The state of fundamental freedoms in Turkey is a cause for serious concern. Since the Gezi Park protests in 2013, frequent attacks on these freedoms have taken on a systematic dimension as legal processes are instrumentalized to intimidate dissent. The freedom of expression, previously filtered through anti-terrorism legislation, suffers as Turkish society has been split into factions pitting conservative hardliners against progressives. Against the backdrop of systematic attempts by the Turkish government to mute citizen dissent and debate, this policy brief offers four policy recommendations to enable citizens’ public perception and participation especially ahead of the general elections scheduled for June 2023.

‘My only consolation is the possibility that my experience will contribute to a better understanding of the grave problems of the judiciary,’ stated Osman Kavala, a Turkish philanthropist sentenced on April 25, 2022, to life without parole for “financing the Gezi Park protests in 2013” and allegedly attempting to overthrow the government. Seven others were sentenced each to eighteen years in prison alongside Kavala. Turkey has continued to ignore a 2019 European Court of Human Rights ruling calling for Kavala’s immediate release and is consequently facing unprecedented disciplinary proceedings by the Council of Europe. Before Kavala, the 2014 ‘Izmir Gezi tweets’ indictment initiated a new era in the attempted criminalization of peaceful protesters based solely on their social media activity and used new legal ways of targeting the freedom of expression. Ever since, there has been a progressive shift from an already frequent repression of freedoms to a systematic repression of fundamental civil liberties in Turkey. The failed military coup attempt in July 2016, the post-coup state of emergency between July 21, 2016, and July 19, 2018, and the constitutional amendments in July 2018, which created a presidential system, are the three milestone developments after the Gezi park protests in this shift towards systematic repression where the law serves as an instrument of politics.

This policy brief offers a legal, political, and sociological overview of how the freedom of expression and related fundamental freedoms in Turkey have deteriorated from 2013 onwards, and provides four policy recommendations...
to overcome what some called a ‘comprehensive civil diminishment by active and systematic attacks’ on civil society by the Turkish authorities. In legal terms, Turkey has been the most frequent violator of the European Convention on Human Rights, as there has been a 30 percent increase in cases brought against it in 2021 compared to the previous year — 70 percent of those cases are related to alleged rights violations during the state of emergency between July 2016 and July 2018. From 1959–2021, the European Court of Human Rights ruled that Turkey violated at least one article of the Convention in 3385 cases out of 3820 cases brought against it. The two most frequently violated articles are Article 6, which guarantees the right to a fair trial, and Article 10, which guarantees the freedom of expression. Turkey has shaped the European Court’s jurisprudence in Article 10 cases as most cases are brought against Turkey, including the landmark *Incal v Turkey* (1998). The case concerns Mr. Incal, a Kurdish politician in Izmir, convicted under Law No. 3713 on the Prevention of Terrorism for distributing leaflets that called on all Kurdish and Turkish street vendors to resist new restrictive vending regulations introduced by the city.

In political and sociological terms, the Incal case demonstrates how the freedom of expression has been filtered through anti-terrorism legislation in Turkey, especially in the 1980s and 1990s. An EU-inspired reform process shaped the early 2000s when there was significant progress in the field of fundamental liberties, including for Turkey’s traditionally repressed Kurds. A dramatic reversal from these reforms has been underway since the mid-2000s as the government consolidated its rule and plunged Turkey into a culture war. The Gezi Park protests were the strongest manifestation of this culture war, entangling questions related to the freedom of expression in the broader protest. American sociologist James D. Hunter re-popularized the term ‘culture wars’ in the 1990s in his work on American society. Hunter defined America’s culture wars as a struggle between orthodox and progressive camps to ‘define America’ and to institute the ‘domination of one cultural and moral ethos over all the others’ in ordering family life, education, arts, culture, and social life. Turkey has been undergoing culture wars of its own between Islamic conservatives and progressives. Anti-terrorism legislation has become a new weapon used systematically to embolden the hardliners and silence those seeking to protect and uphold democracy and human rights.

The literature on authoritarianism has euphemistically described such situations as a ‘legal civil war’ enabling the ‘physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the system.’ Similarly, Turkey has started targeting ordinary citizens who cannot be integrated into a depoliticized, conservative, and heteronormative cultural and moral ethos set by the government. One Gezi Park protester in Izmir had tweeted just about that refusal to be integrated: ‘We do not want a government that meddles with what time we go to bed, what time we drink booze, how many children we have #tayipresign.’ The protester faced criminal charges within a year for this tweet.

**From the Izmir Tweets to the ‘Art’ of Creating Terrorists: Calibrating the Law to Mute Dissent**

The Izmir tweets case (2014) heralded a new era in the attempted criminalization of peaceful protesters based *solely* on their social media posts and the use of Penal Code Article 217, which prohibits ‘provocation of the public to disobey the law.’ Article 217 charges were brought *in addition* to Law No. 2911 on Assembly and Demonstrations – which has been traditionally used to target peaceful protest – thus marking a new way of targeting the freedom of expression in Turkey. Despite a lack of evidence that they knew one another, the 29 defendants were collectively charged and 28 were acquitted. The 29th – who was convicted under Article 125/3 of the Penal Code for ‘insulting a public officer,’ namely then-Prime Minister Recep Tayyip Erdoğan. After Erdoğan became President, the politically motivated charge of ‘insulting the President’ (Article 299) has been systematically used against dissidents, including journalist Sedef Kabaş and Canan Kaftancıoğlu, executive chief of the Republican People Party’s Istanbul branch.

Despite its shortcomings, the Izmir tweets case still resulted in acquittals. Yet as annual progress reports on Turkey’s EU candidacy prepared by the European Commission have also underlined, there has been a ‘serious backsliding’ in the areas of fundamental civil liberties and the independence of the judiciary in Turkey, particularly after the July 2016 coup attempt and the extraordinary powers entrusted to a new executive president in July 2018. These events signal a shift from *frequent to systematic repression* in Turkey where lower courts – under Erdoğan’s tacit support in cases related to fundamental freedoms – have become particularly insistent on not implementing the rulings of the Turkish Constitutional Court or the European Court of Human Rights. ‘I don’t obey or respect the decision’, Erdoğan stated after the Constitutional Court ordered the release of two journalists from jail in 2016. He again denounced as ‘null and void’ separate European Court rulings on Kavala and detained Kurdish politician Selahattin Demirtaş.

Emboldened by Erdoğan, lower courts continue to impute terrorism charges against ordinary citizens. In what one journalist described as ‘the art of creating a terrorist out of a retired math teacher,’ Aysun Cerek was indicted based *solely* on her social media posts. Non-governmental organizations (NGOs) continue to face multiple charges; for example, the *We Will Stop Femicides Platform* was charged with undermining family structure, conducting immoral activities, insulting the President, and advocating...
for the rights of women involved in terrorism. Their indictment follows the entry into force on December 31, 2020, of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, which, although designed to comply with a UN resolution, places severe new restrictions on the freedom of association in practice. A separate January 6, 2021, presidential decree granted access to military weapons and assets to the Turkish police if requested. President Erdoğan issued the decree shortly after student protests at the prestigious Boğaziçi University in Istanbul. As the European Court of Human Rights ruled in İzci v Turkey (2013), the right to peaceful assembly guaranteed under Article 11 of the European Convention is systematically breached in Turkey, with riot police accustomed to using disproportionate force against demonstrators. The militarization of the police exacerbates this structural problem.

**Misvak over Gırgır: Destroying, Marginalizing or Appropriating Liberal Culture**

Independent civil society organizations in Turkey are acutely aware of the government restrictions, especially since the Gezi Park protests. Following the indictment against the We Will Stop Femicides Platform, the Platform's secretary-general said that the government was seeking to marginalize their movement and trying to 'make a culture war.'

The crackdown on cartoons and satirical magazines demonstrates how this split between hardliners and those fighting for democratic values is being waged. In 2017, Turkey’s cult satirical magazine Gırgır, the Charlie Hebdo of liberal Turks, was shut down for publishing a cartoon deemed offensive to Jews and Muslims. Tipped to fill in Gırgır’s vacuum is Misvak, dubbed 'the government’s satire.’ Turkey’s critical press has been silenced under heavy fines for tax evasion or forced into self-censorship. Commercial ads placed by companies fully or partially owned by the state are used to promote pro-government newspapers over them.

Cancellations of public festivals and concerts under pressure from conservative NGOs are the latest front in Turkey’s culture war. In Isparta, the mayor succumbed to pressure from the National Youth Foundation and Anatolia Youth Association and canceled a concert by female singer Melek Mosso that the two organizations argued was 'against the morals' of the city. Authorities have been citing ‘public security’ or ‘public morality’ to explain the cancellations elsewhere. In response, 57 out of 82 bar associations issued a statement entitled Don’t Be Scared of Art! Art Liberates to condemn the cancellations which they say represent the latest in an ‘escalating attack on the freedom of expression’ in Turkey.

**Moving to the Mainstream with ‘Blood-Stinking Audacity:’ the Presidency of Religious Affairs**

The majority of Turkey’s bar associations and the Union of Bar Associations under the determined leadership of ERİNC Sağkan are turning into bastions of liberty despite attempts by the government to sow division within them. Sağkan and ten other lawyers are currently on trial for ‘insulting a public official,’ Ali Erbaş, the conspicuously active head of the Presidency of Religious Affairs. For several years, Erbaş and the presidency have been moving to the mainstream with a disproportionately strong influence in public life and regular access to Erdoğan. In 2020, the executive board of the Ankara Bar Association and its then-president Sağkan condemned Erbaş’s intimidating rhetoric against homosexuality and adultery as ‘blood-stinking audacity’ by a civil servant who incited hatred through religious discourses. Erdoğan was quick to intervene on the side of the Presidency of Religious Affairs, announcing that attacking the presidency is attacking the Turkish state itself. This harsh dispute epitomizes the intense divide that has enveloped Turkey’s institutions and highlights the legal mechanisms that systematically favor the government’s actions. The Turkish society was polarized once again over this dispute, which was reflected on social media with the two different sides tweeting respective hashtags of ‘Ali Erbaş is not alone’ vs. ‘LGBT rights are human rights.’ Today, even writing under hashtags can be considered a crime if draconian new legislation proposed on May 26, 2022, ostensibly for fighting ‘disinformation,’ is adopted.

**Censorship in Disguise: The Proposed New Bill on Preventing Disinformation**

The Turkish web is ‘censored,’ said the authors of a report who estimate that some 467,000 sites were blocked as of December 2020 under the provisions of Law No. 5651. The ‘disinformation’ bill will only further entrench this disabled status. The bill defines the willful spreading of disinformation that creates panic, fear, or targets national security and public order or public peace as a new crime punishable with charges of up to three years in prison. It expands the powers of the Information and Communications Technologies Authority to restrict or block websites and re-classifies online news sites as ‘periodicals’ covered under Turkey’s already imposing Press Law No. 5187. With this bill, news websites will be subject to the same requirements as print newspapers, including the requirement for all websites to display an officially registered business address. This requirement will destroy small and independent online journalism outlets that cannot afford an office space or fulfill other obligations under the Press Law.
In an earlier bill adopted in 2020, Turkey forced social media sites with over one million daily users in the country to appoint a Turkish national as an official representative for the company. The proposed new bill requires this representative to be domiciled in Turkey. More restrictive articles in the bill target mobile network messaging and video applications such as WhatsApp, requiring them to share user data, the number, and duration of voice/video calls, and the number of messages shared. Further articles require social media companies to actively cooperate with the Information and Communications Technologies Authority in preventing the new crime of disinformation and share information with law enforcement on the creators of specific content. Law enforcement authorities can already identify and locate non-anonymous social media users; however, this last requirement is aimed at helping law enforcement with identifying the creator(s) of anonymously posted content. Heavy monetary fines and sanctions would apply to companies which fail to comply with the law. As one expert notes, social media companies may stop operating in Turkey if the new bill is adopted.31

2. Revive university radio programming: University radio stations in Turkey have turned into ‘jukeboxes’ under pressure from most university administrations to avoid educational/political programming, especially since the July 2016 coup attempt. After Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television (2011) required them to conclude a protocol with the state broadcaster TRT for a frequency allocation, many had to shut down or become online-only stations.32 Reviving educational/political university radio programming is another opportunity to stay articulate and stay politicized with the help of partner university radios in Europe and North America, either through live bilingual English/Turkish broadcasts or through recorded programs that can be stored on partner radios’ websites. Partnering with prestigious overseas universities is an opportunity to boast Turkish universities’ profiles and will preempt university administrations’ objections to the joint broadcasts.

3. Crowdfund independent journalism: Anticipating the adverse impact of the disinformation bill, crowdfunding efforts should be mobilized for independent journalism, including for paying office rent if necessary. The lengthy and burdensome procedures under new restrictive rules on fundraising, especially on donations from abroad, will prolong crowdfunding efforts. Still, independent journalism is critical for staying articulate and staying politicized.

4. Define and dispute disinformation: The definition of ‘disinformation’ is imprecise in the proposed new bill. That is why it will be crucial to define it preemptively, narrow its scope so that it does not become a lump-sum category under which legitimate speech can be criminalized, and dispute it through strategic litigation in the courts. Third party interventions, expert opinions, and precedent-setting rulings, especially at the level of supreme courts, can stop the bill which, in its present form, will deal a devastating blow to an already precarious state of freedom of expression in Turkey.

Historically, as sociologist Michael Mann notes, states that increase their coercive/despotick power lose out on their infrastructural power or the ability to penetrate and easily rule society.33 Turkey’s government has placed itself on this path towards an erosion of its infrastructural power, and Erdoğan has been targeting the powers of his nemesis, Ekrem İmamoğlu, the mayor of Istanbul since 2019. Erdoğan issued a number of presidential decrees that removed the mayor’s authority in specific local governance issues, and imposed budgetary constraints on Istanbul’s public services. Local government is at the heart of infrastructural power, and it is imperative that the opposition in Turkey maintain its robust presence at the local level ahead of the 2024 local election.
But İmamoğlu may be unable to compete. He is facing charges of allegedly insulting the members of the Supreme Election Board, and the prosecutor demands that he be barred from politics. A verdict on the case is expected in late September 2022. Others, like the leaders of the Turkish Medical Association, are convicted already of ‘propagating terrorism,’ asý and remaining outlets for voicing dissident opinions are under increased financial pressure due to heavy fines imposed by the Radio Television Supreme Council of Turkey. TELE 1, under extreme financial stress, has just appealed for solidarity from its viewers to be able to continue broadcasting. Staying articulate, staying politicized, and staying in solidarity is more crucial than ever in the defense of fundamental freedoms in Turkey ahead of the 2023 general election which appears to be on a knife-edge between the government and the opposition.

**Endnotes**


5. See [https://globalfreedomofexpression.columbia.edu/cases/incal-v-turkey/](https://globalfreedomofexpression.columbia.edu/cases/incal-v-turkey/)


8. Quoted in Turkish in Altparmak, 2014: 102, translated by the present author.

9. Altparmak, 2014


11. Kaftancioğlu was also barred from assuming political office. Thousands protest Turkish opposition politician’s conviction. Euronews. 5/22/2022. [https://www.euronews.com/2022/05/22/us-turkey-politics-opposition](https://www.euronews.com/2022/05/22/us-turkey-politics-opposition)


17. The provisions of Law No. 7262 served to bolster an impending case against the We Will Stop Femicides Platform which dates back to 2018.


22. Turkey’s cult satirical magazine shut down over Moses cartoon. 2/17/2017. [https://apnews.com/article/bc0a24fd9ed74a1f825f97b28e0bf6d2](https://apnews.com/article/bc0a24fd9ed74a1f825f97b28e0bf6d2)

23. Burak Bilgehan Özpek and Başak Yavcan. 2016. Follow the Money. The Turkish government is rewarding newspapers which favor its position with more state-sponsored advertising. Index on Censorship 45(4): 72-75.


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