Written Comments of PEN International
Concerning the Review of the Initial Report of

THE REPUBLIC OF TURKEY

For consideration by the UN Human Rights Committee Country Task Force
at its 106th session (15 October – 2 November 2012), Geneva

September 2012

For more information contact:
Sara Whyatt, PEN International Deputy Director, Writers in Prison Committee Programme Director.
Contact at +44 (0)20 7405 0338 or Sara.Whyatt@pen-international.org
Introduction

1. The PEN International respectfully submits this alternative report for the consideration of the Country Task Force of the UN Human Rights Committee (the Committee) at its 106th session in October to November 2012. We shall be examining the Initial Report of the Turkish Government on the implementation of the International Covenant on Civil and Political Rights (the Covenant), which was submitted to the Committee in March 2011.

2. PEN International celebrates literature and promotes freedom of expression. Founded in 1921, our global community of writers now numbers more than 20,000 and spans more than 100 countries. Our programmes, campaigns, events and publications aim to connect writers, readers and members wherever they are in the world. We are poets, playwrights, essayists, novelists, translators, editors, academics, publishers, journalists and internet writers.

3. In this report, we will not be undertaking a comprehensive analysis of the compliance of the Turkish Government with the Covenant. Given our expertise, this report is restricted to raising concerns about the Turkish Government’s approach to fulfilling its international obligations to protect the right to freedom of expression.

4. We recognise the existence of Turkish legislation safeguarding freedom of expression as highlighted in the Initial Report. We also recognise the Turkish Government’s efforts to improve its record in this area, evidenced by references to progress in the Initial Report and various provisions in the Third Judicial Reform Package that have been enacted since then. However, we respectfully submit that the Turkish Government has failed to fully implement its obligations under Article 19 of the Covenant through its use of the Anti-Terror Law (including Praising Offences and Offenders); continued implementation of Article 301 of the Turkish Penal Code; failure to protect the journalistic privilege not to disclose information sources; and enforcement of Defamation, Religious Defamation, Internet Censorship and Obscenity laws. These issues are explored in more detail in the discussion below.

5. We believe that the review of the Initial Report offers an opportunity to highlight some of the most significant issues facing writers and journalists in Turkey. We welcome the opportunity for the Committee to utilise our report in analysing the Government’s submissions and in recommending measures required to ensure compliance with the Covenant in the future.

Discussion

6. The most serious development in Turkey in recent years has been the increase in the use of the Anti-Terror Law to prosecute journalists, academics, writers and publishers with no material links to terrorism or the plotting of violent acts. The targets of such cases have almost entirely been the purveyors of dissent and minority views; Kurdish and pro-Kurdish intellectuals (amongst them publisher Ragıp Zarakolu, academic Büşra Ersanli, translator Ayşe Berktay, human rights lawyer Muharrem Erbey and journalist Zeynep Kuray) and investigative journalists (such as Ahmet Şık and Nedim Şener) writing about an alleged Islamist presence in the police and judiciary. The amenability of Turkish courts to enforce lengthy pre-trial detention (ranging from a few months to 6 years) in maximum security prisons in such cases, the complaints of detainees regarding vague
charges (often merely citing ‘the Anti-Terror Law’) and an inability to access the evidence laid out against them (which is gathered in the months after their arrest and is usually insubstantive or circumstantial), come together to form a picture of a system that permits **arbitrary arrest and detention** against its opponents. Paragraph 23 of the Committee’s ‘General Comment No. 34’ (regarding Article 19 and which is applicable to all countries) discusses the use of arbitrary arrest as an attack “aimed at silencing those exercising their right to freedom of expression”, recognising that journalists and persons who engage in the gathering and analysis of information on human rights issues “are frequently subjected to such... attacks because of their activities”. The outdated and problematic Anti-Terror Law urgently needs a complete overhaul, and while recent legislative provisions in the 3rd Judicial Reform Package have made headway in reducing overly harsh sentencing and time spent in pre-trial detention, conditions for pursuing Anti-Terror cases remain excessively broad.

7. Investigative journalists being prosecuted under the Anti-Terror Law mentioned above, such as Ahmet Şık in his public defence statement,¹ have stated that their **journalistic privilege not to disclose information sources** (explicitly set out in Paragraph 45 of the Committee’s Gen. Com. No. 34) has been compromised over the course of their trials despite the supposed protection of these sources elsewhere in Turkish Law.

8. **Obscenity** is a key issue affecting translators and publishers of (especially foreign) literature in Turkey. While it is now very rare for books to be banned or translators/publishers to be convicted on grounds of obscenity, a litany of drawn-out and draining nuisance cases continue to plague individuals and publishing houses involved in the publication of risqué works. Recently, Temporary Article 1 of Law 6352 has come into effect ‘suspending’ obscenity cases for the next three years, after which point they’ll be dropped if no further ‘obscenity’ offences are committed in the meantime. This measure has been described as “the sword of Damocles” by Sel Publishing House (whose trial regarding the William S. Burroughs novel, *The Soft Machine*, has been suspended²) and an intended ‘deterrent’. We appreciate that Turkey is trying to improve its standards in this area of the law but there is a pressing need to put in place revised legislation that offers long-term solutions rather than short-term amnesty-cum-suspended sentences.

9. **Praising offences or offenders** is a broadly defined criminal offence under the Anti-Terror Law. A notable case in this area is that of Irfan Babaoğlu, who was sentenced to 15 months in prison in June 2012 for writing, “we remember them with gratitude and respect” regarding 53 people who committed suicide or were tortured to death during the early 80s in Diyarbakır Prison in Southeast Turkey. We are concerned that the Turkish Law in this area does not comply with the instructions set out by the Committee in Paragraph 46 of Gen. Com No. 34, namely that such measures should “not lead to unnecessary or disproportionate interference with freedom of expression”. Journalists writing about the conflict with the Kurdish separatist PKK in Southeast Turkey have also been subject to such cases, compromising the media’s “crucial role in informing the

¹ [http://bianet.org/files/doc_files/000/000/681/original/Ahmet_%C5%9E%C4%B1k_Savunma.pdf](http://bianet.org/files/doc_files/000/000/681/original/Ahmet_%C5%9E%C4%B1k_Savunma.pdf) [Turkish]

public about acts of terrorism" by penalising legitimate reporting (again referred to in Paragraph 46 of Gen. Com. No. 34).

10. While we recognise Turkey’s successful efforts to reduce the number of Article 301 cases that are brought to trial (covered in Paragraphs 248 and 249 of the state’s Initial Report) and the reduction in the use of this law to penalise historical comment (especially regarding references to an Armenian Genocide), we are concerned that a number of such cases continue to make their way to trial in Turkey and act as a deterrent to freedom of expression. One of the most recent Article 301 cases that has come to our attention is that of Zeynep Kuray; it’s reported that 10 pages of a draft translation of a book detailing mutual historical perceptions of Ottomans and Europeans have been included in the evidence gathered against her due to their ‘anti-Turkish’ content. Even if she is exempted from being tried under Article 301 by the Justice Minister, the fact that such academic material is brought against her as evidence shows that material critical of Turkishness, the Turkish state or its institutions continues to exist as grounds for investigation and attempted prosecution (acting as a deterrent to expressing such views). A filter relying on the political and individual case-related whims of the Justice Minister is patently unsuitable. Article 301 needs to be eliminated root and branch in order to fully comply with Article 19 and the Committee’s comments regarding protection for public institutions set out in Paragraph 38 of ‘Gen. Com. No. 34’.

11. The European Court of Human Rights has in recent years overturned a number of Turkish defamation verdicts for contravening the right to freedom of expression (Article 10 of the European Convention on Human Rights). One of the most notable and recent of these is Tuşalp v Turkey (2012), where the courts overturned a Turkish ruling ordering the columnist Erbil Tuşalp to pay compensation to Prime Minister Recep Tayyip Erdoğan for two critical articles about him. The ECtHR held that the Turkish courts had “overstepped their margin of appreciation and that the judgements… were disproportionate”,3 citing the necessity for public figures to be more tolerant of strong criticism, even if such criticism is “provocative and inelegant and certain expressions could legitimately be classed as offensive”.4 In Gen. Com. No. 34 the Committee stresses the importance of protecting public debate concerning figures in the public and political domain, making reference to this and the particular value it places on uninhibited expression in Paragraphs 34, 38 and 47. Furthermore, In Paragraph 267 of its submission to the Committee (the Initial Report), Turkey notes that under Article 125 of the Turkish Penal Code if “insult is committed… against a public officer due to the performance of his public duty… the penalty to be imposed shall not be less than one year”; this is in clear contravention of the Committee’s position that “imprisonment is never an appropriate penalty” in defamation cases (stated in Paragraph 47 of Gen. Com. No. 34). In its submission to the Committee (the Initial Report) Turkey also highlighted in Paragraph 247 that the Ministry of Justice had issued a Circular in 2006 requesting that prosecutors “give due care while assessing whether an expression of thought is within the limits of criticism as under the framework of the case-law of the ECtHR.” We agree wholeheartedly with the Circular on this point, but cases such as Tuşalp v Turkey (2012) show that this request has not been sufficiently heeded by the judiciary. We therefore

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3 Tuşalp v Turkey [2012], Applications nos. 32131/08 and 41617/08, Paragraph 50
4 Ibid. Paragraph 47
encourage Turkey to enact legislative reforms in this area to offer writers and journalists more protection when writing about public officials.

12. **Religious defamation** is a particularly hot topic in Turkey following Prime Minister Erdoğan’s public statements that he will be looking to push through new laws in this area despite the prevalence of such provisions in the existing Turkish law. In its Initial Report, Turkey makes reference to its commitment to oppose religious defamation in Paragraphs 259, 261, 262, 267 and 271, specifically mentioning sentencing in Paragraphs 267 (a sentence of no less than one year for insulting someone for declaring, altering, disseminating or practising their religious belief) and 271 (a sentence of six months to one year for inciting the population to enmity or hatred). Paragraph 48 of Gen. Com. No. 34 highlights that such provisions must not discriminate in favour of one religion or belief system (or its adherents) or between believers and non-believers, and that it must avoid punishing “criticism of religious leaders or commentary on religious doctrine and tenets of faith.” We are closely monitoring an ongoing case being pursued against Müge and Semih Sökmen (owners of Metis Publishing House) for an Atheism-themed calendar they published titled *İlallah* (a pun on an Islamic expression meaning ‘God! I’ve had enough’). The calendar contains quotations from various intellectuals and thinkers (including James Joyce, George Bernard Shaw and Albert Einstein) regarding religion and irreligion, and its content has led to charges of ‘inciting the population to enmity or hatred’. While we fully appreciate the state’s stance against hate speech, care must be taken to avoid prosecuting non-believers and those critical of religion and belief when they engage in legitimate comment (as we believe is the case in the case of Müge and Semih Sökmen). As a result, we urge diligence when drafting new legislation (if deemed necessary) and call for the existing law to be reformed so that cases such as that being faced by Müge and Semih Sökmen don’t make their way to trial in future.

13. Turkey’s **internet censorship** regime has become an ever more contentious issue in recent years, with over 20,000 websites reported to be blocked in September 2012. The Internet Crime Law referred to in Paragraph 254 of Turkey’s Initial Report, affords the Telecommunication and Transmission Authority the extraordinary power to ban access to websites without judicial approval or a consultation process. While most of the 20,000 blocked sites cannot be accessed due to filesharing or pornographic content, some are blocked due to pro-Kurdish or political content too (including ‘crimes against Atatürk’, which inspired Turkey’s 2008-2010 YouTube ban). Paragraph 255 of the Initial Report refers to a “removal procedure of the harmful content from the internet”. There needs to be more transparency and accountability to this process, and it must also be ensured that Paragraph 43 of Gen. Com. No. 34’s warning – that “it is inconsistent... with paragraph 3 [of Article 19 of the International Covenant on Civil and Political Rights] to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government” – is heeded.

14. PEN International would like to thank the Country Task Force of the Human Rights Committee for giving us the opportunity to contribute to the Review of the Initial Report on Turkey. We look forward to observing the proceedings in Geneva in October.

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5 [http://engelliweb.com/](http://engelliweb.com/) [Turkish]