



UNIVERSAL PERIODIC REVIEW
TURKEY
2014

JOINT STAKEHOLDER
SUBMISSION

FREEMUSE – The World Forum on Music and Censorship is an independent international membership organisation advocating and defending freedom of expression for musicians and composers worldwide. Freemuse has held Special Consultative Status with the United Nation’s Economic and Social Council (ECOSOC) since 2012.

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Summary

1. Freemuse, Siyah Bant and the Initiative for Freedom of Expression welcome the opportunity to contribute to the Second Cycle of the Universal Periodic Review (UPR) process of Turkey. Our organisations' focus is on Turkey's compliance to its commitments under international human rights instruments relating to freedom of expression, creativity and the arts, as well as guarantees under its own Constitution, and to recommendations accepted by Turkey during the first cycle of the UPR in May 2010.
2. We make specific reference to the United Nations Special Rapporteur on cultural rights, Ms Farida Shaheed, in her March 2013 report entitled 'The Right to Artistic Freedom and Creativity', which concludes that "the effects of art censorship or unjustified restrictions of the right to freedom of artistic expression and creativity are devastating."¹ The recommendations outlined in Ms Shaheed's report provide guidance on how authorities can enforce and enhance the protection of these rights.
3. Turkey ratified the International Covenant on Civil and Political Rights (ICCPR) in September 2003 and is thus obligated to ensure the rights enshrined within the Covenant. In this submission, we draw attention to specific articles under the ICCPR related to the right to freedom of arts and creativity: Article 19 (freedom of expression), Article 21 (peaceful assembly) and Article 27 (linguistic and cultural rights).²
4. Furthermore, the Constitution of Turkey contains a number of articles that specifically protect these same rights, notably: Article 25 (freedom of thought and opinion), Article 26 (freedom of expression and dissemination of thought), Article 27 (freedom of science and the arts), Article 34 (right to assembly and peaceful demonstrations) and Article 64 (protection of arts and artists)³

Implementation of recommendations – 2010-2014

5. In the first UPR of Turkey, in May 2010, of the 163 recommendations made, four specifically were broadly framed calls for improvements to protection of the right to freedom of expression. A further thirteen recommended amendment or abolition of laws that have adversely affected these rights directly or in their implementation⁴. Turkey accepted all those recommendations that called for broad adherence to the right to freedom of expression, as well as those calling for legislation to be reviewed so as to exclude from their remit the possibility of breaches of this right. One such recommendation was that submitted by the Netherlands: 'Ensure that the application of legislation that may limit freedom of expression is in line with relevant international standards and that lawful restrictions on the exercise of the right to freedom of expression on grounds such as national security and public order are necessary and proportional'.⁵
6. However, all eight recommendations that expressly requested the abolition or revision of specific laws that directly or indirectly impact on the capacity of artists and creative workers to practice their profession did not enjoy the support of the country under review. These related to Articles 301 and 318 of the Penal Code, Law 5651 regulating the internet and laws on defamation and slander.⁶
7. Since the 2010 UPR, there have been a series of four legislative reform packages enacted between March 2011 and April 2013. Notable are the Third Judicial Reform Package, enacted in July 2012, and the Fourth Judicial Reform Package enacted in April 2013. Among the reforms

¹ http://www.cdc-ccd.org/IMG/pdf/The_right_to_freedom_of_artistic_expression_and_creativity.pdf para. 86

² <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³ http://global.tbmm.gov.tr/docs/constitution_en.pdf

⁴ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/144/95/PDF/G1014495.pdf?OpenElement>

⁵ Ibid. Para 102.20

⁶ The Turkish government's views on the recommendations giving reasons for rejections of some can be found in 15/09/10 report of the UPR Working Group <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/160/66/PDF/G1016066.pdf?OpenElement>

were attempts to create more clarity around what can be construed as ‘terrorist propaganda’ under the Anti Terror Law (TMK), and adding the need for evidence of ‘clear and imminent threat to public order’ when considering prosecution against ‘praise for a crime and criminals’ under Penal Code Article 215⁷, changes that arose out of the peace process. Also under these reforms, bans were lifted against hundreds of books. Trials for ‘media offenses’ were suspended for three to five years. Recent months have also seen the releases of prisoners held in pre-trial detention for long periods, many for over five years, following Constitutional Court orders.

8. However, articles remain within the TMK and Penal Code that severely hamper the practice of freedom of expression, as illustrated in cases detailed below. The suspension of sentences under the Third Judicial Reform Package is for three to five years, and, should a defendant commit a further, similar offence in the meantime, these could be added to the postponed cases, a development described as a ‘Sword of Damocles’ deterrent. The trials against those recently freed from long term pre-trial detention continue, cases which are likely to be long-standing and convoluted. The revisions made in February 2014 to Law 5651 that regulates the internet, increases the powers of the authorities to block websites. The expansion of the surveillance powers of the Turkish intelligence agency just a few weeks later in April 2014 is a further cause for alarm. In addition, artistic expression, artists and creative workers played a high profile role during the Gezi protests of May/June 2013, and as such they found themselves among those who were arrested and brought to court, as well as subject to threats through the print and social media. These continuing problems and the recent, negative developments lead us to conclude that Turkey has not adhered to its acceptance of recommendations to protect and promote freedom of expression made in the First Cycle of the UPR in 2010.

Censorship of the Arts – 2014

9. Today censorship is being enforced not only by the government through legal mechanisms, but also by various other channels and through actors that enforce censorship in arbitrary and often less visible ways. In its 2013 report, the arts censorship monitor, Siyah Bant⁸ has conceptualized censorship not just as the banning of artistic expression through legal means but included processes of de-legitimization, threats, pressure, targeting and hate speech directed at artists and arts institutions that foreclose or delimit the presentation and circulation of artworks. Among the actors that play a part in suppression of creative rights throughout Turkey are state institutions, political groups and parties, individuals who act as proxies of the state, neighbourhood organizations, as well as those more closely related to the art world in its narrower sense, such as arts and cultural organizations, curators, funding agencies and sponsors.
10. Outright government bans constitute only a fraction of censoring mechanisms; more common are efforts to silence through threats, verbal and written, directed towards individuals and arts organizations. Targeting and intimidation have been among the most discouraging means of censorship in recent years. Discretionary powers enacted through the police or local governors has also added to the arbitrariness of censorship. Court cases especially under Penal Code Article 301 that penalize insults to the “Turkish nation” have so far not led to convictions of artists but have helped in designating some artistic expressions as de-legitimate, adding another dimension to how censorship is currently enacted in Turkey.⁹
11. Turkey’s anti-terror legislation as well as provisions concerning public order are frequently employed to legitimize censorship and limitations of the freedom in the arts. These interventions are – for the most part – arbitrary and employed for political and ideological reasons, and often for seemingly contradictory ends. Especially the notion of societal sensitivities has been increasingly used to delimit freedom of arts by non-state and state actors alike.

⁷ Fikret Ilkiz: ‘Turkey’s Terror Prevention Act: Source of problems in freedom of expression’ <http://www.tr.boell.org/web/51-1722.html>

⁸ Parts of this submission are taken from Banu Karaca. 2014. “Artists engaged in Kurdish rights struggle face limits o free expression.” *Index on Censorship* (February 2014) <http://www.indexoncensorship.org/2014/02/freedom-of-expression-in-the-arts-and-censorship-in-kurdish-region-diyarbakir-batman/>

⁹ Banu Karaca. 2011. Images delegitimized and discouraged: Explicitly Political Art and the Arbitrariness of the Unspeakable. *New Perspectives on Turkey* 45: 155-184.

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

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

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

13. Turkey's Anti Terror Law (TMK) has been subject to acute criticism for its overly broad definition of what comprises an offence under this law, and has brought to prosecution numerous artists and writers accused of activities for or membership of a terrorist organisation with little or no evidence of links to terrorism. In the Kurdish regions of Turkey, freedom of expression and assembly are specifically monitored and affected by Turkey's anti-terror legislation. In practice this has meant that any cultural (e.g. language) and artistic expression within the Kurdish rights movement can be construed as illegitimate 'separatist propaganda' and hence outside of the protection of freedom of expression and the arts.
14. Statements made by leading political figures serve to deepen the problems of equation of arts with terrorism. Notable is former Minister of the Interior, İdris Naim Şahin's declaration of art as "the backyard of terrorism" in December 2011¹⁰, where, among other comments, he accused of artists promoting terrorism "...through painting; they [the artists] depict it on a canvas. Through poetry; they reflect it in words." He went on to accuse artists of trying "...to demoralize the military and the police who fight against terrorism by making them the subject of their art". Artists are seen as duplicitous. "If they say 'good', they mean 'bad', and vice versa. If they say 'peace', it means 'war'. If they say 'democracy', they mean 'oppression'". Şahin's chilling solution to this problem is for the government "to weed these [troublemakers] out with the precision of a surgeon". These, and other similar comments made by officials, serve to target artists, and provide a climate under which they feel threatened, and encourage self-censorship.
15. The Fourth Judicial Reform Package has done little to address the problems of ambiguity and lack of definition of terrorism. Worrying, especially for those working in the visual arts, is that the reforms added an additional regulation against the 'hang[ing] of pictures or symbols' of a terrorist organisation, even if these pictures are not displayed during public meetings or protests. This offence carries a prison term of up to five years.¹¹
16. Film director and writer Mizgin Müjde Arslan and photography director Özay Şahin were taken into custody in 13 February 2012. They were arrested under the Kurdistan Communities Union (KCK) case, one of the most high profile TMK cases in recent years. Investigations carried out over several months from late 2011 to early 2012, led to the arrests of 1,000s of pro-Kurdish activists, including writers, journalists and artists, hundreds of whom were imprisoned, and hundreds more put on trial. All were accused under the TMK for membership or activities for 'illegal' organisation, charges that are widely seen to have been misapplied and used to penalise Kurdish activists and their supporters. Arslan and Şahin were arrested during a trip to Northern Iraq to shoot a Turkish Culture Ministry financed movie. They were held for five days before being released.¹²
17. The Anti Terror Law has been applied against members of the music band Grup Yorum who have been repeatedly taken into custody, arrested, and allegedly ill-treated by police on accusation of being members of a terrorist organization, committing an illegal act for terrorist organization and making terrorist propaganda. In May 2011, the İdil Culture Center in Istanbul, of which Grup Yorum and other arts organisations are members, was raided by police and their

¹⁰ English translation of Şahin's speech <http://resmigorus.blogspot.co.uk/2012/01/turkeys-minister-of-interior-idris-naim.html>

¹¹ Fikret İlkiz - Turkey's Terror Prevention Act: Source of problems in freedom of expression <http://www.tr.boell.org/web/51-1722.html>
Retrieved 30/05/14

¹² <http://www.hurriyetdailynews.com/director-suspected-of-kck-probe-released.aspx?pageID=238&nID=14032&NewsCatID=341>

archive documents relating to organizational activities were seized.¹³

18. On 27 June 2012, the Dersim Malatya Third High Criminal Court sentenced Kurdish singer Ferhat Tunç to two years in prison under Article 7 of the TMK for 'propaganda' for having paid tribute to a revolutionary fighter who died in prison in 1973, allegedly under torture. Tunç had made the statement while performing at a concert on 1 May 2011. The sentence has since been turned into a three year ban on speaking about the same subject. This is just one example of the numerous cases brought against Tunç in recent years.¹⁴
19. It is clear that the definition of 'terrorism' in the application of anti-terror laws is ambiguous. The notions such as 'terror', 'terrorist organization', 'membership of a terrorist organization', and 'making propaganda of terrorist organization' needs to be clearly defined.

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

20. The right to peaceably hold meetings and demonstrations is protected under Article 34 of the Turkish constitution.¹⁵ However Law No. 2911 Law on Meetings and Demonstrations have been used to prohibit festivals and prosecute those who participate.
21. One of the most striking cases of censorship under this Law is that of 13 artists affiliated with the Bahar Kültür Merkezi (NavenDa Canda Baharé – Spring Cultural Centre) in Batman, south eastern Turkey. Prosecuted by the 4th Diyarbakır High Criminal Court, the artists' "offenses" range from participating in a cultural festival in Batman in 2006, local Newroz (New Year) celebrations, attendance at press conferences and playing percussion instruments at political rallies. As well as being charged under the TMK with 'separatist propaganda' or 'being a member of a terrorist group,' a number of artists were also convicted of several counts of transgression against Law No. 2911 opened against them over the past four years – some which are now before appeal courts.¹⁶ Also in 2012, the traditional Kuzu Kırpma Kültür Sanat ve Yayla Festivali (Sheep Shearing Culture and Arts Festival) held annually close to the Kurdish town of Sırnak was prohibited by the Ministry of Internal Affairs in 2012 under Article 17 of Law 2911 on the grounds that it promoted propaganda of a terrorist organisation. These cases illustrate that utterances by Kurdish artists can still be construed as unconstitutional political expressions rather than be recognized as artistic expression.
22. During the Gezi protests in mid-2013, members of the music band, Praksis, based in Mersin were charged under Law No. 2911. The musical instruments they played during the protests were given as evidence on the grounds that the music band "kept the protestors dynamic" and "motivated the protestors".¹⁷

Denigration of religion (Article 216/3)

23. Penal Code Article 216/3 specifically states "Any person who openly denigrates the religious beliefs of a group shall be punished with imprisonment from six months to one year if the act is conducive to a breach of the public peace". This clause has been used on occasion to penalise writers and artists who have criticised religion, and cases under this law are also frequently brought by members of the public, encouraged by its presence to target specific individuals. Although these trials rarely, if ever, result in imprisonment, they are long-winded and time consuming, causing psychological and other distress to the targeted individuals. The publicity that also surrounds these trials can expose the individuals to threats from the public.
24. One such example is that of caricaturist Bahadır Baruter who was charged under Article 216/3 upon a complaint from members of the public and Türkiye Diyanet ve Vakıf G revlileri

¹³ <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=polic-raids-leftist-quarters-with-alleged-links-to-outlawed-dhkpc-2011-05-10>

¹⁴ <http://freemuse.org/archives/303>

¹⁵ Turkish Constitution Article 34 'Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission' http://global.tbmm.gov.tr/docs/constitution_en.pdf

¹⁶ For a compilation of available online news items on the case see <http://www.ssiyahbant.org/?p=63>

¹⁷ <http://www.siyahbant.org/mersin-gezi-davasi-praksis-grubu-muzik-yaparak-toplulugu-dinamik-tutmak-tan-yargilaniyor/>

Sendikası (Presidency of Religious Affairs Foundation's Officers' Union) for a cartoon published in *Penguen* magazine in February 2011 which depicted the slogan, “There is no Allah, religion is a lie”. Although he and others have not been imprisoned, the presence of the legislation presents a deterrent to those who are critical of religion or question religious beliefs.¹⁸

25. In 2011, painters Menekşe Samancı and Özlem Alpwere tried under Article 216 for exhibiting Samacı’s painting depicting a mosque with the words ‘ebucu’ a reversal of the word *ucube* (freak) between the minarets. This was a reference to Prime Minister Erdoğan’s naming of a large scale work by sculptor Mehmet Aksoy erected on the Turkey-Armenia border as such, leading it to be demolished. Özlem Alp’s painting of a woman in hijab with a brassiere on her face was the cause of the case against her. Both had exhibited their work at the Tepebaşı Municipality’s Exhibition Hall in Eskişehir in April 2011 staged to support Aksoy.¹⁹
26. A highly publicized case is that of Fazil Say, a well known composer sentenced to a suspended 10 months prison term in 2013 for ‘religious defamation’ in tweets issued the previous year, including one including verses from the Rubaiyat of Omar Khayyam.²⁰

Defamation (Article 125)

27. Defamation is sanctioned under both civil and criminal law in Turkey, with Penal Code Article 125 penalising cases of defamation against a ‘public officer’, and carries prison terms of up to two years.²¹ Public officials, notably the Prime Minister, have turned to civil and criminal courts with complaints including against artists. Not all end up with punishment but it creates a deterrent effect on artistic production and exhibition. It is universally accepted that public officials should expect to be subject to open scrutiny and should not seek to suppress criticism by resorting to criminal defamation laws.
28. In January 2011, the trial opened against 16 members of the Istanbul based Beyoğlu Actors Troupe who were accused of “insult against the Prime Minister” upon a complaint of Prime Minister Erdoğan. The prosecution related to a performance by the Troupe given at the Judas Tree Festival organized by the Istanbul Municipality of Çatalca in July 2010. One of the characters in the play *From our Country* performed a song entitled "The Tayyip Blues", the lyrics of which were the source of the criminal complaint.²²
29. The trial against actor and political satirist, Haldun Açıksözlü was opened on charges of "insult to the Prime Minister" on 15 January 2010 for his satirical performance, ‘Laz Marks’ in the city of Rize, in the Laz region on the eastern Black Sea coast²³. On stage, Açıksözlü had told an anecdote about 'Recep Tayyip from Rize' - a hint to Prime Minister Erdoğan whose family originates from Rize. Thereupon, the trial was launched against the political show. Three other trials were launched against him for other works: two further cases of insult to the Prime Minister and one under Article 215 of the Penal Code (see below).
30. An investigation was launched into an artwork by Nova Kozmikova entitled ‘Will There Be An Intervention?’ that had been displayed at the 23rd Istanbul Art Fair in November 2013. It was initiated upon a complaint of a private citizen who saw it as insulting the Prime Minister. The censored piece was a portrait of Prime Minister Erdoğan where his face was defaced with oil tracks. The curator and the deputy director of the exhibition centre were taken for questioning by police.²⁴
31. Several cartoons displayed at an international competition held in the tourist town of Didim on the Aegean coast in late August 2013, were confiscated by police. The raid is said to have been carried out on request of a local pro-government AKP party leader, for reasons of “insult” to

¹⁸ Reference to the Baruter case and others can be found in Forum 18’s February 2012 Report Turkey: "Denigrating religious values" - A way to silence critics of religion? http://www.forum18.org/archive.php?article_id=1667

¹⁹ <http://www.siyahbant.org/sanata-ucube-diyen-anlavis-ressamlari-yargiliyor-2/>

²⁰ <http://www.pen-international.org/wp-content/uploads/2013/10/Fazil-Say2.pdf>

²¹ <https://opennet.net/research/profiles/turkey>

²² <http://bianet.org/english/freedom-of-expression/127351-pm-erdogan-s-trial-against-beyoglu-troupe-started>

²³ <http://bianet.org/english/freedom-of-expression/133770-4-trials-against-laz-marks-show>

²⁴ <http://artsfreedom.org/?p=7299>

public figures. The theme of the competition was the June Gezi Park protests and many of the caricatures featured Prime Minister Erdoğan.²⁵

Praising crime or criminals (Article 215)

32. Penal Code Article 215 provides prison terms for the offence of ‘anyone who openly praises an offense or praises an offender for their offense shall be sentenced to imprisonment for up to two years’. A case that arose in the period of this review includes that against actor Haldun Açıksözlü on November 2010 for his political piece ‘Laz Marks’, see also para. 29 above. Açıksözlü faced up to two years in prison for ‘praising the offense and the offender’ for references in his play to Kurdish and revolutionary leftist leaders in the 70s and 80s who had suffered torture in Diyarbakır prisons in where Kurdish and leftist activists were imprisoned and tortured. He was also faced with a professional ban of three months to three years.²⁶
33. Changes under the Fourth Judicial Reform Package in April 2013 makes it now applicable only in cases where clear and present danger is posed to public order. However this clause remains ambiguously framed, and acts as a deterrent to artistic expression touching on political issues.

Discouraging people from military service (Article 318)

34. Conscientious objection is seen as part of the rights as enshrined under Article 18 of the ICCPR: “Everyone shall have the right to freedom of thought, conscience and religion... “. However, Article 318 of the Penal Code provides prison terms of up to three years for conscientious objection, and is frequently invoked against those who support conscientious objectors. One such example is the prosecution of the director, art director and four other members of the İzmir Yenikapı Theatre who staged Gogol’s *The Overcoat* during an event on conscientious objection. In December 2012, they were sentenced to five months imprisonment suspended for five years for discouraging people from enlisting in the armed forces.
35. Article 318 was among the articles revised under the Fourth Judicial Reform Package, raising deep concern in that rather than ameliorating concerns, it has now been broadened to encompass commentary made by “Anyone who instigates, recommends, or spreads propaganda which results in discouraging people from performing military service shall be sentenced to imprisonment of six months to two years”.

Other Censorship Modalities Applied by the State

Collaboration with Non-State Actors

36. The state will frequently open investigations into events or art works on grounds of anti-terror or defamation on behalf of the “sensitive citizen”. Yet, conversely, the state follows the policy of ‘cezazırlık’ (impunity) for non-state actors who attack artists and creative work, showing great reluctance to investigate or prosecute those non-state actors who carry out such attacks.
37. Şükran Moral, a highly acclaimed visual artist known for her avant-garde feminist works, had to flee Turkey after receiving death threats following her live performance titled “Amemus” (Love) at the Casa Dell’Arte in Istanbul in 2011. The performance included live sex between two women. An exhibition she had planned featuring photos of the performance had to be cancelled for security reasons.²⁷
38. Turkish actor and activist, Mehmet Ali Alabora was threatened with a maximum 20-year prison term for inciting an uprising for his involvement in a play, *Mi Minör* which depicts a fictional country, ruled by a dictator who is eventually overthrown by popular revolt, and where social media plays a significant role in the uprising. When a newspaper carried an article accusing Alabora, the playwright, Meltem Arikan and others involved in the production of having

²⁵ http://www.ifex.org/turkey/2013/09/09/cartoon_exhibition/

²⁶ <http://bianet.org/english/ifade-ozgurlugu/139872-bia-media-monitoring-and-freedom-of-expression-report-full-text>

²⁷ <http://www.hurriyetdailynews.com/european-art-scene-warmly-welcomes-turkish-artist.aspx?pageID=238&nID=24665&NewsCatID=385>

produced the play as a rehearsal for the Gezi Park protests, there was an acute on-line and in print backlash against them. This was followed by charges laid against Alabora under Article 313/1 of the Penal Code for ‘provoking an armed uprising’, charges that were eventually dropped in September 2013, but not after having caused severe disruption and distress.²⁸ No action has been taken against those who had threatened Alabora and other directors, authors and actors involved in the play.

Police harassment

39. The Mesopotamia Cultural Centers (MKM) whose aim is to promote and disseminate Kurdish language, culture and arts, are systematically under threat by police forces. While the “peace process” that has brought hope and relief to the region with the end of armed violence, other practices, such as the constant surveillance of Kurdish arts and cultural centers by Turkish security forces, are still in place. One such example is the Diyarbakir Municipal Theater, which, whenever it tours outside of Diyarbakir for guest performances, as recently as early 2014 in the cities of Dersim or Iğdır, remains subject to security checks and surveillance. This surveillance lessens only in those venues in municipalities led by the Kurdish Peace and Democracy Party (BDP). This means that they still have to provide a synopsis of the play for prior approval and provide identity information for all actors and support personnel in advance to the local authorities to so as to receive a performance permit.

Censoring art events or art works

40. The state controls the content of the projects it sponsors abroad, interferes with arts organizations on arbitrary grounds, and violates artists' rights by threatening the very institutions it collaborates with, despite there being no legal basis for these actions.
41. A case of such censorship occurred in the course of *Here Together Now*, an exhibition held in 2013 at Matadero Madrid, Spain. The event was curated by Manuela Villa, and realized with the support of the Turkish Embassy in Madrid, Turkish Airlines and ARCOMadrid. In the exhibition booklet, the explanatory notes to artist İz Öztat’s work, *A Selection from the Utopie Folder (Zişan, 1917-1919)* was censored upon the request of the Turkish Embassy in Madrid, and the expression “Armenian genocide” and the date “1915” were taken out.²⁹
42. In other cases, public authorities have intervened by removing works from the exhibitions on grounds of obscenity, defamation or anti-terror. An art exhibition in Turkey has been cancelled by organizers after municipal officials were accused of censorship. Three photographs were removed from the exhibit titled “Aykırı” (Contrary) by officials from the İzmir Metropolitan Municipality after newspaper reports suggested some photographs contradicted religious and social values. Following the removal of the images by authorities, the organizers, the İzmir Photography Art Association (IFOD), pulled the exhibition. Among the photos that caused controversy were two headscarfed women kissing each other, two men kissing each other, and a headscarfed woman wearing a bikini.³⁰
43. *Berivan* a documentary by Aydın Orak, a Kurdish film director and actor, was banned by the Ministry of Culture and Tourism in 2011 and is not allowed distribution in Turkey. In a statement, the Ministry said that the documentary contained “components that distort historical events to affect the public order adversely; commove grudge, hate and hostility in the society and spreads PKK propaganda to disrupt the unity and solidarity of the Turkish. The documentary is an account of a massacre in 1992, using images shot at the time of the event.”³¹
44. Sculptor Mehmet Aksoy’s *İnsanlık Anıtı* (The Monument to Humanity) located on the Turkish-Armenian border promoting the peace between Armenia and Turkey was demolished after Prime Minister Erdoğan visited nearby Kars in 2011. The prime minister called the monument “freakish” and said it threatened to overshadow historical sites in the area such as the Seyyid

²⁸ PEN International report: *The Gezi Park Protests – The Impact on Freedom of Expression in Turkey* March 2014, pgs 12 & 25

²⁹ <http://www.indexoncensorship.org/2014/05/international-exhibition-censored-turkish-embassy-madrid/>

³⁰ <http://www.hurriyetdailynews.com/censorship-debate-scuttles-exhibit.aspx?pageID=238&nID=11343&NewsCatID=385>

³¹ <http://en.firatnews.com/news/culture/berivan-film-banned-in-turkey-but-presented-at-cannes.htm>

Hasal El Harakani tomb and mosque. He demanded its demolition, which was carried out by the Kars municipality.³² Linked to the controversy surrounding the demolition, artist Bedri Baykam, and Tuba Kurtulmuş who runs Baykam's Istanbul based Pyramid Gallery, were seriously wounded by an individual attacker in an Istanbul street in broad daylight as they were leaving a meeting to protest the pulling down of the monument. The perpetrator was apprehended and later received a 25-year jail sentence.³³

Use of certification as a means of creative control

45. Artistic freedom of expression in Turkey may be limited by regulations under criteria that are very ambiguous, leading to arbitrary practices by the state and non-state actors. Although there is not any implication in the Constitution which leads to prior censorship, bodies such as the film rating committee or the committee which selects film/theatre projects to be granted funding function as prior censorship committees, banning some films/theatre projects, over-rating and restricting the available state funding.
46. The rating or certification system has been increasingly employed to effectively limit the circulation of certain films by enforcing harsh age limits. There is, of course, an important and valid basis to age-limit provisions in Turkey as well as internationally in order to protect minors from potentially disturbing and harmful images. Yet debates have erupted about the ways in which these provisions have been used to legitimize broader infringements on freedom of expression that surpass the protection of minors,³⁴ especially since this rating is tied to the *eser işletme belgesi* (work operation certificate), a certificate necessary for commercial distribution. Until recently this certificate was not required when films were intended for festival use, i.e. non-commercial screenings. While legal scholar Ulaş Karan argues that this accords with official regulations³⁵, the Ministry has decided to reinterpret the distribution provisions and make them requirements for festival films as well.
47. Danish film maker, Lars von Trier's *Nymphomaniac* which was scheduled to open in Turkish cinemas in March 2014 has been banned by Turkey's national cinema board. The Higher Rating Committee ruled that the film 'cannot be commercially distributed or screened' and banned the screening of the movie, referring to regulations that read as follows: 'The committees formed under the jurisdiction of the Ministry rate and evaluate films according to their accordance with public order, public moral values, protection of spiritual and physical well-being of the youth, human dignity and the principles outlined in the constitution as well as the respective trademark and copyright issues that might arise'.
48. In early 2014, filmmaker Onur Ünlü 's *İtirazım Var* (Let's Sin), in which an imam embarks on an adventure to solve a murder committed at his mosque, was rated 18+ by the Turkish film classification board. The decision had both moviegoers and the film's makers perplexed as "there is no apparent reason for an 18+ rating in the storyline," according to critics. The director's team successfully appealed and the rating was revised to 15+.³⁶
49. We concur with the UN Special Rapporteur on culture, Farida Shaheed's recommendations: 1) that "...prior censorship should be an exceptional measure, taken only to prevent the imminent threat of grave irreparable harm to human life or property. A system whereby content automatically requires official clearance before it can be released would be unacceptable, as its harm to freedom of artistic expression and creativity would by far outweigh the benefit of its goal", and 2) that states shall ensure that classification bodies are independent, have terms of reference, rules of procedure and activities made public, and that there are effective appeals mechanisms. She adds that the regulation of access by children should not "result in prohibiting or disproportionately restricting access for adults"³⁷

³² <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=demolition-of-the-monument-begins-in-kars-2011-04-18>

³³ <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=turkish-painter-stabbed-at-meeting-for-8216humanity-movement8217-2011-04-18>

³⁴ Majorie Heins, *Not in Front of the Children: "Indecency," Censorship, and the Innocence of Youth* (New York: Hill and Wang, 2001).

³⁵ Siyah Bant report, *Sanatta ifade özgürlüğü, Sansur ve Hukuk* author Ulaş Karan, 2013

³⁶ <http://www.todayszaman.com/news-346200-director-unlu-on-his-films-18-rating-they-can-just-ban-my-next-film.html>

³⁷ http://www.cdc-cdd.org/IMG/pdf/The_right_to_freedom_of_artistic_expression_and_creativity.pdf

Withholding of funding as a tool of censorship

50. Recent news that the Ministry will retract funding from films rated suitable for age 18 and above have increased concerns in the film sector about how age restrictions might be further instrumentalized for political purposes.³⁸ It is very likely that this new guideline will further the precarious economic standing of independent filmmakers and engender self-censorship due to the fear of losing much sought after public funding. This regulation will also allow the Directorate of Cinema to intervene into decisions of final cuts, in order to meet age restrictions eligible for this funding, rather than making decisions based on the artistic integrity of a given work.
51. In the spring of 2013, a draft of a document with suggested changes to the TÜSAK (Turkish Arts Council) legislation was leaked, which further aggravated concerns that had already been raised in the previous year about the government signalling its intention to privatize the state theatre system. The draft as it stands at the moment aims to restructure the entire arts funding system in Turkey by granting support on a project basis and by shifting decision-making powers to state appointed officials rather candidates representing artists' associations from respective disciplines.
52. The authorities should note Special Rapporteur Farida Shaheed's recommendation that governments 'refrain from nominating or appointing cultural administrators or directors of cultural institutions on the basis of their political, religious or corporate affiliation' and not proceed with shifting decision making powers to state appointed officials, as currently proposed. By so doing, this will guarantee an independent and flourishing arts sector.

RECOMMENDATIONS

53. The definition of 'terrorism' in the application of anti-terror laws is ambiguous. The notions such as 'terror', 'terrorist organization', 'membership of a terrorist organization', and 'making propaganda of terrorist organization' should be clearly defined in law.
54. Anti terror legislation should not be applied against artistic and creative works that clearly have no connection with nor propagate violence.
55. Public officials should desist from statements allying artists with terrorism, and hence from turning artists into targets.
56. Revoke Articles 6/2 and 7/2 of the Anti Terror Law that penalise propaganda for or distribution of material by 'terrorist' organisations and which have led to many convictions that breach free expression guarantees. This should be among a number of steps towards securing reforms that would remove the threats to freedom of expression and other rights currently present in the Law.
57. Abolish or amend Law 2911 to ensure the full respect of peaceful meetings as guaranteed under the Turkish Constitution and international agreements.
58. Revoke Penal Code Article 216/3 so as to remove the crime of 'denigration of religion'.
59. Remove criminal defamation from the statute books by abolishing Article 125. In the meantime restrict public officials and authorities from initiating defamation cases before criminal and civil courts
60. Penal Code Article 215 should not be applied in a manner that leads to the prosecution of those practicing their rights to artistic freedom of expression.

³⁸ "Tiyatrodan sonra sinemaya da ahlak kriteri geldi," *Radikal Online*, 25 December 2013, http://www.radikal.com.tr/kultur/tyatrodan_sonra_sinemaya_da_ahlak_kriteri_geldi-1167945

61. Revoke Article 318 penalising conscientious objection as being incompatible with Article 18 of the ICCPR protecting freedom of conscience.
62. Protect artists and creative workers, as well as audiences engaged in artistic activities against threat and violence. No person issuing or carrying out such threat should be granted impunity to do so.
63. Ensure that broadcast classification bodies are independent, have terms of reference, rules of procedure and activities made public, and that there are effective appeals mechanisms.
64. Replace present pre-censorship mechanisms with a system of age-based classification that refrains from deleting or modifying content and accords due representation to artists in its administration.
65. Refrain from nominating or appointing cultural administrators or directors of cultural institutions on the basis of their political, religious or corporate affiliation.