis publishing), who was sued under Article 216 of the Turkish Penal Code (“denigrating religious values”), was also suspended in July. Metis publishing publishes a calendar with a different theme every year. For 2010, the theme was “the right to be a disbeliever”. The foreword signed by the editors of Metis mentioned that while they “respect the right to believe, they have a deeper respect for the right to be a disbeliever”. The calendar contains words about god, religion or belief by famous authors or scientists such as George Bernard Shaw, Albert Einstein, James Joyce, Galileo Galilei, Bertrand Russell, and Sigmund Freud.

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<sup>1</sup> *Death Porn* in Turkish

However, the three-year suspension of these court cases is conditional on the defendant not committing a similar “crime” within the three year suspension period. If the defendant does not commit a similar “crime”, the previous investigation or trial will be dropped. But if he or she committed a similar “crime” during the suspension period, the investigation or trial would be opened again, and an additional case or cases would commence at the end of the suspension period in July 2015. In other words, the conditional suspension acts as a Sword of Damocles hanging over these publishers’ and translators’ heads. The main two publishers concerned by the obscenity cases (Ayrıntı and Sel) made it clear that they would not change their publishing policy. Both of them decided to appeal. Upon the suspension decision in July 2012, Hasan Basri Çıplak handed the judge Chuck Palahniuk’s most recent book published by his publishing house *Pygmy*, as well as *The Wild Boys* by William Burroughs. He declared on this occasion: “We’d like these books to be sent to the Prime Ministerial Board for the Protection of Children from Harmful Publications. And we’ll come and stand before you again. We report ourselves now”. This year, Ayrıntı also published *Stranger than Fiction*<sup>2</sup> also by Palahniuk, the author of *Fight Club*. To date, in practice, none of these publishers or translators has been the object of an investigation. Yet, there is no certainty that this will last, and, potentially, there may be many new cases tried at the end of the suspension period in July 2015. Metis publishing also objected to the suspension decision, requesting an acquittal, but the request was rejected. Overall, one may fear that this conditional suspension provision amounts to a vast pre-publication censorship measure designed to force all Turkish publishers into self-censorship. The conditional suspension should therefore be suspended, and all publishers concerned should be acquitted at once.

By contrast, a truly positive change brought about by the third reform package is the lifting of the ban, in January 2013, on 453 books, 645 newspapers, magazines and booklets. This list had been used by police and courts for many years to withdraw some books from circulation.

Finally, the third judicial package abolished the special courts dealing with coup attempts and terror cases and replaced them with regional high criminal courts. However, the existing special courts dealing with current cases (KCK and Ergenekon in particular) will continue to exist until a final verdict is reached. One of the Istanbul branches of the KCK mass trial concerns two publishers, Deniz and Ragıp Zarakolu (see pp. 3-4 for more).

## **II: Censorship by the Ministry of Education: A Negative Trend**

The censorship of books by the Ministry of Education was a hot issue in Turkey this year, and continued to affect freedom of expression negatively. Throughout the country, following complaints lodged by individuals, book examination committees of provincial directorates of the Ministry of Education examined some books and poems, which included pages or verses referring to sexuality, alcohol or ethnic specific expressions, etc. Very often, these works are deemed to be “immoral”, or “not suiting Turkish traditions”. As a result, some verses of the classical poets are simply cut out from poems. According to the Evrensel newspaper, Yunus Emre's *İlahi (Hymn)*<sup>3</sup> and poet Kaygusuz Abdal<sup>4</sup> were censored in the Turkish literature textbooks prepared for the 10<sup>th</sup> grade. In addition, some foreign classics like Steinbeck's *Of Mice and Men*, or Vasconcelos's *My Sweet Orange Tree* are being investigated. Amin Maalouf's *Samarcande* was also being investigated by the Bahçelievler provincial directorate of the Ministry of Education earlier this year.

<sup>2</sup> *Kurgudan da Garip*

<sup>3</sup> Evrensel reported that the verse "What they call as paradise/Is a couple of mansions and a couple of houses/Give those to the ones who want them / What I need is you" was not found in the textbook.

<sup>4</sup> Evrensel reported that the sections that contained concepts belonging to the Alawism culture of the "Nefes" ("Breath") poem by Kaygusuz Abdal were censored and verses that contained the words "Mourning month" "Zülfıqar" "Ali" "Hû" and "Pir" were deleted.

According to the Bianet website, one book was taken off the Ministry of National Education (MEB) list of “100 Fundamental Books” on the grounds that it was obscene<sup>5</sup>.

### **III: The Aram Publishing House**

According to Bianet, investigations were launched against 10 books published by the Aram publishing House, which had been sued in the past for publishing books by John Tirman and Noam Chomsky.

### **IV: Scores of Journalists, Writers and a Publisher in Prison**

Many journalists are still imprisoned on freedom of expression grounds, though the number decreased compared to last year: 67 journalists were in prison as of 26 April 2013 according to Bianet, a world record according to several other freedom of expression groups. Their regular journalistic activities, sound records, notes, phone calls, books, Word documents, news articles, even their being staff of a certain newspaper are regarded as evidence of crimes. Several writers are in prison. At least one publisher, Deniz Zarakolu, remains in prison.

### **V: The KCK Cases: How a Broad Definition of Terrorism Threatens Freedom of Expression**

The various cases against the Kurdistan Communities Union (KCK) are ongoing. The main case is in the Eastern city of Diyarbakır. Some defendants were released thanks to international pressure (e.g.: Ragıp Zarakolu, Büşra Ersanlı), but many are still in jail (e.g: Ayşe Bertay, Deniz Zarakolu). In Istanbul there are two KCK cases, including the **KCK Press Case** where all of the defendants are journalists or media workers and the evidence against them is strictly related to their normal, daily journalistic activities. 44 people have been charged, 24 of them are still in prison. The next hearing is scheduled for 17-19 June 2013. In the **other Istanbul case**, a total of 205 defendants are standing trial. Professor Büşra Ersanlı is being charged with “commanding a terrorist organisation” (Article 314/1 of the Turkish Penal Code) and “making propaganda on behalf of a terrorist organisation” (Article 7/2 of the Anti-Terrorism Law). The owner of the Belge publishing house, Ragıp Zarakolu, is being charged with “knowingly and willingly helping an organised criminal group although not being a member of that group” (Articles 314/2, 314/3 and 220/7 of the Turkish Penal Code). While Ersanlı is facing up to 22.5 years in prison, Ragıp Zarakolu is facing up to 15 years in prison. Deniz Zarakolu, who was arrested on 7 October 2011, is still being detained. He is charged with “being a member of an illegal organisation” and risks up to 12 years in prison. Translator Ayşe Bertay is also still being detained and is charged with “membership of an illegal organisation” for allegedly “planning to stage demonstrations aimed at destabilising the state, plotting to encourage women to throw themselves under police vehicles so as to create a furore, and attending meetings outside Turkey on behalf of the KCK”. The next hearing is scheduled for 27 May-7 June 2013.

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<sup>5</sup> It is not clear which one.

### Case Study 1: Focus on Publishers Ragıp and Deniz Zarakolu

*As the next hearing of the trial of Ragıp and Deniz Zarakolu opens on 27 May 2013 in Silivri, Turkey (one of the branches of the KCK mass trials), IPA urges the Turkish authorities to drop all charges against both publishers and to immediately release Deniz Zarakolu who has been detained since 7 October 2011 (close to 600 days). Ragıp and Deniz Zarakolu are among more than 40 people arrested in October 2011 under the Koma Civaken Kurdistan (KCK) investigation which has seen scores of writers, journalists, and publishers detained following thousands of arrests over the past two years.*

*In June 2012, the 29th IPA Congress adopted a resolution “rejecting the abuse of broad definitions of terms such as defamation, state security, state secrecy, or terrorism as dangerous inroads for censorship, harassment of the media, and undemocratic influencing (...)”. Sadly, with one third of the total world convictions for terrorism in the last ten years, Turkey’s strict anti-terrorism law (ATL) illustrates the resolution above only too well. The broadness of ATL has allowed the Turkish authorities to curtail the freedom of expression of many in Turkey, including publishers who have for a long time advocated freedom to publish for all publishers and writers. This is particularly true of the Zarakolus.*

*Deniz Zarakolu, a publisher, writer, translator, and PhD student specializing in political thought at Bilgi University, is charged with “being a member of an illegal organisation” and risks up to twelve years in prison. He was arrested on 7 October 2011, after giving a lecture at the Political Science Academy of the pro-Kurdish Peace and Democracy (BDP) opposition party. This party is legal, and such party-affiliated research academies are common in Turkey, with similar institutes run by the Republican People’s Party (CHP) and the Justice and Development Party (AKP).*

*Ragıp Zarakolu is charged with “aiding and abetting an illegal organisation” and is threatened with up to fifteen years in prison. In February 2012, he applied against Turkey before the ECHR for a violation of Article 10 of the Convention. He was released on 10 April 2012 following 160 days spent in a high security prison on pre-trial detention. His crime as we know it? Attending a peaceful public meeting of the BDP at which discrimination against the Kurds was discussed. Ragıp Zarakolu also said that during the raid on his house, police confiscated only a few books as “evidence of crimes”. The confiscated books were: Vol. 2 of Vatansız Gazeteci (Stateless Journalist) by Doğan Özgüden, Chief-editor of the Brussels-based Info-Türk website; Habiba by Ender Öndes; Peace Process by Yüksel Genç; and manuscripts of three books about Armenian History. IPA believes that Ragıp Zarakolu and several other writers and intellectuals (incl. Deniz Zarakolu, Ayşe Berktaş, Büşra Ersanlı) are charged solely because of their writings and publishing, which violates Turkey’s international human rights obligations.*

### Case Study 2: Focus on the Zirve Publishing House case

*On 18 April 2007, Turkish citizens Necati Aydın and Ugur Yuksel and Tillman Geske, a German citizen, were tortured and killed at the offices of the Zirve publishing house, a Christian publishing house, by five young men in the Eastern city of Malatya.*

*The trial of the five alleged murderers began on 22 November 2007 at the Third Criminal Court in Malatya and is on-going to date. The prosecutors claim that the killings were part of a high-level clandestine scheme to undermine the government through acts of terror. In September 2012, and just two days before the next phase of the trial, two judges and two prosecutors were removed by the Turkish Justice Ministry, leaving just one judge familiar with the case.*

*Mr Erdal Doğan, a prominent human rights defender who works as lawyer for the victims’ families, has received death threats, including from one of the defendants, Varol Bülent Aral, who threatened him during a hearing on 8 March 2013. Mr Doğan claims<sup>6</sup> that the killings were an attempt by secular elements within the security forces to undermine the AKP government by attributing the crime to religious youths. He claims that the National Strategies and Operations Department of Turkey (TUDHAD) acted as a coordinating hub for different branches of Turkey’s security apparatus in targeting domestic enemies, including the employees of the Zirve publishing house, Hrant Dink and Catholic priest Andrea Santoro. The 65<sup>th</sup> hearing began on 13 May in Malatya.*

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<sup>6</sup> 18 April 2013 article published on eurasinet.org

## **VI: Recommendations**

IPA calls on the Turkish authorities to:

- Amend Article 26 of the Constitution so as to ensure its consistency with international human rights standards;
- Shed full light on the murders of the employees of the Zirve publishing house and calls on the EU Delegation in Ankara to monitor the trial in Malatya;
- Drop all charges against Ragıp and Deniz Zarakolu, Ayşe Berktaş, Büşra Ersanlı, and free Deniz Zarakolu immediately;
- Refrain from prosecuting writers and publishers who have expressed non-violent opinions as penal prosecution of these writers and publishers may turn them into potential targets in the eyes of the most nationalistic circles;
- Lift the conditional ban on freedom of expression and freedom to publish cases, and acquit all the publishers and writers concerned at once;
- Amend the definition of terrorism in Article 1 of the Anti-Terrorism Law so as to bring it in line with the definition proposed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Repeal Article 6/2 of the Anti-Terrorism Law (Printing or publishing declarations/statements of a terrorist organization); Amend Article 7/2 of the Anti-Terrorism Law (Making propaganda for a terrorist organization) so as to ensure that it only prohibits advocacy of incitement to violence;
- Abolish or amend all legislation that penalises freedom of expression in contravention of the Turkish State's commitments under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), specifically by:

*removing criminal defamation from the Turkish Penal Code by abolishing Article 125 or making amendments to remove imprisonment from its remit, and the abolition of Article 299; repealing Law 5816 protecting Atatürk's memory from insult;*

*Annuling Article 301 as being in contradiction of international standards guaranteeing freedom of expression (see Altuğ Taner Akçam v. Turkey);*

*Clearly defining the notion of obscenity in Article 226 so as to avoid prosecution of publishers publishing translations of foreign works like The Memoirs of a Young Man by Guillaume Apollinaire or The Soft Machine by William Burroughs (Sel publishing);*

*Making it explicit that only "open and evident calls for violence" should be considered under Article 216 and others that refer to incitement.*