



FREEMUSE
DEFENDING ARTISTIC FREEDOM

UNITED NATIONS HUMAN RIGHTS COUNCIL
35th Session of the Working Group on the Universal Periodic Review
January 2020
JOINT STAKEHOLDER SUBMISSION TO THE UPR OF TURKEY
Submitted on 18 July 2019

PLATFORM FOR INDEPENDENT JOURNALISM (P24) - Founded in 2013, P24 is an initiative to support and promote editorial independence in the Turkish press at a time when the journalistic profession is under fierce political and financial pressure. It is a not-for-profit, civil society organization which started with a broad mission to build capacity in the Turkish media, create a public appetite for media independence, define and promote best journalistic practice. But it has expanded its mission over the recent years to include defending and promoting freedom of expression and of the press in the face of growing political pressure, prosecution and threats targeting the Turkish media and members of the public in general. The information presented here builds on the works of SUSMA (Speak Up), an anti-censorship platform that was founded by P24 in September 2016. The network of SUSMA Platform connects artists, journalists, academics with CSOs and lawyers working on human rights and freedom of expression, in order to promote practical support, knowledge-sharing, awareness raising and coordinated action against censorship in the fields of art and culture. SUSMA Platform currently has 62 members.

Address: Asmalımescit Mahallesi, Yemenici Abdülatif Sokak, No:1 Kat:4 Beyoğlu, ISTANBUL Tel: 90 212 2529389; Email: punto24info@gmail.com; Web: <http://platform24.org/>

FREEMUSE - Freemuse is an independent international organisation founded in 1998, advocating for and defending freedom of artistic expression. We believe that at the heart of violations of artistic freedom is the effort to silence opposing or less preferred views and values by those in power - politically, religiously or societally - mostly due to fear of their transformative effect. With this assumption, we can address root causes rather than just symptoms - if we hold violators accountable. Our approach to artistic freedom is human rights-based as it provides an international legal framework and lays out the principles of accountability, equality and non-discrimination, and participation. To accomplish such fundamental change, we monitor and document violations of artistic freedom, expose laws and policies that enable and sustain these violations, and leverage evidence-based advocacy for systemic structural changes at international, regional

and national levels. Working with partners, artists and activists in the global south and north, we campaign for and support individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally-owned national coalitions in their campaigns and capacity building to monitor and defend artistic freedom. Freemuse has held Special Consultative Status with the United Nation's Economic and Social Council (ECOSOC) since 2012.

Address: Jemtelandsgade 1, DK-2300 Copenhagen S, Denmark, Tel: +45 33 32 10 27; Email: freemuse@freemuse.org; Web: <http://www.freemuse.org>

Summary

1. P24 through the nationwide network of SUSMA and in cooperation with Freemuse, based on both organisations' ongoing work of documenting violations of freedom of expression and working with a wide variety of stakeholders advocating for artistic and cultural freedom, welcomes the opportunity to contribute to the Third Cycle of the Universal Periodic Review (UPR) process of Turkey. Our organisations' focus is on Turkey's compliance to its commitments under international human rights instruments relating to freedom of expression, creativity and the arts, as well as guarantees under its own Constitution, and to recommendations accepted by Turkey during the first (2010) and second (2015) cycle of the UPR.
2. We make specific reference to the United Nations Special Rapporteur on cultural rights, Ms. Karima Bennouna's statement at the 37th Session of the Human Rights Council (1 March 2018), where she notes: "Creative approaches in the field of culture contribute in many ways to creating, developing and maintaining peaceful and inclusive societies in which all human rights can find increased realization. [...]" Governments and intergovernmental bodies must provide robust support for human rights for these kinds of actions to thrive. This entails accepting that some artistic and cultural works will inevitably be critical of government and of society, and sometimes

of aspects of cultural and religious practices, and requires that Government refrain from trying to control or censor these works”.ⁱ

3. Turkey ratified the International Covenant on Civil and Political Rights (ICCPR) in September 2003 and is thus obligated to ensure the rights enshrined within the Covenant. In this submission, we draw attention to specific articles under the ICCPR related to the right to freedom of arts and creativity: Article 19 (freedom of expression), Article 21 (peaceful assembly) and Article 27 (linguistic and cultural rights).ⁱⁱ
4. Furthermore, the Constitution of Turkey contains a number of articles that specifically protect these same rights, notably: Article 25 (freedom of thought and opinion), Article 26 (freedom of expression and dissemination of thought), Article 27 (freedom of science and the arts), Article 34 (right to assembly and peaceful demonstrations) and Article 64 (protection of arts and artists).ⁱⁱⁱ

Implementation of recommendations – 2015-2019

5. Following the delivery of its report to the 21st session of the 2nd Cycle of the UPR held on 27 January 2015, the government of Turkey gave its support to 20 recommendations relating to the broad protection and promotion of freedom of expression and of the media, one of which, presented by Norway, also specifically referred to the arts. Artistic freedom is encompassed within the broader framework of freedom of expression under Article 19 of the ICCPR, and many state legislations

include clauses that specifically protect artists' rights alongside those protecting media rights and broader freedom of expression.

6. Since January 2015, the Turkish government has not abided by its commitments to the recommendations relating to freedom of expression, and the country has instead seen a steep deterioration in the protection of fundamental freedoms, notably through the enforcement of State of Emergency (SoE) legislations following the July 2016 coup attempt which have now become normalised within law after the lifting of the SoE in July 2018.

Censorship of the Arts – 2019

7. In its 2012 report, the Istanbul-based arts censorship monitor, Siyah Bant^{iv} has conceptualized censorship not just as the banning of artistic expression through legal means but also through such processes as de-legitimization, threats, pressure, targeting and hate speech directed at artists and arts institutions that foreclose or delimit the presentation and circulation of artworks. Among the actors that play a part in suppressing creative rights throughout Turkey are state institutions, political groups and parties, individuals who act as proxies of the state, neighbourhood organizations, as well as those more closely related to the art world, such as arts and cultural organizations, curators, funding agencies and sponsors.
8. In reports on artistic freedom made to the previous UPR process, outright government bans constituted only a fraction of censoring mechanisms. This situation has changed considerably, firstly following the national elections of 2015, and precipitating after

the failed coup attempt of 15 July 2016. Instead of strengthening the rights mechanisms recommended to and supported by the government of Turkey during the 2nd Cycle of the UPR, the Turkish government has extended the application of counter-terror measures, and with it surveillance and persecution, to the wider public, civil society, the arts and cultural fields, and thus has increasingly equated any kind of critique, including that through creative expression, with terrorist propaganda and terrorist actions. This shift was in part aided by the SoE declared on 20 July 2016. While the SoE was lifted on 18 July 2018, it is important to note that Law no. 7145 de facto turned emergency decrees into law, thus preserving and normalizing powers applied under the SoE that fall foul of Turkey's commitments under the ICCPR and other treaties and making otherwise temporary emergency legislation permanent.^v This has been especially effective in curtailing artistic expression.^{vi}

9. Strengthening the discretionary powers of the police and local governors, Law no. 7145 has increased the arbitrariness of censorship, with many arts and cultural events being cancelled over the last few years by drawing on these provisions ostensibly to “maintain the public order” or for “security reasons”. These also include long detention periods and the extension of online surveillance, both of which have had an immense chilling effect, leading to a rise in self-censorship.^{vii} In addition, they have created a social climate rife for anonymous complaints and denunciation.

10. As detailed below, Kurdish artists and cultural expression has been particularly gravely impacted by these shifts. For example, during the SoE, 31 actors working at the Diyarbakir City Theatre were sacked (January 2017), and the theatre de facto closed.^{viii}

Also the Dicle Fırat Culture and Arts Association and the Kurdish language school KURDİ- DER were closed down. *Sesli Kütüphane* – a website that makes audio versions of Kurdish language children books available online to the blind was shut down. In January 2016, the Roboski Memorial, commemorating the killing of 34 citizens by Turkish security forces while crossing Turkish-Iraqi border, as well as a statue of Lamassu, a Mesopotamian mythical figure, were removed by Diyarbakır’s government appointed trustee.

- 11.** Philanthropist and founder of the arts organization Anadolu Kültür, Osman Kavala, has been in custody since 18 October 2017. He and thirteen others from the field of culture and civil society are facing a myriad of charges, including attempting to “overthrow the government” by way of the Gezi protests in 2013.^{ix} Kavala’s arrest and long pretrial detention (the court case started 24 June 2019) has sent shockwaves through the arts and culture scene in Turkey and impacted anyone, who like Kavala, has been working on “emphasizing cultural diversity and cultural rights, supporting local initiatives and strengthening regional and international collaborations; and [...] projects that establish dialogue with Armenia and create spaces for the Kurdish language and culture”.^x

- 12.** Due to the sheer volume of violations of the legally guaranteed freedom of the arts, only cases exemplifying the most common (but by no means all) mechanisms of censorship could be included in this report.

Laws applied in contravention of international instruments protecting freedom of expression and creativity as well as Constitutional guarantees

13. There are numerous laws that continue to be applied against artists and creative works in a manner which breach the rights to freedom of expression, association and other guarantees under the ICCPR and the Constitution of Turkey. We maintain that it is often not the laws themselves but their implementation that is especially problematic. It is the ambiguous character of these laws that allows for arbitrary, subjective decisions and actions.

Anti-Terror Law – TMK (1991 Law no. 3713)

14. Turkey’s Anti-Terror Law (TMK) has been subject to acute criticism in previous UPR cycles for its overly broad definition of what comprises an offence under this law, and has brought to prosecution numerous artists and writers accused of disseminating terrorist propaganda, or membership of a terrorist organisation with little or no evidence of links to terrorism. Changes were made in 2013 to article 7/2 of the Anti-Terror Law that regulates “propaganda in favour of terrorist organizations” to define actions or speech that praise or legitimize the “force, violence, and threats” employed by terrorist organizations as such offenses. While the government, when introducing the change of law in Parliament argued that it would bring the TMK to the standards required by the European Court of Human Rights, in practice the law has served to further criminalize all kinds of political and artistic expressions by claiming that they

are congruent with those of terrorist organisations. In the Kurdish regions of Turkey, freedom of expression and assembly are disproportionately affected by anti-terror legislation. In practice this has meant that any cultural (e.g. language) and artistic expression within the Kurdish rights movement can be construed as illegitimate “separatist propaganda” and hence outside the parameters of protection of freedom of expression and the arts.

15. Nazlı Masatçı was indicted for acting in a stage version of V-For Vendetta in 2015.

Charged with “disseminating propaganda on behalf of a terrorist organization” (TMK 7/2), she was sentenced to one year and six months in prison in February 2019.

Masatçı was released on probation in June. It is important to note that the reason for her imprisonment is that she had previously been sentenced to a six-month deferred sentence for taking part in a staging of Nikolai Gogol’s “The Overcoat” as part of a solidarity event with a then imprisoned conscientious objector. Charged and sentenced under Article 318 of the Turkish Penal Code for “alienating the people from the military” in 2012, her deferment was reliant on her not committing another “crime” within the next five years.^{xi} Masatçı is part of the Yenikapı Theatre company, one of the many arts and culture associations that have been closed by emergency decree. This example shows how applications of the current prison sentence deferment procedures impede greatly on artists pursuing their artistic practice and production.

- 16.** Musician Alpay is currently under investigation for allegedly “praising members of terrorist organizations and demeaning the state”. During a concert on 22 March 2019, Alpay showed photographs of three revolutionaries, who were executed in 1972, and of teenager Berkin Elvan, who passed away following a 269-day coma after being hit by tear gas capsule during the Gezi Protests in June 2013, whilst on stage.
- 17.** The publishing houses Avesta and Aram (both located in Diyarbakir and which publish in Turkish and Kurdish) have been hit with numerous indictments. Since 2017, Avesta has been put on trial numerous times, with thirteen books being charged for “disseminating terrorist propaganda” (TMK 7/2) and “inciting hate and animosity” (according to Turkish Penal Code 216). On the basis of the press law’s article 25, the books were confiscated. They can no longer be reprinted or sold. These books focus, for example, on the history of the Kurdish struggle (both legal and illegal) and on Yezidi Poetry and spirituality. In the case of Aram Publishing, 93 books from their list have been prosecuted under TMK 7/2 since 2016.
- 18.** In March 2017, journalist and painter Zehra Doğan was sentenced to two years and nine months in prison (TMK7/2) for her reporting and for posting a picture of one of her paintings online. The painting showed the destruction of city of Nusaybin during the curfew ordered by the Turkish security forces based on a photograph that was widely covered in the Turkish Press but regarded as a vehicle for disseminating “terrorist propaganda” when painted by Doğan. She was released on 24 February 2019.
- 19.** Film directors Çayan Demirel and Ertuğrul Mavioğlu have been indicted in 2017 for “disseminating propaganda in favour of a terrorist organization” under Article 7/2

because of their documentary “Bakur”. This is the first time that a film has been tried in Turkey, and if convicted the filmmakers face up to five years in prison. The feature length documentary, shot in the summer and fall of 2013, shows the daily life of PKK members in three different camps in southeast Turkey. The production of “Bakur” coincided with the peace talks between the Turkish government and the PKK to end a 40-year conflict during which a ceasefire was in place.

20. In February 2019, Filmmaker Veysi Altay received a prison sentence of two years and six months for “disseminating terrorist propaganda” under Article 7/2 due to a poster publicizing his documentary “Nû Jîn” (New Life) that features the film’s protagonist with the flag of the Kurdish Women’s Protection Units (YPJ) in the background. The film’s subject is the daily life of a woman guerrilla from Kobanê, who joins the Women’s Protection Units to fight against ISIS. Notably, the YPJ was not outlawed in Turkey when the film was being shot. Dicle Anter, the then director of the Yilmaz Güney Cinema in Batman where the film was shown in 2015, received a prison sentence of two years and one month based on the same “offense”.

Law on Meetings and Demonstrations (1982 Law no. 2911)

21. The right to peaceably hold meetings and demonstrations is protected under Article 34 of the Turkish constitution.^{xii} However Law No. 2911 on Meetings and Demonstrations has been used to prohibit festivals and prosecute those who participate, especially in conjunction with the Provincial Administration Law No. 5442 that allows for broad discretionary powers by governors and district governors.

- 22.** During the SoE many arts and culture events were cancelled by governors throughout Turkey, among them the International Malatya Film Festival (2016), the Munzur Culture and Nature Festival (2017 and 2018), the Diyarbakir leg of the “Which Human Rights?” Film Festival (2017), and the Amed Theatre Festival (2016) to name only a few. In the lead-up to the International Woman’s Day of March 2018, the governors of Diyarbakir and Van banned all events and demonstrations. Most commonly, the reasons for banning these events have relied on citing vague threats to the “public order” or “security reasons”, despite the fact that state agencies are obligated to create a safe environment for the public.
- 23.** These bans have consistently targeted LGBTI + cultural events and assemblies. In 2018, the Adana Pride March was banned, as were the Pride Marches in Izmir and Antalya (2019). The Istanbul Pride March has now been prevented on orders of the Governor’s Office for five years in a row on the grounds that LGBTI + assemblies are “socially questionable”, and by citing vague provisions like “public morals”, “public health”, and “security” creating a generalized suspicion and criminalization of LGBTI + individuals and groups.
- 24.** A similar logic was applied as a pretext for banning the German LGBTI+ film days organized in corporation with Ankara-based KuirFest and Büyülü Fener Cinemas (November 2017) by the Governor of Ankara. Arguing that such an event would according to Article 216 of the Turkish Penal Code “publicly incite animosity and enmity”. The Governor’s Office added that LGBTI+ events would also endanger “societal sensitivities”, “public health and public morals”, “other’s rights and

freedoms”. None of these concepts are codified by law but lie in the discretion of non-elected officials.

Denigration of religion (Article 216/3)

25. Penal Code Article 216/3 specifically states “Anyone who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of public peace”. This clause has been used on occasion to penalise writers and artists who have criticized religion, and cases under this law are also frequently brought by members of the public, encouraged by its presence to target specific individuals. Although these trials rarely, if ever, result in imprisonment, they are long-winded and time consuming, causing psychological and other distress to the targeted individuals. The publicity that also surrounds these trials can expose the individuals to threats from the public.

26. One such case occurred during discussions that sought to legitimize the possible re-introduction of the death penalty in Turkey by arguing that it would be enacted against sexual predators. Actor Berna Laçın was indicted on account of a tweet that read “if the death penalty was a bulwark against rape there would have not been record numbers of rapes in Medina”. The tweet was interpreted as denigrating the religious beliefs of “part of the population”. The “part of the population” implied to be injured by this statement are officially the majority in Turkey, i.e. Muslims, whereas according

to the ICCPR, freedom of expression in theory should also protect minority opinions.
Laçın was acquitted in February 2019.

Insulting the President (Article 299) and Defamation (Article 125)

27. Turkey has witnessed a sharp uptake in cases investigated and tried under Article 299.

In 2017, 20,539 investigations and 6,033 criminal cases were opened under this charge.^{xiii} In its 2016 report, the Venice Commission clarifies that “although ‘insult’ is not defined in Article 299, the definition provided in the general provision on ‘insult’ in Article 125 [...] is used when applying Article 299”.^{xiv} According to Article 125, insult is the attribution “of an act, or fact, to a person in a manner that may impugn that person’s honour, dignity or prestige, or attacks someone’s honour, dignity or prestige by swearing”. Defamation is sanctioned under both civil and criminal law in Turkey, with Penal Code Article 125 penalising cases of defamation against a “public officer”, carrying a prison term of up to two years. It is universally accepted that public officials should expect to be subject to open scrutiny and should not seek to suppress criticism by resorting to criminal defamation laws and that a distinction should be made between criticism and defamation/insult.^{xv}

28. Musician Ferhat Tunç is currently facing a plethora of indictments (adding up to more than 13 years in prison) and one conviction relates to ten social media posts that allegedly “insult the President of the Republic”. One such post shared a news item from the Kurdistan Post on a leaked version of the EU Progress Report that allegedly claimed that Turkey was supporting ISIS. Others equate President Erdoğan to the leader of the 1980 coup, Kenan Evren, and the images of war and destruction depicted

in Picasso's Guernica with those from Sur (Diyarbakir). Tunç is also facing charges for insulting former Prime Minister Binali Yıldırım (again on social media), and for “disseminating terrorist propaganda” – a “crime” for which his sentence is based on a statement he made from the stage during Mayday celebrations in 2011. The multiplicity of charges places him in a judicial limbo and suggests that some artists are explicitly targeted because of their high public profiles, and to serve as a warning to others.

29. Singer Zuhâl Olcay received a deferred sentence of eleven months and 20 days for insulting the President (July 2018) after an anonymous complaint in which she adapted the song entitled “Boş Vermişim Dünyayı (I Let Go of the World)” to include a reference to President Erdoğan. According to the complaint, she accompanied the lines with an “unidentified but repeated hand gesture” that the court deemed “offensive by society”.

30. Actors Müjdat Gezen and Metin Akpınar are being investigated for criticizing President Erdoğan during an interview they gave for Halk TV (December 2018). In addition, Metin Akpınar is being investigated for “inciting the people to take up arms against the government of Turkey” (TCK 313/1), “denigrating part of the population” (TCK 216/2) and “praising a crime or a criminal” (TCK 215). This is another example that demonstrates how speech that is deemed critical of the authorities is being criminalized using an approach of multiplying charges against those who dissent.

Praising crime or criminals (Article 215)

31. Penal Code Article 215 stipulates prison terms for “anyone who openly praises an offense or praises an offender for their offense” of up to two years. The changes made

under the Fourth Judicial Reform Package in April 2013 were supposed to make it applicable only in cases where clear and present danger is posed to the public order. Yet, this clause remains ambiguously framed and acts as a deterrent to artistic expression particularly where it touches on political issues.

32. This ambiguous framing contributed to the indictment of director Yunus Ozan Korkut and five protagonists of his documentary “Benim Varoş Hikayem (My Suburban Stories, 2017)” that focuses on urban impoverishment. They were charged with “praising a crime and criminals” as well as “encouraging drug use”. Notably the film had been screened at reputable (inter)national film festivals and was nominated for a Turkish Film Critics Association Award in 2017. While all were acquitted in April 2019, the case demonstrates how the documentation of societal inequalities can be criminalized.

Protection and Access to Cultural Heritage and Archives

33. During the SoE, numerous arts spaces were closed down, their archives, props, and other equipment were confiscated. This practice has extended from municipal theatres in the Kurdish regions to theatre groups to a variety of arts and culture associations and collectives across the country.^{xvi} While some have since been reopened, their archives are yet to be returned. Access to the past, to cultural and artistic memory, including that of the more recent past, is vital for freedom of expression. In October 2016, the Human Rights Council adopted unanimously a resolution ([A/HRC/RES/33/20](#)) calling “upon all States to respect, promote and protect the right

of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, and to take relevant actions to achieve this”.^{xvii}

- 34.** The home of documentary filmmaker and member of the video activist collective Seyri Sokak, Oktay İnce, was raided on 16 October 2018 on the back of a tweet sent from the collective’s twitter account. The post referred to two alleged members of an outlawed left-wing organization killed by Turkish Forces as “fighters for the people”. Deemed to be “praising terrorism”, İnce was briefly taken into custody. However, his entire film and video archive spanning twenty years and documenting important social movements and rights struggles in Turkey, along with raw materials for planned documentaries were also confiscated. İnce has been protesting for his archive to be returned since 2 April 2019 and was briefly detained during one such protest on 30 May 2019. While the practice of confiscation has been normalized, under Turkish laws such digital archives should be copied and returned immediately.

Other Censorship Modalities Applied by the State Collaboration with Non-State Actors

Collaboration with Non-State Actors

- 35.** The state frequently opens investigations into events or art works on grounds of anti-terror or defamation citing “societal sensitivities” that are not codified by law. Yet, conversely, the state also follows the policy of impunity for non-state actors who attack artists and creative work, showing great reluctance to investigate or prosecute non-state actors who carry out such attacks.

- 36.** During the opening of the 11th instalment of the art fair Contemporary Istanbul, a group of nationalists proclaiming to be affiliated with “Milli Görüş (National Outlook)” attacked a work by artist Ali Elmacı that consisted of a portrait of Ottoman Sultan Abdülhamid II on the body of a bikini-clad sculpture of a woman. The sculpture was temporarily removed for security reasons but reinstalled for the duration of the fair shortly after. There was no investigation of any kind following the incident.
- 37.** One example in which the police has actually pursued an investigation into an attack on a work of art is the case of “Doors open to those who knock” an exhibition curated from the Koç collection at the Abdülmecid Efendi Köşkü (Istanbul). On 22 October 2017, a group of men tried to destroy the sculpture “Man under Cardigan,” created by Australian artist Ron Mueck that represented a naked man because it – in their opinion – tarnished the memory of the Ottoman Caliphate. During the three consecutive attempted attacks on the sculpture, police were called by the exhibition organisers. The investigation into the perpetrators has been ongoing for two years. While the police were initially responsive in this case, the long investigation time continues to signal impunity for such attacks.

Police harassment

- 38.** In December 2017, the screening of the documentary “Sûr: Axit û Welat’ (Sur: Soil and Home)” that centres on the destruction and redevelopment of the Sur district (Diyarbakir) was illegally prevented by the police when it was scheduled to be shown at the Şişli City Cultural Centre in Istanbul. The management of the cultural centre

succumbed to repeated pressure by the authorities, who threatened to raid the theatre should the screening go ahead. There is no legally codified basis for such threats.

39. A similar strategy of discouragement had been employed in the case of “Bakur” (see above) during the Istanbul Film Festival in 2015. In this case, plain-clothed police officers threatened the management of a cinema, stating “they would be unable to protect the audience from possible mobs” who they alleged might be galvanized by the film’s subject matter. The Istanbul Film Festival claimed that the film could not be screened because of a missing film certificate. However, the lack of such a certificate is only punishable by a fine. The police have no legal basis to prevent the screening of a film. Instances like these are extremely discouraging for filmmakers and for those venues screening such productions and have a chilling impact on future programming.

Censoring art events or art works

40. The state controls the content of the projects it sponsors abroad, interferes with arts organizations on arbitrary grounds, and violates artists' rights by threatening the very institutions it collaborates with, despite there being no legal basis for these actions. During the Venice Biennial of 2015, the Turkish Ministry for Culture Tourism and the Foreign Ministry threatened to withdraw funding for the Turkish Pavilion, because the catalogue accompanying the work of the artist Sarkis featured a text by Rakel Dink, widow of murdered Turkish-Armenian journalist Hrant Dink, that explicitly referenced the Armenian genocide. The Turkish Pavilion’s curatorial team, in dialogue with the artist, was able to circumvent this intervention and made the publication available

online without the Ministries' logos. However, the threat to withdraw funding on purely political grounds sees the Turkish government overstepping its obligations to protect freedom of expression both as per Turkish Constitution Article 26, as well as under the international treaties referred to in this submission.

- 41.** In April 2016, the screen of the public art project YAMA on the Marmara Pera was shut down by the Istanbul Municipality on the basis of an anonymous complaint, claiming that the work of artist Işıl Eğrikavuk, a video animation, projecting the slogan “Finish up your apple, Eve!” insulted “religious sensibilities”. When pressed further, the municipality cited “visual pollution” as the reason for discontinuing the screening. This example illustrates a strategy by local government agencies to legitimize their acts of censorship as purely procedural and administrative actions.
- 42.** The cancellation of the exhibition “Post-Peace” (February 2016) shows the difficulty of expressing critical views on state policies even in privately-run galleries. The exhibition curated by Katia Krupennikova was cancelled by the Aksanat Gallery just five days before the opening, with its director citing the rising tension and the mourning after another bombing in Turkey as the reason. Given that other events went on as scheduled, it seems likely that the contentious issue was a video included in the planned exhibition, which was critical of the paramilitary violence targeting Kurds in the 1990s.^{xviii}
- 43.** Actor and playwright Baris Atay’s one-man-play “Sadece Diktatör (Only a Dictator)”, which premiered in November 2015 and widely toured the country for three years, has been repeatedly obstructed by provincial administrations since 2018. It was cancelled

in Artvin (January 2018) with the vague explanation that the play was “objectionable”. In same month, the Governor’s Office of Izmir intervened proposing that the play “provoked hatred and animosity”, was threatening “public morals” and endangering “others’ rights and freedoms”. Atay is also facing prosecution for multiple social media posts.

Withholding of funding as a tool of censorship in conjuncture with using certification as a means of creative control

44. In 2016, Filmmaker Kazim Öz was asked to take out scenes from his movie “Zer”, which referenced state violence, or otherwise pay back the funds he received from the Cinema Directorate of the Ministry of Culture and Tourism to produce this movie. Öz complied by blacking out those scenes and instead showed them with a note reading “You are unable to see this scene on the request of the Ministry of Culture and Tourism”. Öz is also currently facing trial for allegedly “disseminating propaganda” on behalf of the PKK, “being a member of armed terror group”, and for having participated in the Gezi protests. The prosecution is demanding a sentence between seven years and six months and fifteen years in prison. Observers suggest, that Öz – who has received national and international accolades for his work – has been charged because of his strategy of dealing with official censoring requests.

45. In 2017, directors Kaan Arıcı and İsmet Kurtuluş were asked to cut a number of scenes from their film “Son Şnitzel (The last Schnitzel)” by the Cinema Directorate of the Ministry of Culture and Tourism in order to receive their copyright and rating certificate. Although this regulation has been on the books since 2004, it only started

to be enforced regularly for all screenings, be they commercial or non-commercial, in late 2013. Arıcı and Kurtuluş refused to comply with this order and hence their film could not be shown as scheduled at the 16th Istanbul Independent Film Festival. This certification process, which is supposed to protect the copyright of filmmakers and determine the age rating for films, is increasingly being used as a censoring mechanism by which filmmakers are put under duress, especially if they have received funding from the Ministry of Culture and Tourism (in this case they have to repay the funding). They can also be hit with unreasonable 18+ age ratings which are not viable for many independent films since distributors and cinemas shy away from films with high age ratings for monetary reasons.

RECOMMENDATIONS

- 46.** A multitude of legislation is applied in Turkey that either directly targets freedom of expression, or in its applications suppresses this right as protected under Article 19 of the ICCPR, as well as under the Turkish Constitution. The following recommendations address some of these infractions of human rights protections as they relate to the practice of the right to freedom of expression by artists and cultural practitioners.
- 47.** Review legislation introduced in July 2018 under Law No. 7145 that normalizes within law decrees enforced during the 2016-2018 State of Emergency and that are incompatible with Turkey's commitments under the ICCPR.
- 48.** Recognise that the definition of "terrorism" in the application of anti-terror laws is ambiguous. The notions such as "terror", "terrorist organization", "membership of a

terrorist organization”, and “disseminating propaganda on behalf terrorist organization” remain ambiguous and should be clarified by law.

- 49.** Acknowledge that anti-terror legislation should not be applied against artistic and creative works that clearly have no connection with nor propagate violence. Public officials should desist from issuing statements which ally artists with terrorism, and hence turn artists into targets for harassment, intimidation and attack.
- 50.** Review and repeal the Anti-terror Law to bring it in line with the Turkish Constitution and Article 19 of the International Covenant on Civil and Political Rights.
- 51.** Take serious steps to abolish discretionary powers by non-elected officials who regularly rely on Laws no. 2911 and Provincial Administration Law No. 5442 to curtail peaceful meetings and arts events as guaranteed under the Turkish Constitution and international agreements.
- 52.** Revoke Penal Code Article 216/3 thus removing the crime of ‘denigration of religion’.
- 53.** Remove criminal defamation and insult from the statute books by abolishing Articles 125 and 299. In the meantime, restrict public officials and authorities, and the President from initiating defamation cases before criminal and civil courts.
- 54.** Penal Code Article 215 (‘praising a criminal’) should not be applied in a manner that leads to the prosecution of those practicing their rights to artistic freedom of expression.

55. Protect artists and creative workers as well as audiences engaged in artistic activities against threat and violence. No person issuing or carrying out such threats should be granted impunity to do so.

i <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22908&LangID=E>

ii <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

iii https://global.tbmm.gov.tr/docs/constitution_en.pdf

iv Asena Günel (ed.), “Sanatta Sansür: Farklı Aktörler ve Mekanizmalar,” Siyah Bant Yayınları, 2012; http://www.siyahbant.org/wp-content/uploads/2012/09/siyahbant_kitap_final_web.pdf

v For a summary of this assessment supported by the Human Rights Association (IHD) and Human Rights Foundation of Turkey (TIHV) see <https://bianet.org/english/human-rights/203384-state-of-emergency-made-permanent>

vi For a detailed account on artistic freedom of expression under the State of Emergency from August 2017, see “Artistic Freedom of Expression in Turkey: State of Emergency,” *ArtsEverywhere*, <http://artseverywhere.ca/2017/08/28/artistic-freedom-turkey/>

vii For SUSMA’s research on perceptions and experiences of self-censorship in Turkey, see http://susma24.com/wp-content/uploads/2019/07/susma_rapor_en_2018.pdf

viii While six of them have been reinstated, others are awaiting decisions from the courts with which they have lodged complaints. According to the Actors’ Union, similar dismissals from duty occurred in the Istanbul City Theater and other public theater companies across the country.

ix For a detailed overview over the judicial process, the activities of Osman Kavala in the fields of arts, culture and civil society as well as statements of support from international human rights organizations as well as the Council of Europe, for instance, see <http://www.osmankavala.org>

x For a detailed article on Osman Kavala’s arrest and its effect on arts and culture in Turkey, see <http://red-thread.org/en/cultural-hegemony-by-means-of-the-police/>

xi The option to “defer the announcement of the verdict” (known in Turkish as *Hükmün Açıklanmasının Geri Bırakılması*, HAGB) is given to the defendant if the predicted prison sentence is less than 24 months. Defendants who accept this offer might avoid prison sentences but lose the right to appeal. Should defendants commit another “crime” in the five years following the sentence, the verdict is announced, and the given prison time will be served. As the Human Rights Foundation of Turkey (TIHV) explains in a recent report: “Suspending the execution of the sentence is a different legal practice from deferring the announcement of the verdict. In the latter no conviction occurs because the verdict is not legally announced but kept in reserve, whereas in the former the defendant is convicted and has a criminal record with all consequences except serving time in prison, which is conditionally suspended.”

<http://www.tihvakademi.org/wp-content/uploads/2019/03/AcademicsforPeace-ABriefHistory.pdf>

xii https://global.tbmm.gov.tr/docs/constitution_en.pdf

xiii See <https://www.dw.com/tr/cumhurbaşkanına-hakaret-davalarında-rekor-artış/a-46622702>. In July 2016, the President dropped a number of law suits as a one-time gesture of good-will, see <https://www.dw.com/en/erdogan-to-withdraw-insult-lawsuits/a-19438213>. However, according to an article published by Human Rights Watch in October 2018 “the number of people prosecuted for article 299 has

rapidly increased since 2014. The records reveal that 132 people (including 1 minor) were prosecuted in 2014, that there was a sharp increase to 1,953 (including 76 minors) in 2015, and that in 2016, the number of cases more than doubled, with 4,187 persons (including 148 minors) prosecuted. In 2016, 54 of the minors prosecuted were aged between 12 and 15. A further huge leap occurred in 2017, when prosecutions rose to 6,033, with 340 cases concerning minors (42 aged between 12 and 15). According to the ministry's statistics, the number of convictions also rose over the same period. While 40 persons were convicted for insulting the president in 2014, 238 were convicted in 2015, the number almost quadrupled to 884 in 2016, and jumped to a staggering 2,099 convictions in 2017." For the full article, see <https://www.hrw.org/news/2018/10/17/turkey-end-prosecutions-insulting-president>

xiv Article 299 of the Turkish Penal Code (falling under the section of Offences against the Symbols of State Sovereignty and the Reputation of its Organs) stipulates that (1) "Any person who insults the President of the Republic shall be sentenced to a penalty of imprisonment for a term of one to four years"; (2) "Where the offence is committed in public, the sentence to be imposed shall be increased by one sixth"; and (3) "The initiation of a prosecution for such offence shall be subject to the permission of the Minister of Justice", see [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

xv "The Venice Commission recalls that the use of offensive, shocking and disturbing words especially within the context of a debate on matters of public interest, are guaranteed by the freedom of expression". [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e)

Para 67

xvi For a more detailed account, see <https://www.indexonensorship.org/2017/04/turkey-freedom-arts-archives-erasure/>

xvii For the joint statement, see <https://www.ohchr.org/EN/Issues/ESCR/Pages/CulturalRightsProtectionCulturalHeritage.aspx>

xviii For a more detailed description of the case and its effects, see <https://www.indexonensorship.org/2016/05/75504/>