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# THE END OF OPPOSITION: THE AKP’S TEN-YEAR WAR ON PRESS FREEDOM IN TURKEY

Ryan Lavigne\*

## ABSTRACT

In July of 2016 there was a coup attempt in Turkey. What followed can only be characterized as a ‘purge’ of certain sectors of society. Included, and arguably central to the post–coup reaction, has been an attack on free press in the country. This Article explains and argues why this post–coup attempt crackdown must not be viewed in isolation, but instead as a quasi-culmination of a ten-year war waged against the press by the ruling Justice and Development Party (AKP) in Turkey. The decline in press freedom indicators in the absence of any new restrictive legislation suggests that the AKP has intentionally and increasingly suppressed the press using laws predating this ten-year period. Thus, the recent press purge is less a one-off event than the continuation of a systematic suppression. Tangible results of this suppression’s effect on democracy become ever more apparent following the approval of the April 2017 constitutional amendments via referendum and Recep Tayyip Erdoğan’s reelection to the Presidency with new amendments in force.

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INTRODUCTION

A free press plays a vital role in democracy.<sup>1</sup> Implicit in every functioning democracy is an agreement between factions that wield power to participate in tradeoffs, accessions of control to other factions to avoid a concentration of power. With regard to the press, such tradeoffs are key to allowing citizens to feel comfortable relinquishing power to the government. By playing a watchdog role, the press checks the government by informing citizens about exactly what is taking place in a country.<sup>2</sup> This investigation and communication allows populaces to make informed decisions about what actions to take in relation to their political representatives, at voting booths or through other avenues of political discourse. In exchange for relinquishing a level of individual autonomy by allowing others to govern, citizens are partially compensated through access to information they can use to make changes happen in their governance. Because of this fundamental role the press plays in the functioning of democracy, Turkey has enshrined its commitment to a free press in its constitution, but it has constantly attacked this institution.

Article 28 of the Turkish constitution reads “The Press is free, and shall not be censored.”<sup>3</sup> However, these guarantees have never truly represented the reality in Turkey.<sup>4</sup> History shows that, regardless of which political party is in power, the Turkish press has never enjoyed the freedom promised to it in the 1982 constitution or in any previous constitution.<sup>5</sup> The Justice and Development Party (AKP), the current ruling party in Turkey, has had an unstable

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1. For the purposes of this Article the press shall be defined as any news or media organization, in any medium, and include anyone who works for these organizations or individuals who work in the role of a journalist independently; RANDALL P. BEZCENSON, HOW FREE CAN THE PRESS BE? 250 (2008) (“A free press is “Bulwark of liberty,” an essential restraint in tyranny—perhaps even more essential in a democracy.”).

2. *Id.* at 5 (“The central function of the press is most evident when the press discloses information about the government, especially information that the government wants to keep secret.”).

3. TÜRKİYE CUMHURİYETİ ANAYASASI [TCA] [Constitution], Nov. 7, 1982, art. 28 (Turkey).

4. Throughout this Article there will be countless examples of why the press is not truly free in Turkey, as guaranteed by the constitution. The factors hampering the press range from direct suppression of the press by the government through legislation, to less overt issues dealing with media consolidation and the clientelist relationships between many of the owners of media companies and the government. Current press suppression in Turkey is extreme, but the country has never been a model for press freedom.

5. The 1960 constitution also guaranteed a free press.

relationship with the press throughout its tenure—a relationship that reached a boiling point in the summer of 2016.

On the night of July 15, 2016, there was a coup attempt in Turkey.<sup>6</sup> As military jets flew low over Istanbul, helicopters were shot out of the sky in Ankara.<sup>7</sup> These two cities, the cultural and administrative hubs of Turkey, respectively, became arenas of insurrection. As the fighting wore on, Turkish President Recep Tayyip Erdoğan (Erdoğan) placed a FaceTime call to *CNN Turk* from an undisclosed location to urge his supporters take to the streets and protest the coup.<sup>8</sup> As the sun rose and the dust settled, it not only became clear that the coup had failed, but also that its rejection had been nearly universal.<sup>9</sup> Energized either by their President or their commitment to the sanctity of democracy, Turks had flooded the streets and resisted.<sup>10</sup> Normally sharply divided along economic, political, and religious lines, Turks had rallied together against the coup, signaling the end of an era where military coups had been accepted as a way of life.

While Turkish society's rejection of the military coup must be viewed as a positive sign for democracy, the events that have followed are troubling. Almost instantaneously, and understandably, the Turkish parliament established a state of emergency.<sup>11</sup> Simultaneously, the government declared a group led by Fethullah Gülen, a Turkish religious and political figure living in exile in the United States, responsible for attempting to overthrow the government.<sup>12</sup> The official narrative was that the group (FETÖ or Gülenists) systematically infiltrated all aspects of Turkish society over many years, lying in wait to

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6. New York Times, *The Arc of a Coup Attempt in Turkey*, N.Y. TIMES, July 16, 2016, [http://www.nytimes.com/interactive/2016/07/16/world/europe/turkey-coup-photos.html?\\_r=0](http://www.nytimes.com/interactive/2016/07/16/world/europe/turkey-coup-photos.html?_r=0).

7. *Id.*

8. Jose Pagliery, Frank Pallotta & Ralph Ellis, *Turkey's beleaguered president addresses country on FaceTime*, CNN MONEY, July 15, 2016, <http://money.cnn.com/2016/07/15/technology/turkey-coup-facetime-interview>.

9. Constanze Letsch, *Defiant Turks stood up for democracy—but not necessarily for Erdoğan*, THE GUARDIAN, July 16, 2016, <https://www.theguardian.com/world/2016/jul/16/turkey-failed-coup-attempt-public-resistance-president-Erdoğan> (“‘The resistance against the coup attempt las night was quite heterogenic,’ said Erol Onderoglu, Turkey’s Reporters Without Borders representative . . .”); New York Times, *Turks Rally Against Attempted Coup*, N.Y. TIMES, July 16, 2016, <https://www.nytimes.com/live/2016-07-16/world/turkey-coup-Erdoğan/turks-rally-against-attempted-coup> (“Thousands of Turks flocked to public squares across the country Saturday night, staging pro-democracy marches in opposition to the attempted coup.”).

10. Al Jazeera, *Turkey's Failed coup attempt: All you need to know*, AL JAZEERA, Dec. 30, 2016, <http://www.aljazeera.com/news/2016/12/turkey-failed-coupattempt161217032345594.html>. (As news of the coup attempt spread via social media, thousands of ordinary citizens, armed with nothing more than kitchen utensils gathered in streets and squares . . . to oppose the coup.”).

11. *State of Emergency Declared in Turkey Following the Coup Attempt on 15 July 2016*, Joint Declaration by the Grand National Assembly of Turkey (July 21, 2016).

12. *Id.* (“Fethullah Terrorist Organisation (FETÖ) has staged a coup attempt in Turkey on 15 July 2016.”).

execute a coup.<sup>13</sup> Soon after, the government began to take swift action against individuals and entities it deemed associated with the group, issuing malevolent decrees at a rapid rate.<sup>14</sup> These government issued documents called for the arrest of some and the resignation of others, from virtually all corners of society, ranging from teachers to judges, based on varying degrees of association with the Gülenists.<sup>15</sup> Two and a half months after the attempted coup, Reuters estimated that the Turkish government had fired or suspended more than 100,000 employees, including but not limited to academics, civil servants, military members, detaining around 40,000 of them.<sup>16</sup>

One of the government's main targets in the aftermath of the coup attempt has been the press. In October 2016, the number of journalists jailed reached as high as 129.<sup>17</sup> In addition, twenty-nine TV stations, three news agencies, forty-seven newspapers, sixteen magazines, thirty-one radio stations and twenty-eight publishing houses had been closed.<sup>18</sup> In all, by December of 2016 approximately 2500 journalists and media organization employees had lost their jobs because of organizational shut downs since the state of emergency had been declared.<sup>19</sup>

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13. Patrick Kingsley, *Foes on the Run as Erdoğan Makes Power Personal*, N.Y. TIMES, April 5, 2017, [https://www.nytimes.com/2017/04/06/world/europe/turkey-Erdoğan-gülenist-movement.html?action=click&contentCollection=world&region=rank&module=package&version=highlights&contentPlacement=1&pgtype=sectionfront&\\_r=0](https://www.nytimes.com/2017/04/06/world/europe/turkey-Erdoğan-gülenist-movement.html?action=click&contentCollection=world&region=rank&module=package&version=highlights&contentPlacement=1&pgtype=sectionfront&_r=0) (“The government describes the Gülen movement as carefully structured conspiracy with a secret leadership that aims to infiltrate and take over the Turkish bureaucracy . . .”).

14. Ceylan Yeginsu, *Turkey Uses Post-Coup Emergency Decree to Purge Mayors and Teachers*, N.Y. TIMES, Sept. 9, 2016, <http://www.nytimes.com/2016/09/10/world/middleeast/turkey-uses-post-coup-emergency-decree-to-purge-mayors-and-teachers.html?action=click&contentCollection=Europe&module=RelatedCoverage&region=EndOfArticle&pgtype=article>; Tim Argano, Ceylan Yeginsu & Ben Hubbard, *Vast Purge in Turkey as Thousands Are Detained in Post-Coup Backlash*, N.Y. TIMES, July 18, 2016, <http://www.nytimes.com/2016/07/19/world/europe/turkey-Erdoğan-crackdown.html?action=click&contentCollection=Europe&module=RelatedCoverage&region=EndOfArticle&pgtype=article>.

15. Patrick Kingsley, *Turkey sacks 15,000 education workers in purge after failed coup*, THE GUARDIAN, July 20, 2016, <https://www.theguardian.com/world/2016/jul/19/turkey-sacks-15000-education-workers-in-purge>; Patrick Kingsley, *Turkey detains 6,000 over coup attempt as Erdoğan vows to ‘clean state of virus,’* THE GUARDIAN, July 17, 2016, <https://www.theguardian.com/world/2016/jul/17/us-turkey-coup-attempt-fethullah-gulen>; Human Rights Watch, *Turkey: Judges, Prosecutors Unfairly Jailed*, HUMAN RIGHTS WATCH, Aug. 5, 2016 (“Turkey’s courts have placed at least 1,684 judges and prosecutors in pretrial detention in the aftermath of the failed July 15, 2016 coup . . .”).

16. Humeyra Pamuk, *Turkey Sacks 10,000 More Civil Servants, Shuts Media in Latest Crackdown*, REUTERS, Oct. 30, 2016, <http://www.reuters.com/article/us-turkey-security-dismissals-idUSKBN12U04L>.

17. Journalists in State of Emergency, PLATFORM FOR INDEPENDENT JOURNALISM, <http://platform24.org/en>.

18. *Id.*

19. Human Rights Watch, *Silencing Turkey’s Media: The Government’s Deepening Assault on Critical Journalism*, HUMAN RIGHTS WATCH, <https://www.hrw.org/report/2016/12/15/silencing-turkeys-media/governments-deepening-assault-critical-journalism>.

While the initial reaction to the coup attempt and crackdown specifically on the press should be worrying, the extension of both the time and scope of the state of emergency is extremely alarming. The original three-month state of emergency has now been extended by an additional three months on seven different occasions, with the latest extension going into effect on April 18, 2018.<sup>20</sup> In conjunction with this temporal extension, the government implicitly widened the groups susceptible to state of emergency powers from those associated with the Gülen movement to include supposed Kurdistan Workers Party (PKK) sympathizers and others with no association to the Gülen group.<sup>21</sup>

The true motives of the AKP have come into question following the aforementioned extensions.<sup>22</sup> What outwardly began as an attempt to stabilize the future of democracy has seemingly devolved into an opposition purge. Regardless of how the AKP's post-coup actions are categorized, its focus on the press is neither new nor coincidental.

This Article argues that the suppression of the press in the attempted coup's aftermath is not a one-off incident; instead, it is the culmination of a ten-year fight waged by the AKP against the press. To give background, Part I provides a short timeline on press in Turkey since the state's establishment in 1923. Part II focuses on the relationship between the AKP and the press

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20. Joint Declaration by the Grand National Assembly of Turkey (July 16, 2016); Emre Peker, *Turkey Extends State of Emergency*, WALL ST. J., Oct. 3, 2016, <http://www.wsj.com/articles/turkey-extends-state-of-emergency-1475507092>; At the time of publishing this note, the latest extension (three more months) to the state of emergency had been enacted on July 17, 2017. See Reuters, *Turkish government extends state of emergency rule for another 3 months*, REUTERS, July 17, 2017, <https://www.reuters.com/article/us-turkey-security-emergency/turkish-government-extends-state-of-emergency-rule-for-another-3-months-idUSKBN1A212S>.

21. Ceylan Yeginsu & Safak Timur, *Turkey's Post-Coup Crackdown Targets Kurdish Politicians*, N.Y. TIMES, Nov. 4, 2016, <http://www.nytimes.com/2016/11/05/world/europe/turkey-coup-crackdown-kurdish-politicians.html>; Amnesty International, *Turkey: HDP deputies detained amid growing onslaught on Kurdish Opposition Voices*, AMNESTY INTERNATIONAL, Nov. 4, 2016, <https://www.amnesty.org/en/latest/news/2016/11/turkey-12-kurdish-deputies-detained-amid-growing-onslaught-on-opposition-voices>; The International Crisis Group, *Managing Turkey's PKK Conflict: The Case of Nusaybin*, THE INTERNATIONAL CRISIS GROUP, May 2, 2017, <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/243-managing-turkeys-pkk-conflict-case-nusaybin> ("Particularly in the wake of the failed July coup attempt an in the run-up to the 2017 presidential system referendum, emergency rule conditions resulted in the arrest and/or removal from office of elected representatives of the legal Kurdish political movement.").

22. Emre Peker, *Turkey Extends State of Emergency*, WALL ST. J., Oct. 3, 2016, <https://www.wsj.com/articles/turkey-extends-state-of-emergency-1475507092> ("The president saying that the state of emergency can last longer than 12 months is strengthening the fear of a counter-coup. It's raising the prospect of opportunist measures." –Kemal Kilicdaroglu"); Tim Arango, Ceylan Yeginsu & Safak Timur, *Turks See Purge as Witch Hunt of 'Medieval' Darkness*, N.Y. TIMES, Sept. 16, 2016, <https://www.nytimes.com/2016/09/17/world/europe/turkey-Erdoğan-gülen-purge.html> ("[A]nd there is justified worry that the purges may ultimately serve to cleanse the state of all critics, not just Gülenist's who really seem to have mastered the coup attempt." Mustafa Akyol.").

in three Subparts. The first Subpart discusses the AKP's rise to power. The second lays out Turkey's international and domestic commitments regarding press freedom. The third Subpart looks at press freedom under the AKP since 2002 in three parts: (1) trends found in press freedom indicators;<sup>23</sup> (2) specific happenings on the ground in Turkey (defined as "press suppression in action"); and (3) the text of the laws currently being used against the press. Part II discusses how the laws' nonadherence to the international principle of legality can help explain the downward trend in press freedom indicators absent the passing of new legislation and discusses media consolidation. This Article concludes by returning to the importance of a free press, especially in the current climate in Turkey.

## I. HISTORY OF THE PRESS IN TURKEY

Turkey is a relatively young country, it gained independence in 1923; the State's relationship with the press, however, has been rich and complex.<sup>24</sup> The Republican People's Party (RPP) held one-party authoritarian rule over the Turkish state during the first twenty-three years of its existence.<sup>25</sup> The party's leader, Mustafa Kemal ("Atatürk"),<sup>26</sup> pushed an aggressive modernization agenda with the stated goal to "reach[] the level of contemporary civilization."<sup>27</sup> During this time, the press was used as a political tool, strictly limited to pushing propaganda that aligned with Atatürk's agenda for Turkish state modernization.<sup>28</sup>

Turkey held its first multiparty elections in 1946.<sup>29</sup> Although the RPP retained power after the election, newly founded opposition parties brought rarely brought problems with press independence to the political forefront.<sup>30</sup> Only four years later, the first major press reform was ushered in.<sup>31</sup> To the surprise and chagrin of veteran political elites, the 1950 election resulted in

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23. Press freedom indicators, comprised of many factors, create a process by which the findings based on these factors are condensed into a grade or number. The indicators allow outside observers to gauge the press freedom situation in a country from afar; creating a method by which countries press scores can be viewed comparatively.

24. KEREM OKTEM, *ANGRY NATION: TURKEY SINCE 1989*, 24 (2011).

25. *Id.*

26. "Atatürk" means "Father of the Turks".

27. OKTEM, *supra* note 24, at 27.

28. Gözde Yılmaz, *Europeanisation or De-Europeanisation? Media Freedom in Turkey (1999–2015)*, 21 S. EUR. SOC'Y & POL. 147, 149 (2016) ("In the early single-party regime of the Republic in the years between 1923 and 1950, there was no freedom for the media, which were instrumentalised by the state in the name of promoting modernization in Turkey."); Heper Metin, & Tanel Demirel, *The Press and the Consolidation of Democracy in Turkey*, 32 MIDDLE E. STUD. 109, 110 (1996) ("From 1923, when the Republic was proclaimed, until 1945 . . . journalists had been instrumental in propagating the modernizing reforms of the one-party system.").

29. OKTEM, *supra* note 24, at xi.

30. Yılmaz, *supra* note 28, at 149.

31. OKTEM, *supra* note 24, at xi.



the empowerment of the Democratic Party (DP).<sup>32</sup> The DP's political victory brought with it press reforms promised during the campaign.<sup>33</sup> That year, the DP passed the Press Law, formally recognizing freedom of the press for the first time and giving journalists the right to unionize.<sup>34</sup>

A decade later, a military coup ousted the popularly-elected government.<sup>35</sup> One of the byproducts of military rule was the establishment of a new constitution.<sup>36</sup> The 1961 constitution has been lauded as extremely liberal; its provisions afforded protections and improvements not only for the press but for liberal freedoms generally.<sup>37</sup> Although the constitution itself was a positive step for press freedom, there were still obstacles in the way of a free press in the country. Turkey's lack of capital accumulation during the period meant that many media owners were still reliant on the state through subsidies or regulation, ensuring that the paternalistic relationship between the press and the state did not disappear.<sup>38</sup>

Twenty years later, in the early 1980's, two important developments left a permanent mark on Turkish society. The first was another military coup and subsequent establishment of a new constitution.<sup>39</sup> The second was a neoliberalization wave that swept over Turkey, prompting a series of economic, social and political reforms.<sup>40</sup> One of the results of these reforms was a rapid privatization process, opening up the government as a "cash cow" to offer huge sums of money via private contracts for a multitude of projects.<sup>41</sup> Corporate leaders viewed media organizations as a tool to establish close government relationships, leading them to absorb traditionally family-owned media organizations that previously constituted the press in Turkey.<sup>42</sup> Although no longer explicitly

32. *Id.*

33. Raşit Kaya & Barış Çakmur, *Politics and the Mass Media in Turkey*, 11 *TURKISH STUD.* 521, 524 (2010).

34. Referred to as the Law of Press No: 5680, this law remained in force until it was replaced June 9, 2014; Kaya & Cakmur, *supra* note 33, at 524.

35. Since the State of Turkey was established there have been three military coups (1960, 1971 and 1980) and one "post-modern" coup (1997).

36. Human Rights Watch, *Violations of Free Expression in Turkey*, *HUMAN RIGHTS WATCH* at 53 (1999); Ergun Ozbudun, *CONTEMPORARY TURKISH POLITICS: CHALLENGES TO DEMOCRATIC CONSOLIDATION*, 54 (2000).

37. *Id.*; Kaya & Cakmur, *supra* note 33, at 524; Yılmaz, *supra* note 28, at 149.

38. Human Rights Watch, *supra* note 36, at 53; Kaya & Cakmur, *supra* note 33, at 525.

39. Human Rights Watch, *supra* note 36, at 21.

40. Kaya & Cakmur, *supra* note 33, at 525.

41. Yılmaz, *supra* note 28, at 149.

42. Aslı Tuğ, *Media Ownership and Finances in Turkey: Increasing Concentration and Clientelism*, *S. E. EUR. MEDIA OBSERVATORY* 1, 10 (2015) (In the memoirs of Hasan Cemal, a respected journalist, it was noted that the Koch family, an elite business family in Turkish society, contemplated publishing a newspaper in order to receive appointments with the President and Prime Minister in the late 80's); Ali Çarkoğlu & Gözde Yavuz, *Press-party Parallelism in Turkey: An Individual Level Interpretation*, 11 *TURKISH STUD.* 614, 618 (2010); Yılmaz, *supra* note 28, at 150.



forced to patronize the government (as was required during the Atatürk era), the press remained beholden to the state due to economic incentives.<sup>43</sup>

The consequences of neoliberal reforms that began in the 1980s continued into the next decade. The major difference between decades was the relatively weak central government that characterized the 1990s.<sup>44</sup> This weakness created a power vacuum that, after ten years of neoliberal developments, the press was equipped to fill.<sup>45</sup> Commonly referred to as the fourth estate for its role in a democratic government behind the executive, judiciary and legislature, the Turkish press took on a quasi-first estate role in the 1990s.<sup>46</sup> Run by five prominent business groups, the press had a commanding influence over Turkish politics during this period.<sup>47</sup> The extent of this power is best exemplified by the postmodern coup of 1997, in which the media played a major role in helping the military undermine the government and overthrow it without the use of force (distinguishing it from the 1960, 1970, and 1980 military coups).<sup>48</sup> Despite the changes to Turkish society under the guise of neoliberalization during the 1980s and 1990s, there was no noted abolition of restrictive press legislation during the period, allowing existing legislation to remain dormant until it would be utilized again.<sup>49</sup> In fact, the opposite seems to be true; more restrictive legislation was passed during this time period. For example, the Anti-Terror law, which will be discussed at length *infra*, was passed in 1991.<sup>50</sup>

The rise of a new political party in the 2002 election marked the next significant change in press-state relations in Turkey. Due to that election, an

43. Ali Çarkoğlu & Gözde Yavuz, *Press-party Parallelism in Turkey: An Individual Level Interpretation*, 11 *TURKISH STUD.* 614, at 618 (2010) (“[A]fter the deregulation of media markets, newspaper owners started to utilize material benefits of patrimonial/clientelistic relationship between media and state. The result of that relationship is the instrumentalization of media. While private media owners have connections to obtain contracts and concession, politicians can pressure media owners by selectively enforcing broadcasting, tax and other laws in that kind of relationship.”).

44. Kaya & Cakmur, *supra* note 33, at 530; OKTEM, *supra* note 24, at 85 (Concluding that from 1991–2002 there were eight coalition governments and only two five month stretches of single party rule).

45. Heper Metin & Tanel Demirel, *The Press and the Consolidation of Democracy in Turkey*, 32 *MIDDLE E. STUD.* 109, 112 (1996).

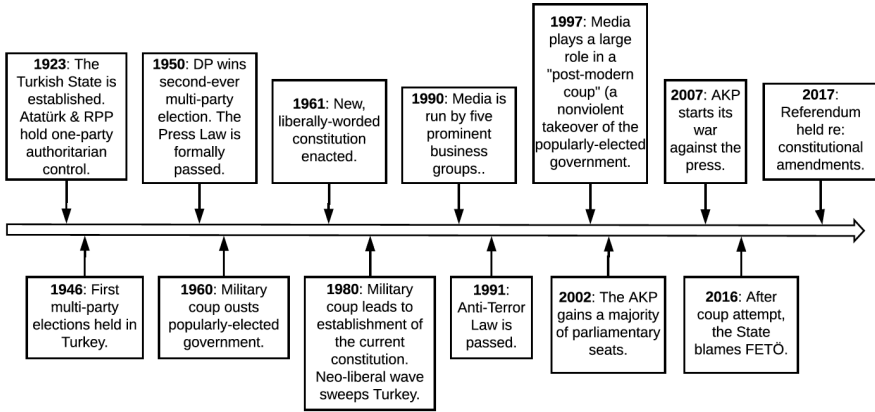
46. *Id.*; Kaya & Cakmur, *supra* note 33, at 530.

47. Yılmaz, *supra* note 28, at 150; Heper & Demirel, *supra* note 45, at 112.

48. Susan Corke et al., *Democracy in Crisis: Corruption, Media, and Power in Turkey*, *FREEDOM HOUSE SPECIAL REPORT*, 3 (2013); The “postmodern coup” involved no use of military force, instead the military produced a list of directives to be followed by the government. See *Timeline: A History of Turkish Coups*, *AL JAZEERA*, July 15, 2016, <http://www.aljazeera.com/news/europe/2012/04/20124472814687973.html>.

49. Human Rights Watch, *Questions and Answers: Freedom of Expression and Language Rights in Turkey*, *HUMAN RIGHTS WATCH*, Apr. 2002, <https://www.hrw.org/legacy/press/2002/08/turkeyqa041902.html>. (“Many of the repressive provisions found in the Press Law, the Political Parties Law, the Trade Union Law, the Law on Associations, and other legislation were imposed by the military junta after its coup in 1980.”).

50. Law to Fight Terrorism, Act No. 3713 (1991).



entire political ruling class had been replaced, and the AKP had risen to prominence in its first election cycle.<sup>51</sup> Campaigning on a populist modernization platform, the AKP, and their omnipresent leader Erdoğan, promised to bring Turkey more in line with Europe, while also focusing on the promotion of a conservative business class.<sup>52</sup> This platform resulted in relaxed enforcement of restrictive press legislation until the 2007 election.<sup>53</sup> Since then, press freedom indicators show that enforcement is on the rise again.<sup>54</sup> This new wave of press suppression peaked in the 2015, hitting its pinnacle the year following the failed coup attempt.<sup>55</sup>

This condensed history indicates that there has been a consistent paternalistic relationship between the press and state in Turkey. This relationship ensures that the government controls the press through restrictive legislation or economic interests tied to the state. Also implicit in this relationship is an acknowledgment of the important role the press plays in a society. In the era

51. Ayhan Kaya, *Islamisation of Turkey under the AKP Rule: Empowering Family, Faith and Charity*, 20 S. EUR. SOC'Y & POL. 47, at 50 (2015).

52. Seda Demiralp, *The Rise of Islamic Capital and the Decline of Islamic Radicalism in Turkey*, 41 COMP. POL. 315, 328 (2009) (“Clearly, the AKP represented the interests of the newly arisen Anatolian entrepreneurial group that were no longer served within the limits of the radical Islamist party . . . . When the AKP came to power, it immediately started a rapid and expansive privatization program, accelerated the negotiations with EU members, and gave impetus to the EU-adjustment reforms in the legal system. Some of the policies that are designed to support the small and medium size entrepreneurs deserve particular attention to highlight the class interests that play a significant role in determining the parts agenda.”).

53. See Part II.C.1, *infra*, for a discussion on press indicators.

54. *Id.*

55. Commissioner for Human Rights, *Memorandum on freedom of expression and media freedom in Turkey*, Council of Europe, Feb. 15, 2017, available at <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-turkey/16806f1ae2> (“Prior to the declaration of the state of emergency in Turkey, which followed the attempted coup of July 2016, direct interference with media freedom had already reached an alarming level.”).

when the Turkish press was most influential—and, relatedly, most estranged from the paternalistic relationship with the state that has historically characterized its existence—it was a serious threat to the government. This background is key to understanding the current state of the press under the AKP.

## II. THE AKP AND PRESS FREEDOM IN TURKEY 2002–2017

### A. *History of the AKP's Rise to Political Dominance*

The 2002 election brought radical change to the Turkish political landscape.<sup>56</sup> The first major transformation took place in the parliament, where all incumbent political parties were ousted from participation in the new government.<sup>57</sup> The second circumstance that differed from the norm was the empowerment of newly formed AKP party.<sup>58</sup> The combination of strong support and the disenfranchising ten percent threshold required for a party to be represented in parliament meant that, in its first election, the AKP became the only party since 1987 to hold a majority of seats in Parliament.<sup>59</sup>

While the AKP was the “new kid on the block” in the 2002 election, its political lineage suggested that its ascension to power would be more of a change in degree than a change in kind. Following a 2001 Constitutional Court decision, the once-powerful Virtue Party had been ordered to disband for promoting nonsecular policies.<sup>60</sup> In its wake, the party’s constituents split in two, forming new parties, one of which was the AKP.<sup>61</sup> In an attempt to separate itself from the Islamic party lineage from which it was derived, the AKP, led by Erdoğan, branded itself as a conservative democratic party.<sup>62</sup> While it quite obviously still held Islamic values in high esteem, the party distanced itself from the more radical tenets of previous parties and instead focused on pro-business policies that included cultivating a strong relationship with Europe.<sup>63</sup> One of the byproducts of the AKP’s pro-business European agenda was the

56. E. Fuat Keyman, *Modernization, Globalization and Democratization in Turkey: The AKP Experience and its Limits*, 17 *CONSTELLATIONS* 312, 312–3 (2010) (“[T]he AKP experience since 2002 has constituted one of the most significant eras in Turkish politics, democracy and modernity.”).

57. OKTEM, *supra* note 24, at 123.

58. Kaya, *supra* note 51, at 50.

59. *Id.*; Keyman, *supra* note 56, at 313 (“The sole winner of the election was the AKP. By receiving 34.2% of the popular vote and with the aid of the undemocratic 10% national threshold, the party gained 66% of the parliamentary seats (363 of 55 seats).”).

60. Demiralp, *supra* note 52, at 327.

61. *Id.*

62. Keyman, *supra* note 56, at 316 (“the AKP’s declaration that it is a conservative-democratic party, willing to locate itself at the center and linking itself to different societal groups . . . ”); HAKAN YAVUZ, *ISLAMIC POLITICAL IDENTITY IN TURKEY* 81 (2003) (“The party (AKP) avoided religious labeling, defining itself as a supporter of secularism and ‘conservative democracy.’”).

63. OKTEM, *supra* note 24, at 123; Kaya, *supra* note 51, at 50; Keyman, *supra* note 56, at 316.

promotion of a more liberal political and social platform in order to appease its potential suitors at the European Union (EU).<sup>64</sup> This agenda appealed to a wide range of factions, even if some remained skeptical of the AKP itself, leading to alliances with a diverse base.<sup>65</sup>

Since its electoral success in the 2002 election, the AKP has maintained its majority hold over parliament.<sup>66</sup> Concomitant with the rise of the party has been the rise of Erdoğan, who has held the position of either Prime Minister or President since the party's initial electoral success.<sup>67</sup> While its hold on power has remained constant, the party's affinity for aligning with Europe and the diversity of its base have waned.<sup>68</sup> The actions of the AKP during its fifteen-year reign have shaped the state of press freedom in Turkey. Before taking a closer look at press freedom generally from 2002 to 2017, it is important

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64. Yavuz, *supra* note 62, at 55 (“The AKP government from its early days gave priority to the twin objectives of democratization and the promotion of Turkey’s membership in the European Union (EU). The prospects of such membership provided a strong stimulus for democratizing reforms . . .”).

65. Kaya, *supra* note 51, at 50 (“the AKP made political and societal alliance with the EU, the Gülen movement, Liberals, and its own electorate . . .”); Keyman, *supra* note 56, at 320; Demiralp, *supra* note 52, at 330 (“Skeptical secularists suggested that the AKP’s neoliberal policies, in line with Copenhagen criteria, were in fact the party’s indirect attempts to cut back on the economic power of the state, through privatization and submission to EU authority, so that in the long run the true (Islamic) agenda of the party could be imposed upon the weakened state.”).

66. Keyman, *supra* note 56, at 693. In 2015, the AKP originally did not win enough seats to form a majority, but after attempts to create a coalition government failed, snap elections were called. The results of these elections were an AKP majority. See Bipartisan Policy Center, *Divide and Conquer: Voting Patterns and Erdoğan’s Campaign Strategy Ahead of Turkey’s Snap Election*, BIPARTISAN POL’Y CENTER, Sept. 2015, <https://bipartisanpolicy.org/wp-content/uploads/2015/09/BPC-National-Security-Turkey-Snap-Election.pdf>. (suggesting that the AKP took blatant steps after the first 2015 election to court the nationalist vote to regain the majority in parliament).

67. Abbas Djavadi, *Erdoğan’s One-Man Government*, RADIOFREEEUROPE RADIOLIBERTY, May 23, 2016, <https://www.rferl.org/a/Erdoğan-turkey-one-man-government/27751954.html>; *Turkey Election: Erdoğan wins Re-Election as President*, BBC News, June 25, 2018, <https://www.bbc.com/news/world-europe-44596072>.

68. This movement away from Europe in terms of both political and social values has been extensively studied in turkey. See Canan Balkir & Sedef Eylemer, *Shifting Logics: The Discourses of Turkish Political Elites on EU Accession*, 21 S. EUR. SOC’Y & POL. 29, 33 (2016) (analyzing the changing position by the AKP party on Europe; they outline the shift from a “rights based” logic, which stressed that the motivation to join the EU was to ensure liberal norms and standards enjoyed by citizens in EU countries could be afforded to Turkish citizens, to a “logic of interest” logic which focuses more on the strategic economic and political relationships Turkey could gain through joining the EU as the motivating factor); see also, Senem Aydın-Düzgüt, *De-Europeanisation through Discourse: A Critical Discourse Analysis of AKP’s Election Speeches*, 21 S. EUR. SOC’Y & POL. 45, 50 (2016) (exemplifying change in the AKP’s political platform for the time period of 2011 through 2014. Erdoğan gave 164 speeches over this period, and while a majority of them discussed foreign policy in some way, only three contain positive mentions of the EU).

to note the Turkish government's domestic and international commitments during that period.

## B. *Turkey's Commitments to Freedom of the Press*

### 1. Domestic Commitments

The current Turkish constitution guarantees freedom of the press.

*ARTICLE 28:* The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

The State shall take the necessary measures to ensure freedom of the press and information.

...

In the limitation of freedom of the press, the provisions of Article 26 and 27 of the constitution shall apply.

...

Although the constitution includes a commitment to press freedom, the very section that recognizes this freedom circumscribes it. There are also numerous examples of domestic legislation that further undermine press freedom,<sup>69</sup> such as the Anti-Terror Law, Article 216, Article 314 and Article 301 (described in more detail *infra*).<sup>70</sup> Some of these laws explicitly target the press, while others use vague terms authorities can selectively apply to members of the press.<sup>71</sup>

### 2. International Commitments

Turkey is a signatory to three international treaties which obligate it to guarantee freedom of expression, and more specifically freedom of the press, for its citizens.<sup>72</sup> Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive or impart information and ideas of all kinds.”<sup>73</sup> Article 19 of the Universal Declaration of Human

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69. Human Rights Watch, *supra* note 36, at 21; *see also* Commissioner for Human Rights, *Memorandum on freedom of expression and media freedom in Turkey*, Council of Europe, Feb. 15, 2017 (“A profound suspicion of freedom of expression and, in particular, of non-consensual, dissenting, shocking or disturbing statements, permeates the Turkish constitution and domestic legislation.”).

70. *Turkey: Freedom of the Press 2016*, Freedom House (2016), <https://freedomhouse.org/report/freedom-press/2016/turkey>.

71. *Id.*

72. TCA, *supra* note 3, art. 90 (“International agreements duly put into effect have the force of law . . . . In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”).

73. International Covenant on Civil and Political Rights, art. 19.

Rights (UDHR) deals with freedom of expression and states that “this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.”<sup>74</sup> Finally, the European Convention on Human Rights (ECHR) Article 10 states that the freedom of expression includes “freedom to . . . receive and impart information and ideas without interference by public authority and regardless of frontier.”<sup>75</sup>

### C. *Press Freedom Under the AKP*

Press freedom in Turkey has experienced periods of both subtle improvement and massive diminishment under the AKP. This is best exemplified through the presentation of indicators that human rights groups use to measure the level of press freedom in a country, as shown in the first subpart. The second illustrates the Turkish state’s attacks on the press. The third Subpart focuses on the laws currently being used against the press. These laws will be analyzed in regard to the principle of legality, which will shine light on how press freedom indicators can fluctuate in the absence of any new, significant legislation.

#### 1. Human Rights Indicators on Press Freedom

Generally, press freedom indicators improved in Turkey after the AKP came to power in 2002, peaking around 2005–2007.<sup>76</sup> Since the 2007 election, press freedom in Turkey has been in decline, and, according to some indicators, is drastically decreasing.<sup>77</sup>

A significant press freedom indicator is the jailing of journalists. Committee to Protect Journalists (CPJ) publishes an annual list of the number of

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74. United Nations, Universal Declaration of Human Rights, art. 19, U.N. (1948).

75. Much like Turkey’s domestic commitment to free press, it seems the State is only ostensibly committed to the right internationally. This superficiality is best exemplified through Turkey’s tumultuous relationship with the court created to enforce the ECHR, the European Court of Human Rights (ECtHR). The Court has found Turkey to have violated Article 10 (Freedom of Expression) over 250 times. This number compared to the next closest countries, Austria and France with thirty-four violations each, is extremely high. European Court of Human Rights (2015), [http://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2015\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_1959_2015_ENG.pdf).

76. The 2002–2007 increase in press freedom indicators coincides with the time period before the AKP had abandoned a “rights-based logic” approach to joining the European Union and had yet to abandon Europe and its Institutions as standard bearer of liberal norms.

77. *Journalists in Jail: Archives*, COMMITTEE TO PROTECT JOURNALISTS, <https://cpj.org/imprisoned/2016.php>; Freedom House, *supra* note 70; Reporters Without Borders, *World Press Freedom Index*, REPORTERS WITHOUT BORDERS, <https://rsf.org/en/turkey>; Commissioner for Human Rights, *supra* note 69 (“The Commissioner notes that several reputable international NGOs denounced a worsening of problems relating to freedom of expression in Turkey in recent years. The OSCE Representative on Freedom of the Media also made a series of statements over the same period, deploring severe blows to freedom of expression and media freedom in Turkey.”).

journalists in jail in each country.<sup>78</sup> In 2002, there were thirteen journalists in Turkish prisons; the following year there were only five.<sup>79</sup> Over the next nine years, these low levels continued, with an average of three and a half journalists in jail every year.<sup>80</sup> This number sky rocketed over the 2011–2015 period, showing a six-fold increase in the average number.<sup>81</sup> 2016 was excluded from this average because of its outlier nature. The 81 Journalists in Turkish prisons by December 2016 (five months after the failed coup attempt) propelled CPJ's number of journalists jailed worldwide to its highest level since 1990.<sup>82</sup>

In addition to CPJ's list, Reporters Without Borders and Freedom House have both created indicators to show the level of press freedom within a country. These approaches to measuring press freedom include a combination of the quantitative data of attacks on journalists and a qualitative analysis of the press situation in a country.<sup>83</sup> While the way both indicators rate press freedom might differ from CPJ, the trends are similar.

In 2002, when Reporters Without Borders' "World Press Freedom Index" was first released, Turkey was ranked the ninety-ninth best country regarding press freedom.<sup>84</sup> Four years later, in 2006, Turkey had improved one spot to ninety-eighth.<sup>85</sup> By 2017, Turkey's ranking had dropped fifty-three spots to 155.<sup>86</sup>

78. Committee to Protect Journalists, *supra* note 77.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Turkey's crackdown propels number of journalists in jail worldwide to record high*, COMMITTEE TO PROTECT JOURNALISTS, Dec. 13, 2016, <https://www.cpj.org/reports/2016/12/journalists-jailed-record-high-turkey-crackdown.php>.

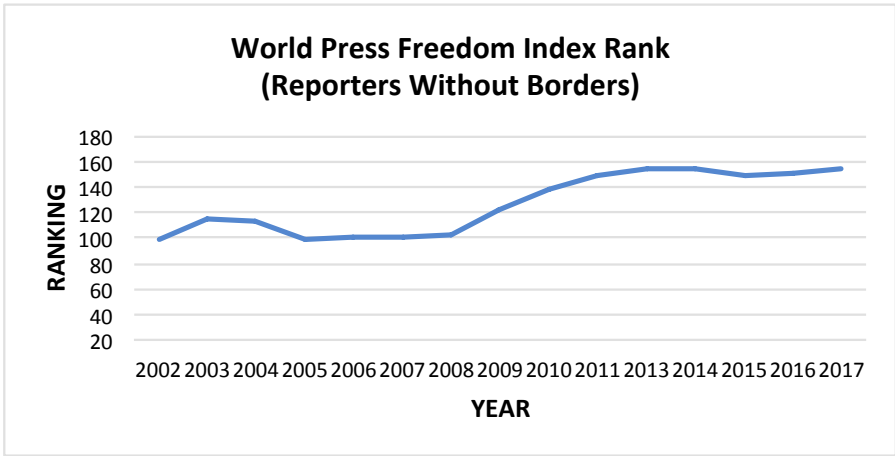
83. Scores for Reporters Without Borders' World Press Freedom Index are "determined by pooling the responses of experts to a questionnaire" devised by the organization. "The criteria evaluated in the questionnaire are pluralism, media independence, media environment and self-censorship, legislative framework, transparency, and the quality of the infrastructure that supports the production of news and information. The countries are then ranked from lowest score to highest, those receiving a lower ranking having a better press freedom situation than the higher scoring countries according to Reporters Without Borders. <https://rsf.org/en/detailed-methodology>. Scores for Freedom House's Freedom of the Press are determined "on the basis of 23 methodological questions divided into three" sub categories: Legal environment, political environment, and economic environment. The questions are answered by ninety analysts. The lower a country's score, the better the press freedom situation is in that country according to Freedom House. <https://freedomhouse.org/report/freedom-press-2016-methodology>.

84. Reporters Without Borders, *supra* note 77.

85. *Id.*

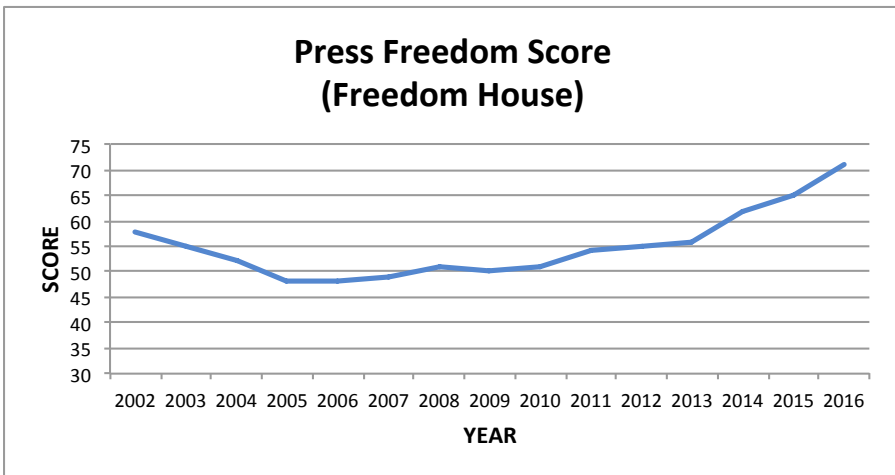
86. *Id.*





**Figure 1: Reporters Without Borders’ World Press Freedom Index, 2002–2017**

In a similar fashion, in 2002, Turkey received a score of 58 according to Freedom House’s “Press Freedom Score” and was labeled *partly free*.<sup>87</sup> By 2006, Turkey’s score had improved by ten points to 48, and the press continued to be considered *partly free*.<sup>88</sup> In its most recent release in 2016, Freedom House assigned Turkey a score of 71 and labeled press in the country as *not free*.<sup>89</sup>



**Figure 2: Freedom House’s Press Freedom Score, 2002–2016**

87. Freedom House, *supra* note 70.

88. *Id.*

89. *Id.*; Freedom House’s Press Freedom Score 2017 was released prior to publication of this Article. In it, Turkey was given a score of 76 and labeled not free. See *Turkey: Freedom of the Press 2017*, FREEDOM HOUSE (2017), <https://freedomhouse.org/report/freedom-press/2017/turkey>.

## 2. Press Suppression in Action

Press freedom indicators, comprised of many factors, create a process by which the findings based on these factors are condensed into a grade or number. The indicators allow outside observers to gauge the press freedom situation in a country from afar; creating a method by which countries press scores can be viewed comparatively. Although these indicators add to our collective understanding of press in a country, the importance of individual actions by states, including their symbolic significance, should not be understated. Acts by the Turkish government while under AKP rule help supplement the picture that press freedom indicators have already begun to paint. Can Dündar, Turkey's most well-known journalist who now lives in a quasi-self-imposed state of exile, astutely described the state of press freedom, "Turkey has never been a paradise for journalists, but of course, not a hell like this."<sup>90</sup> Unbeknownst to Dündar back in May of 2016, hell is not comprised of only a single level, and in the coming months the press in his beloved country was about to begin a rapid descent to its core.

Dündar's perspective gained a prominent backer in the European Union when Turkey and the EU restarted accession talks during the beginning of the AKP's rule.<sup>91</sup> While Turkey's accession to the EU has been marred by many issues, the requirement that press freedom be improved has been omnipresent.<sup>92</sup> Originally, an ostensive commitment by the AKP to fulfill the Copenhagen Criteria resulted in an improvement in the press freedom situation in the country. But even during this golden age, there were still significant transgressions. Hrant Dink's prosecution under Article 301 for insulting the Turkish state by claiming the Turks committed genocide vis-à-vis the Armenians in World War I, is one such example.<sup>93</sup> The power that lies in this type of

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90. Kareem Shaheen, *Turkish journalists accuse Erdoğan of media witch-hunt*, THE GUARDIAN, May 2, 2016, <https://www.theguardian.com/world/2016/may/02/turkish-journalists-accuse-Erdoğan-of-media-witch-hunt>.

91. Negotiating Framework: Principles governing the negotiations, E.U., Oct 3, 2005, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/turkey/st20002\\_05\\_tr\\_framedoc\\_en.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/turkey/st20002_05_tr_framedoc_en.pdf) ("The union expects Turkey to sustain the process of reform and to work towards further improvement in the respect of principles of liberty, democracy, the rule of law and respect for human right and fundamental freedoms . . . . To consolidate and broaden legislation and implementation measures specifically in relation to . . . freedom of expression.").

92. *Turkey 2015 Report: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Enlargement Strategy*, EUR. COMM'N, Oct 11, 2015, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2015/20151110\\_report\\_turkey.pdf#page=6](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_turkey.pdf#page=6) ("The country has reached some level of preparation on respect for freedom of expression."); *Turkey: Freedom of the Press 2012*, Freedom House(2017), <https://freedomhouse.org/report/freedom-press/2012/turkey> ("The restrictive penal code continued to overshadow positive reforms that had been implemented as part of the country's bid for European Union Membership.").

93. Reporters Without Borders, *Armenian editor could face new prosecution for*

prosecution includes the resultant condemnation in the minds of the masses. This power was on full display after Dink's state-sponsored denunciation in 2007, as his killer triumphantly announced, "I shot the infidel!"<sup>94</sup>

As the years passed after Dink's murder, as outlined *supra*, the situation in Turkey steadily worsened. From 2007 onwards, there were serious violations of press freedom. These included highly politicized fines against the Dogan Group, one of the country's major media companies, and the apparent media censorship that took place during the 2013 Gezi Park protests.<sup>95</sup> While these events and others were significant, none better exemplifies the re-intensification of press suppression before the coup attempt than the case against Can Dündar and Erdem Gul, in their respective roles as Editor-in-Chief and Ankara Bureau Chief of the *Cumhuriyet*.<sup>96</sup>

One of the oldest newspapers in Turkey, the *Cumhuriyet* has long been associated with secular order in the country, which helps explain its position as an opposition paper under the current regime.<sup>97</sup> In 2015, the paper published an article describing the interception by Turkish police of a convoy stocked with weapons near the Syrian border.<sup>98</sup> A video that accompanied the article showed police uncovering weapons hidden below medicine boxes in

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*referring to Armenian Genocide*, REPORTERS WITHOUT BORDERS, July 19, 2006, <https://rsf.org/en/news/armenian-editor-could-face-new-prosecution-referring-armenian-genocide>.

94. Garin K. Hovannisian, *In standing up for the truth, Hrant Dink no longer stands alone*, THE CHRISTIAN SCIENCE MONITOR, Feb. 5, 2007, <https://www.csmonitor.com/2007/0205/p09s02-coop.html> ("... video footage shows Turkish security officers giving Samast a hero's treatment as they posed with him in front of a Turkish flag shortly after his arrest."); *Eight suspects arrested in murder case of Turkish-Armenian journalist Dink*, HURRIYET DAILY NEWS, Mar. 29, 2017, <http://www.hurriyetdailynews.com/eight-suspects-arrested-in-murder-case-of-turkish-armenian-journalist-dink-111367> ("... the Istanbul Chief Public Prosecutor's Office's Terror and Organized Crime Bureau issued warrants for the footage published on Jan. 20, 2017, which shows Samast in front of a saying by Mustafa Kemal Ataturk, the founder of modern Turkey. 'The homeland is holy, it can't be left to its destiny,' reads the saying by Ataturk.").

95. *Turkey: Freedom of the Press 2011*, Freedom House, <https://freedomhouse.org/report/freedom-press/2011/turkey> ("A tax authority controlled by the Finance Ministry fined one of the country's major media companies, the Dogan Group, 826 million lira (US\$537 million) in February and 3.7 billion lira (US\$2.4 billion) in September for purported tax evasion. The Dogan Group has consistently reported on the ruling party's shortcomings and involvement in an Islamic charity scandal in 2008, and the tax case was widely viewed as politicized."); *Turkey: Freedom of the Press 2014*, Freedom House, <https://freedomhouse.org/report/freedom-press/2014/turkey> ("Journalists were harassed and assaulted while attempting to cover the Gezi Park protests that broke out in Istanbul in May, and dozens were fired or forced to resign in response to their reporting on the demonstrations.").

96. *Turkey jails Cumhuriyet journalists Can Dündar and Erdem Gul*, BBC, May 6, 2016, <http://www.bbc.com/news/world-europe-36233282>.

97. Shaheen, *supra* note 9090 ("They want to silence *Cumhuriyet* because it is not the only newspaper that isn't a party organ. They're trying to silence that last remaining castle, and the rule of law is in the deep freezer.").

98. BBC, *supra* note 96.

the intercepted vehicles.<sup>99</sup> The article alleged that Turkey's National Intelligence Organization (MIT) was responsible for deploying the convoy and the weapons, with the aim of bringing them across the border to Syria.<sup>100</sup> Almost immediately, Erdoğan announced on live television, "The individual who has reported this as an exclusive story will pay a high price for this. I will not let this go."<sup>101</sup> Soon thereafter, Dündar and Gul were arrested and kept in pre-trial detention for 92 days until the constitutional court ruled they had to be released pending trial.<sup>102</sup>

The charges against the men amounted to espionage and carried with them a potential life sentence, but the two were eventually convicted of the lesser charge of revealing state secrets.<sup>103</sup> Subsequently, Gul was sentenced to five years, while Dündar was sentenced to just under six years.<sup>104</sup> These sentences were not just an attack on the *Cumhuriyet* or the two individuals, but instead an affront on journalism as a profession in Turkey. The two men had been arrested, kept in pre-trial detention for 92 days, and then convicted of a crime, simply for doing their job. Recognizing the hopelessness of his situation following both his sentencing and the coup attempt, Can Dündar went into exile, claiming he would not return because, "To trust such a judiciary would be like putting one's head under the guillotine."<sup>105</sup> The implementation of the state of emergency and the subsequent legal cases brought against journalists add credence to Dündar's assertion.

Following the coup attempt, the AKP no longer attempted to cloak their war on the press with any semblance of secrecy; it made its intentions clear

99. *Id.*

100. *Id.*

101. *Turkey's Erdoğan vows to punish journalists behind Syria Trucks video*, REUTERS (June 1, 2015), <http://uk.reuters.com/article/uk-mideast-crisis-turkey-arms/turkeys-Erdogan-vows-to-punish-journalist-behind-syria-trucks-video-idUKKBN0OH1UQ20150601>; In two interviews with Bloomberg Erdoğan has made his position on jailing journalists quiet clear, stating in one "Do media members have some sort of special feature that they cannot commit a crime?" John Micklethwait, *Turkey's Erdoğan on U.S. Relations, Fethullah Gulen*, YOUTUBE, Sept. 23, 2016, [https://www.youtube.com/watch?v=-o7vP\\_M3OFQ](https://www.youtube.com/watch?v=-o7vP_M3OFQ) and in another, "Most of those you say are in prison aren't journalists most of them are terrorists, (need this interview site) most of them have had their name involved in many bombing incidents, some of them have been involved in robbery, some of them have been caught robbing ATMs, there are many of those, so saying I'm a journalist doesn't make you a journalist." *Erdoğan Says Most Jailed Journalists are Terrorists*, YOUTUBE, Sept 21, 2017, <https://www.bloomberg.com/news/videos/2017-09-21/Erdoğan-says-most-jailed-journalists-are-terrorists-video>.

102. David Kaye, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey*, U.N. HUMAN RIGHTS COUNCIL, June 7, 2017, [https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session35/documents/a\\_hrc\\_35\\_22\\_add\\_3\\_e.docx](https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session35/documents/a_hrc_35_22_add_3_e.docx).

103. BBC, *supra* note 96.

104. *Id.*

105. The Guardian, *Can Dündar announces he is stepping down as editor of Turkish paper*, THE GUARDIAN, August 15, 2016, <https://www.theguardian.com/world/2016/aug/15/turkey-can-Dundar-stepping-down-editor-opposition-paper-cumhuriyet>.

with the publication of each subsequent decree. As David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression from the United Nations, stated in his June report on Turkey, “They (the laws preceding the coup attempt and those measures taken after it) have established one of the worst environments for freedom of expression in Turkey in decades, if not one that is unprecedented in its modern history.”<sup>106</sup> Since July 2016, over 100 media outlets have closed, over 231 journalists have been arrested, almost 10,000 journalists and media workers have been fired, and nearly 800 press cards have been revoked.<sup>107</sup> The differences between the pre and post-coup attempt periods in Turkey are the impunity and lack of humility which now characterize the AKP’s brutal attack on press freedom.

Previously, to bring charges against a journalist for being critical of the AKP or supportive of a group the AKP had labeled as a terrorist organization, the prosecutor’s office had to identify an overt act taken by that journalist. Following the coup attempt, the coup attempt itself has become that perpetually-alluded overt act. Now, acts that had previously gone unpunished because of their lack of criminal nature have been criminalized. For example, the case against Turkish journalist Ahmet Altan and his academic brother Mehmet breached any previously-established boundary of the ridiculous. On September 10, 2016 Ahmet and Mehmet Altan were arrested and accused of relaying “subliminal messages” in support of the coup.<sup>108</sup> Turkish prosecutors claimed the pair had been sending out coded messages to coup plotters during a panel discussion on television the night before the coup attempt took place.<sup>109</sup> Ahmet Altan later asserted that the charge was about consciousness and made as much sense as saying the two could “move mountains with the power of magnetism.”<sup>110</sup>

In addition to the charge of sending subliminal messages, Turkish prosecutors also brought a case based on articles written before the coup attempt that they claimed helped “legitimize” it.<sup>111</sup> The target of this charge was a familiar

106. Kaye, *supra* note 102.

107. *Id.*

108. Reuters, *Turkish journalists detained over ‘subliminal coup messages,’* REUTERS, Sep. 23, 2016, <http://www.reuters.com/article/us-turkey-security-journalists/turkish-journalist-detained-over-subliminal-coup-messages-media-idUSKCN11T1N8>; Raf Sanchez & Burhan Yuksekkas, *Turkish brothers go on trial for ‘sending subliminal messages’ before coup attempt,* THE TELEGRAPH, June 19, 2017, <http://www.telegraph.co.uk/news/2017/06/19/turkish-brothers-go-trial-sending-subliminal-messages-coup-attempt>.

109. Reuters, *supra* note 108; Kaye, *supra* note 102.

110. Sanchez & Yuksekkas *supra* note 108; Silencing Turkey’s Media, *supra* note 19, at 21 (“As in most recent cases against journalists the prosecutor’s office has presented no compelling evidence of any criminal wrongdoing by Altan.”).

111. The Guardian, *Turkey detains editor and staff at opposition Cumhuriyet newspaper,* THE GUARDIAN, Oct. 31, 2016, <https://www.theguardian.com/world/2016/oct/31/turkey-detains-editor-and-staff-at-opposition-cumhuriyet-newspaper>.

one, the *Cumhuriyet*.<sup>112</sup> On October 31, 2016, twelve staff members, including Editor-in-Chief Mrat Sabuncu, were arrested.<sup>113</sup> The Istanbul Prosecutor's Office claimed that the material used as evidence for the arrests, previous articles in the paper, allegedly justified the coup attempt.<sup>114</sup> The arrested now stand accused of committing crimes on behalf of both FETÖ and the PKK, two organizations diametrically opposed to each other.<sup>115</sup>

These two cases lack coherent or viable charges, but the importance of the rule of law seems to have been lost in Turkey. Before the coup attempt, the AKP still insisted on some level of formality in its legal cases against the press. After June 2016, the shackles of formal presentation seem to be off, allowing the AKP to act with complete impunity, the danger of which is enhanced in the face of the party's complete lack of humility.

### 3. Current Laws Used to Curb Press Freedom

The dramatic fluctuation in press freedom shown by the indicators above and the increasing absurdity of the charges brought against the press, suggest that the government has passed new restrictive legislation that lead to the deterioration of press freedom, but that is not the case in Turkey. No recent domestic legislation passed has significantly contributed to the downward spiral of press freedom in the country between 2007–2016. Instead, this large fluctuation in press freedom without any overt change in legislation suggests that the legislation currently in place is written in a manner that violates the international principle of legality.

Generally speaking, the international principle of legality is the idea that conduct can constitute a crime and be penalized only through the law.<sup>116</sup> The International Committee of the Red Cross states this rule as, “[n]o one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed.”<sup>117</sup> The European Court of Human Rights (ECtHR) determined that this principle requires a law be clearly defined, to ensure that “the individual can know from the wording of the relevant

112. *Id.*

113. Al Jazeera, *Turkey detains top staff of Cumhuriyet daily*, AL JAZEERA, Nov. 1, 2016, <http://www.aljazeera.com/news/2016/11/turkey-detains-top-staff-opposition-cumhuriyet-daily-161101043111174.html>; The Guardian, *supra* note 111 (“Police had warrants for 16 staff members . . .”).

114. Kaye, *supra* note 102 (“The Istanbul Prosecutor’s Office justified the arrests by referring to material published by the newspaper shortly before the coup, which allegedly justified the coup.”).

115. Kareem Shaheen & Safak Timur, *We became the news; staff at Turkey’s Cumhuriyet speak out over arrests*, THE GUARDIAN, Nov 17, 2016, <https://www.theguardian.com/world/2016/nov/17/we-became-the-news-staff-at-turkeys-cumhuriyet-speak-out-over-arrests>.

116. Customary IHL: Rule 101. The Principle of Legality, ICRC, available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter32\\_rule101](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule101).

117. *Id.*

provision and, if need be, with the assistance of the Court's interpretation of it, what acts and omissions will make him liable."<sup>118</sup> The Inter-American Court of Human Rights has opined that the principle of legality stands for the proposition that laws proscribing crimes must be written in "precise and unambiguous language that narrowly define[] the punishable offense."<sup>119</sup> The principle of legality ensures that individuals are given notice of the type of behavior that is classified as criminal, while at the same time limiting the power of authorities to use vague laws to arbitrarily criminalize individuals instead of acts.<sup>120</sup>

Currently Articles 301, 314, 216 and the Anti-Terror law are the main domestic laws being used to suppress the press in Turkey.<sup>121</sup> As previously mentioned, none of the above laws were passed at a time that can help explain the downward trend in press freedom outlined in Subpart II.C.1. A closer analysis of these laws, through the lens of the principle of legality, helps illustrate how these laws can be abused to crack down on the press at different levels in different times.

Article 301, due to its unique nature, is the most well-known law that is used to suppress the press in Turkey.<sup>122</sup> While the Article originally outlawed insulting "Turkishness," it now outlaws insulting "the Turkish nation" and carries with it a sentence of imprisonment "for a term of six-months to two years."<sup>123</sup> The wording of the law does not give much indication of what exactly it is criminalizing, but it has been used to punish journalists for commenting on an array of topics.<sup>124</sup> Specifically, journalists who report on Cyprus, criticize

118. European Court of Human Rights, *Kokkinakis v. Greece*.

119. Inter-American Court of Human rights, *Castillo Petruzzi and Others case*.

120. Inter-American Court of Human rights, *Castillo Petruzzi and Others case*.

121. Freedom Press, Turkey: Freedom of the Press 2016, FREEDOM HOUSE (2016), <https://freedomhouse.org/report/freedom-press/2016/turkey>.

122. Turkey's most famous author, Nobel laureate Orhan Pamuk, was charged under Article 301. Although the charges were eventually dropped, Pamuk was originally charged with violating the Article in a Swiss interview where he said "30,000 Kurds and 1 million Armenians were killed in these lands, and nobody dares to talk about it." Orhan Pamuk, *Charges dropped against novelists accused of insulting "Tukishness,"* N.Y. TIMES, Jan. 23, 2006, <http://www.nytimes.com/2006/01/23/world/europe/charges-dropped-against-novelist-accused-of-insulting.html>.

123. Penal Code Article 301 (Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State); Article 301 has seen other improvements over time, such as requiring prosecutions brought under the Article be subjected to the authorization of the Minister of Justice and no longer regarding expressions aimed at criticism as criminal. However, statistical data supplied to the committee of ministers, the ECHR body in charge of enforcement of rulings, indicated a continuous trend of commencing investigations under Article 301. The Committee also invoked the ECtHR ruling in *Altug Taner Akcam's* case to make the point that approval of prosecution by the Minister of Justice was not a sufficient safeguard because political change could affect the way the Article was interpreted. Communication from Committee of Ministers concerning the Incal group of cases against Turkey (Application No. 22678/93), Secretariat of the Committee of Ministers.

124. Freedom House, *supra* note 121.



security forces, or discuss the existence of the Armenian genocide have been targeted with Article 301.<sup>125</sup>

Article 314 criminalizes the “establishment, command or membership of an armed organization.”<sup>126</sup> This Article is particularly worrying for press freedom because of the third paragraph, which states: “[o]ther provisions relating to the forming of an organization in order to commit offences shall also be applicable to this offence.”<sup>127</sup> In recent rulings, this Article has been used in conjunction with Article 220, which criminalizes the making of propaganda for organizations which are established to commit offences and increases the penalty if the crime is committed through “press or broadcasting.”<sup>128</sup> The Article has specifically been used to prosecute journalists associated with the Kurds and the political left.<sup>129</sup>

Article 216 is intended to ban both provoking the public to “hatred” or “hostility” against another section of the public and “degrading” a section of the public on protected grounds.<sup>130</sup> Once again, this Article uses extremely vague language, affording authorities broad powers to determine the meaning of terms like “hatred” and “hostility,” putting the Article at risk of arbitrary enforcement.<sup>131</sup> While the stated intention of the Article is to criminalize hate speech, its vague language allows it to target speech deemed protectable under international law.<sup>132</sup> This potential was realized consistently pre-2006 with Article 312, the article that 216 replaced in the Turkish penal code.<sup>133</sup> Although Article 216 is worded differently, according to the Committee of Ministers, the body charged with monitoring the implementation of ECtHR rulings by a state, the contents of both Articles are the same.<sup>134</sup> In a series of ECtHR rulings, the Court found Turkish prosecutions under Article 312 were brought on the basis of protected speech that constituted harsh criticism of public policy and not against unprotected speech that incited hatred or violence.<sup>135</sup> Much

125. *Id.*

126. European Commission for the Democracy Through Law (Venice Commission), Turkey, opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, Adopted by the Venice Commission at its 106th Plenary Session (Venice, March 11–12, 2016).

127. Penal Code Article 314 (Armed Organisation).

128. Freedom House, *supra* note 121.

129. *Id.*

130. European Commission for Democracy Through Law (Venice Commission), *supra* note 126, at 11.

131. *Id.* at 10.

132. *Id.* at 13 (“The article should not be applied to punish non-violent but harsh criticism of government policies.”).

133. Yavuz, *supra* note 62, at 58.

134. European Commission for Democracy Through Law (Venice Commission), *supra* note 126, at 11 (“these new provisions modified the wording of the old text while keeping its contents intact . . .”).

135. *Id.* at 10 (“The ECtHR has examined many cases of persons criminally convicted under Article 312 of the former Penal Code. In these cases, the ECtHR found violations of Article 10 on account of the convictions of the applicants having published articles or books

like its predecessor, Article 216 has been used to criminalize journalists who advocate or express opinions that contain harsh criticism of public policies, especially in relation to minority rights groups.<sup>136</sup> According to the most recent statistics provided to the international community by Turkey, the number of criminal cases lodged under Article 216 have been on the rise since 2010.<sup>137</sup>

Finally, the Anti-Terror Law from 1991 has been used to prosecute journalists in recent years.<sup>138</sup> The law is especially troubling for the press in two respects. First, it uses vague language to define terrorism:

Article 1 – Any criminal action conducted by one or more persons belonging to an organisation with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing the State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health, is defined as terrorism.

This wording leaves open the possibility that any criminal act committed by someone who is deemed part of an organization which has goals that fit in to the undefinable phrases offered in the above definition, is an act of terror. What exactly is meant by “the aim of changing attributes of the Republic” or “damaging the indivisible unity of the State”? In reality, these phrases are intentionally amorphous, allowing the Articles to be applicable to a wide range of scenarios. Secondly, the law also explicitly targets the press in several respects. In Article 7 of the law, the text includes specific provisions criminalizing the “making of terrorist propaganda” and lists aggravating circumstances as being if the crime is committed through mass media and if the accused individual is an editor-in-chief of a publication.<sup>139</sup> The law also allows for the criminalization of reporters without proving they are a member of a terrorist organization by including the following language, “[p]ersons who, not being a member of a terrorist organisation, commit a crime in the name of the organisation, are also considered as terrorist offenders and shall be punished as members of such organisations.” The vague language and specific sections focusing on the press allow the Anti-Terror Law to be used to punish individuals for being journalists. The Anti-Terror Law sits around like a loaded gun; a journalist is a journalist until they fall out of favor with the state, then they are a terrorist.

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that allegedly incited to hatred or hostility or praised a crime or a criminal. The Court stated that although such articles contained harsh criticism of public policies, they wither did not incite to hatred and violence . . . ”).

136. Freedom House, *supra* note 121.

137. Secretariat General, Communication from Turkey concerning the Incal group of cases against Turkey (Application No. 22678/93), Committee of Ministers (Apr. 27, 2015).

138. Freedom House, *supra* note 121.

139. Freedom House, *supra* note 121.

The common theme in all the legislation above is the failure to comport to the international principle of legality, creating two major issues that are intertwined.<sup>140</sup> The first problem is that members of the press cannot comport their actions to ensure they are acting legally, regardless of whether the Turkish government should be outlawing the speech generally. The second issue is that the language puts authorities in a position where they can arbitrarily apply the law. The texts of the Articles provide very limited guidance and restrictions for those charged with enforcing them. These two issues have not only lead to the direct prosecution and convictions of members of the press, but they have also had an undeniable chilling effect on the media.<sup>141</sup> The failure of the Turkish laws to comport to principle of legality has facilitated the AKP's crackdown on the press. The AKP appears to have pulled back on using these laws from 2002 to 2007, which would explain the improvement in press freedom indicators. Since 2007, an increase in arbitrary application of these vague, amorphous, laws has been the weapon of choice in the AKP's war against the press.<sup>142</sup>

#### 4. Media Consolidation

While the threat to press freedom posed by Erdoğan and the AKP through the use of restrictive legislation remains stronger than ever, there are also powers within the media itself that are working towards curbing the ability of the sector to fulfil its proper role in a democracy. Media in Turkey is currently plagued by two major issues: consolidation and clientelism.<sup>143</sup> Consolidation of media ownership in of itself is dangerous, limiting the number of opinions being brought to the public because the sources of that information are few, but when these sources are also all beholden to the government for the success of the other business they have interests in, aka clientelism, the media situation can become dire.

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140. See Commissioner for Human Rights, *supra* note 55 (“Considering the failure of past amendments of these provisions (included those discussed in this Note and additional provisions) to prevent new human rights violations, the Commissioner considers that many of these provisions need to be simply abrogated.”).

141. European Commission for Democracy Through Law (Venice Commission), *supra* note 126, at 30 (“The Commission underlines that prosecution of individuals and convictions in particular by lower courts (with Article 216, Article 299, Article 301 and Article 314), which have a chilling effect on the freedom of expression, must cease.”); Freedom House, *supra* note 121 (“Very few of those prosecuted under Article 301 receive convictions, but the trials are time-consuming and expensive, and the law exerts a chilling effect on speech.”).

142. Yaman Akdeniz & Kerem Altıparmak, *Turkey: Freedom of Expression in Jeopardy*, English PEN at 24–25 (2018) (“Criminal law has now become the primary instrument for silencing speech.”).

143. Ethical Journalism Network, *Censorship in the Park: Turkish Media trapped by Politics and Corruption*, ETHICAL JOURNALISM NETWORK (2013), <https://ethicaljournalismnetwork.org/resources/publications/censorship-in-the-park>; Reporters Without Borders, *Media Ownership Monitor: Turkey*, Bianet and Reporters Without Borders, <https://turkey.mom-rsf.org/en>.

A typical Turkish media company today will be an arm of a larger holding company with interests in multiple other sectors of business, including businesses which bid for public tenders directly from the government.<sup>144</sup> The majority of the owners in the media sector are not shy about where their political loyalties lie, whether that means having Erdoğan as a wedding witness or naming a football (soccer) stadium after him, these owners tend to be unabashedly pro-AKP.<sup>145</sup> The Dogus Group and Demiroren Holding are two illustrative examples of large business conglomerates with interests in the media and close ties to the current government.

The Dogus Group has been involved in the media sector in Turkey since the late 1970s.<sup>146</sup> The group owns eight TV stations, four radio stations, eight news portals, eight magazines, and a publishing house.<sup>147</sup> In addition to media interests, the group has invested in the automobile industry, banking, construction and energy, and other industries.<sup>148</sup> The Dogus Group has won a number of public tenders in recent years, including a major metro construction project in Istanbul and the rights to operate the Galatport area in Karakoy for thirty years.<sup>149</sup>

The second group that exemplifies the typical business conglomerate involved in the Turkish media is Demiroren Holding. The group only entered the media sector in 2011 when it purchased a controlling interest in the company that runs the *Milliyet* and *Vatan* newspapers.<sup>150</sup> Previously, the group had focused on other industries such as gas, construction and education.<sup>151</sup> The group's loyalty to Erdoğan was made obvious following the release of a phone call recording that took place between the owner of the holding group, Erdoğan Demiroren (Demiroren), and Erdoğan.<sup>152</sup> In the recording Erdoğan is heard berating Demiroren over the publishing of a leaked document in a

144. Asli Tunc, *Media integrity report: Media ownership and Financing in Turkey*, S. E. EUR. MEDIA OBSERVATORY 1, 15 (2015) (“A significant number of media owners in Turkey belong to industrial conglomerates with interests that go beyond freedom of press and opinion—in addition to the close relationships between the government and some of these industrial conglomerates.”); Ethical Journalism Network, *supra* note 143.

145. Reporters Without Borders, *supra* note 143.

146. *Id.*

147. *Id.*

148. Ethical Journalism Network, *supra* note 143.

149. *Dogus Group Secures €1 billion financing for Istanbul's new luxury Galatport project in Turkey*, TORNOS NEWS, Sept. 1, 2016, <http://www.tornosnews.gr/en/tourism-businesses/new-investments/18154-turkish-dogus-group-secures-%E2%82%AC1-billion-financing-for-istanbul%E2%80%99s-new-luxury-galatport-project.html>; *Erdoğan opens first driverless metro line in Istanbul*, METRO REPORT, Dec. 15, 2017, <http://www.metro-report.com/news/single-view/view/Erdoğan-opens-first-driverless-metro-line-in-istanbul.html>.

150. Reporters Without Borders, *supra* note 143.

151. Ethical Journalism Network, *supra* note 143.

152. *New leaked tape reveals PM Erdoğan reducing media boss to tears over report*, HURRIYET DAILY NEWS, March 7, 2014, <http://www.hurriyetdailynews.com/new-leaked-tape-reveals-pm-erdogan-reducing-media-boss-to-tears-over-report-63338>.

publication Demiroren Holding owned. Demiroren is brought to tears and tells Erdoğan that the person who published the leaked document will be outed.<sup>153</sup> Also, in the tape Demiroren questions why he ever entered the media business, but that sentiment seems to have fallen by the wayside as the group has drastically increased its investment in the sector recently in a way that undoubtedly pleases Erdoğan himself.<sup>154</sup>

Although obviously already extremely problematic, the consolidation of Turkey's mass media in the hands of Erdoğan loyalists was exacerbated in early 2018 when Dogan Holding sold its media arm, Dogan Media Company, to Demiroren Holding.<sup>155</sup> Dogan Media Company had at one time dominated the Turkish media landscape.<sup>156</sup> The most prominent asset in the purchase was the *Hurriyet* newspaper, a staple of the press in Turkey since the establishment of the country's multiparty system that valued its commitment to the type of secularism that the country was founded on.<sup>157</sup> The paper, and Dogan Media Companies other assets, now fall into the hands of a pro-government conglomerate, putting their impartiality, and any the media had left generally, at risk.

This is not to say that the Dogan Media Company was hampering Erdoğan's influence over the media in any serious way, but the sale is symbolic in the sense that it is representative of Erdoğan's complete triumph over the sector. Dogan Media Company held a special role in Turkey over the past decade as one of the only major conglomerates with a media branch that was still not willing to accede to the government and become simply a mouth piece for its agenda.<sup>158</sup> In fact, over the years the *Hurriyet* newspaper had landed the company in hot water with Erdoğan, at one point resulting in what was widely seen as a retaliatory multibillion-dollar tax fine in 2009.<sup>159</sup> The sale of the Dogan Media Company represents that the battle between the company's

153. *Id.*

154. *Id.*

155. Ercan Ersoy, Kerim Karakya & Tugce Ozsoy, *Turkey Media Baron to Sell After Long Battle with Erdoğan*, BLOOMBERG, March 22, 2018, <https://www.bloomberg.com/news/articles/2018-03-22/dogan-in-talks-to-sell-turkish-media-assets-to-demiroren-group>.

156. *Id.*

157. *Editor-in-chief Fikret Bila writes on Hurriyet's sale process*, HURRIYET DAILY NEWS, March 26, 2018, <http://www.hurriyetdailynews.com/editor-in-chief-fikret-bila-writes-on-hurriyets-sale-process-129316>.

158. Dorian Jones, *Turkey's Ruling Party Extends Control Over Media*, VOA NEWS, March 23, 2018, <https://www.voanews.com/a/turkeys-ruling-party-extends-control-over-media/4312760.html>. (“With this sale, there is nothing left in the mainstream media for a guy or girl out there who is seeking independent information, that period is now over in Turkish media.”); New York Times, *Turkish Media Group Bought by Pro-government Conglomerate*, N.Y. TIMES, March 21, 2018, <https://www.nytimes.com/2018/03/21/world/europe/turkey-media-Erdoğan-dogan.html> (“The process of gathering the Turkish media industry in one hand according to the Putin model is completed. By this huge takeover including the *Hurriyet*, Turkish mass media industry comes under the direct political control of President Erdoğan.”).

159. Jones, *supra* note158.

owner, Aydın Dogan, and Erdoğan is over. Erdoğan once stated that Dogan Media Company represented “old Turkey.”<sup>160</sup> In the Dogan Groups absence one thing is abundantly clear, now all the media organizations simply represent Erdoğan’s Turkey.

While different than the direct suppression of the press through archaic legislation, media consolidation and clientelism has also played a major role in the decline of press freedom seen in Turkey.<sup>161</sup> When both of these forces work in conjunction with another, they will eventually create an environment where Erdoğan will have be able to loosen his overt strangle hold over the press and simply sit back and allow *his* media to operate for him. The business who owns the paper should not also be bidding for projects commissioned by the government.<sup>162</sup> The media in Turkey is becoming Erdoğan’s: free of critics, full of praise.

### CONCLUSION

Most lay people understand the importance of a free press, but academics are usually left to sort out its complexities. When the free press plays its role correctly, it fills a vital void in democracy as the purveyor of truth. Checking the elected branches of government though the dissemination of information to the masses is how a free press functions, but what happens in the absence of a free press? The idea of speech being chilled, or the blurring of falsity and truth are results of press suppression, but they are intangible. People cannot always see the consequences of a suppressed press before their eyes, making the supposed result easy to dismiss or at least creating an environment where many fail to immediately act to ameliorate the potential consequences. Unfortunately, if the press in a country is not allowed to function freely for long enough, the results will start to manifest in more obvious forms and start to threaten the future of democracy itself.

Currently, the more tangible results of the lack of a free press in Turkey are beginning to take shape. In April of 2017, the AKP pushed through constitutional reforms via referendum that created a quasi-presidential style government.<sup>163</sup> The new reforms align the executive and legislative branch by

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160. Ersoy, Karakya & Ozsoy, *supra* note 155.

161. Ethical Journalism Network, *supra* note 143; Tunç, *supra* note 144 (“The most substantive problem involves the economic interests of media owners . . . Media ownership and financing are at the core off Turkey’s freedom of press problems.”).

162. Ethical Journalism Network, *supra* note 143 (“Companies with interests across economic sectors often rely on government contracts or regulation, leading to situations where they are asked or decide to apply pressure or limit political criticism, which could jeopardize those interests or contracts.”).

163. European Commission for Democracy Through Law (Venice Commission), Turkey, Opinion on the amendments to the constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017, see European Commission, *supra* note 126 at 4; The referendum was very hotly contested. According to Anadolu news, a state-run news agency, the yes vote received

holding elections simultaneously and allowing the president to be both head of her party in the legislature and head of the executive branch.<sup>164</sup> The amendments will also weaken the judiciary by giving the president more control over the appointment power of judges.<sup>165</sup> The changes are so drastic that the Venice Commission, an advisory body of the Council of Europe composed of independent experts in constitutional law, stated in a report that they “wish[] to stress the dangers of degeneration of the proposed system towards an authoritarian and personal regime.”<sup>166</sup>

Although the reforms had been approved via referendum, the bulk of the constitutional changes were not slated to be implemented until after the next simultaneous president and Turkish Grand national Assembly elections in 2019.<sup>167</sup> With this in mind, and with what some suggest was an eye towards a teetering economy, the AKP called for snap elections more than a year before elections were officially scheduled.<sup>168</sup> The results of the election indicated that Erdoğan retained his role as President, but would now be afforded the powers he had worked so hard to consolidate in the office.<sup>169</sup>

While Erdoğan’s election to President does not constitute another step upon Turkey’s potential devolution towards an authoritarian regime per se, the amendments to the constitution certainly do.<sup>170</sup> The absence of a free press to play its role as the watchdog of democracy during both the referendum and election process is troubling. When analyzing both happenings it is important that one ask themselves some key questions. Why, at the pinnacle of its war against the press, was the AKP pushing through arguably the most important referendum in the history of Turkish democracy instead of delaying the vote

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51.3 percent compared to 48.7 percent for the no vote, with a turnout exceeding 80 percent. See Kareem Shaheen, *Erdoğan clinches victory in Turkish constitutional referendum*, THE GUARDIAN, April 16, 2017, <https://www.theguardian.com/world/2017/apr/16/Erdoğan-claims-victory-in-turkish-constitutional-referendum>.

164. *Id.* at 23.

165. *Id.* at 26.

166. *Id.* at 30.

167. Serap Yazici, *Constitutional Amendments of 2017: Transition to Presidentialism in Turkey*, N.Y.U. HAUSER GLOBAL LAW SCHOOL PROGRAM (2017), [http://www.nyulawglobal.org/globalex/2017\\_Turkey\\_Constitution\\_Amendments.html#Conclusion](http://www.nyulawglobal.org/globalex/2017_Turkey_Constitution_Amendments.html#Conclusion) (“The Results of the amendment will enter into force at the first simultaneous elections of the TGNA and the President of the Republic.”).

168. Carlotta Gall, *Erdoğan’s Victory in Turkey Election Expands His Powers*, N.Y. TIMES, June 24, 2018, <https://www.nytimes.com/2018/06/24/world/europe/turkey-election-Erdoğan.html>; Holly Ellyatt, *Turkey has called a snap election and it’s all about power and a ‘deteriorating’ economy*, CNBC, Apr. 19, 2018, <https://www.cnbc.com/2018/04/19/turkey-called-a-snap-election-and-its-all-about-the-economy.html>.

169. Tuvan Gumrukcu & Nezvati Devranoglu, *Erdoğan Wins Sweeping new powers after Turkish election*, REUTERS, June 24, 2018, <https://uk.reuters.com/article/uk-turkey-election/turkeys-Erdoğan-wins-sweeping-new-powers-after-election-victory-idUKKBN1JJ16T>.

170. Venice Commission, *supra* note 126; It is also important to point out that the constitutional amendments potentially allow Erdoğan to remain as president until 2032. See Gall, *supra* note 168.



until the state of emergency had expired? What kind of information were the citizens of Turkey receiving about the reforms and the potential impact they would have on the future of *their* democracy?<sup>171</sup> Unfortunately, the search for answers to these questions now is largely academic.

As abhorrent as the post-coup press purge has been, the ten years of press suppression preceding it created an environment where such a purge was not only possible, but probable. The current situation in Turkey should teach all nations three lessons. First, write legislation in a way that restricts arbitrary application by the powers that be, because those powers change. Second, work towards eliminating media consolidation and clientelism to the government. Third, and most importantly, fight against suppression of the press in its beginning stages. The people must stand up for a free press, expose those who discredited it for political gain, and preach the importance of objective and unbiased truth in a democracy. If minor infractions are let slide, norms erode, making the situation increasingly more difficult to combat. At some point, like in today's Turkey, it becomes too late to do so.

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171. Gumrukcu & Devranoglu, *supra* note 169 (“The restrictions we have seen on fundamental freedoms (due to the state of emergency) have had an impact on these elections” Ignacio Sanchez Amor, head of the OSCE observer mission.”); Kemal Kirisci & Kutay Onayli, *Turkey's snap elections and the future of Turkish democracy*, BROOKINGS, April 23, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/05/29/does-turkeys-opposition-have-a-chance-at-beating-Erdoğan-akp-in-june> (“The emergency rule imposed after the coup attempt in July 2016 further restricted media freedoms and openness around criticizing the government suffocating the voice of a “no” vote . . . . The public did not have a chance to develop an informed understanding of the proposed amendments to the constitution. Ironically, even the prime minister—a staunch Erdoğan loyalist—remarked that the country never had a chance to discuss properly the proposed amendments.”).

