

Hearing on “The Future of Turkish Democracy”
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Mr. Chairman and distinguished members of the subcommittee:

Thank you for this important hearing. Given the monumental events of the last year in Turkey, and the upcoming presidential elections that will shape the direction of Turkey’s politics for decades to come, the subcommittee has made a timely decision in taking up the question of Turkey’s democracy and where it is headed.

It has been just over thirteen months since the Gezi Park protests began. Especially in the early days of the protests, there were many who saw them as an opportunity for Turkey: a chance for the government to strengthen democracy by compromising with a large minority frustrated with its lack of voice in an increasingly majoritarian system.

Unfortunately in the past year the government has not taken that opportunity. Since halting the Gezi protests with overwhelming police force in July 2013, the government has grown even more intolerant and dismissive of criticism. This tendency intensified following the launch of the major corruption investigation on December 17, 2013, which implicated leading members of the government and was followed by leaked recordings of government officials apparently engaged in massive corruption.

I want to highlight here several of the key examples of how the government has sought to suppress dissent, with a special focus on the media.

First, it is important to understand that the chief mechanism of control of most media in Turkey is not a law but the relationships between media owners and government officials, especially the Prime Minister. The country’s largest media outlets are owned by corporate holding companies that depend heavily on government procurement contracts in areas like construction, housing,

transport, and logistics. This makes them very vulnerable to government pressure, and incentivizes holding companies to use their media arms as lobbying firms for major government contracts.

To give one example, certain of the conversations released after December 17 involve the owners of major construction firms that were seeking to win contracts to build Istanbul's multibillion-dollar third airport. The leaked conversations show that the owners were directed by a government minister to contribute hundreds of millions of dollars of their money to a "pool" to buy one of the country's largest and most important media companies, Sabah-ATV. The owners would then be expected to provide positive coverage of the government. This has created the expression in Turkish "*havuz medyası*" – literally "the pool media" – to describe corporate owners whose media properties are in service of the government.

This relationship between corporate owners and the government creates a clear conflict of interest that the government exploits. In other recordings released after December 17, Prime Minister Erdoğan is heard berating a top manager of the television station HaberTürk for running coverage of opposition politicians on his news channel. The prime minister has publicly confirmed one of these incidents, when he demanded that the manager remove a ticker from the bottom of the screen describing an opposition politician's speech.

For years before Gezi, journalists in Turkey had been describing the prime minister's phone calls to have coverage changed and individual journalists fired for speaking out in ways that displeased him. When more than 80 journalists were fired during the Gezi protests for critical coverage, therefore, it was a continuation of a process that had begun years before.

The government's direct leverage over media ownership is coupled with a very repressive set of legal tools that are actively used to punish dissent. These include criminal and civil defamation laws, which the government continues to use very widely against all sorts of protected speech. Prime Minister Erdoğan himself has filed hundreds of defamation suits. In one of many examples, on January 20, 2014, the prime minister won compensation in a libel suit against author İhsan Eliaçık who had accused Erdoğan of being a "dictator, a corrupt leader, provocateur, liar and arrogant" on his Twitter account during the Gezi Park protests.

The European Court of Human Rights has ruled, in *Tuşalp v. Turkey*, 2012, that using civil defamation laws to afford greater protection to public officials is a violation of Article 10 of the European Convention on Human Rights, which is legally binding upon Turkey as a signatory.

The government can even dictate to media organizations which stories not to cover. Most recently on June 17 this year the Radio and Television Higher Council (RTÜK) issued a ban on reporting on the capture of Turkey's diplomatic representatives in Mosul, Iraq by the Islamic State of Iraq and Syria, or ISIS. This blackout remained in effect as of July 11.

The country's harsh anti-terrorism laws create another major limit on freedom of speech. Despite a series of judicial reforms, these laws remain broad and susceptible to abuse. Under these laws, reporting on or interviewing members of terrorist or illegal organizations can result in years of pre-trial detention followed by long jail sentences. Although Turkey is no longer the world's leading jailer of journalists thanks to a reform in spring 2014 that released dozens of journalists who had served years in pre-trial detention, it is important to note that in most cases these are only conditional releases, and the original charges remain open against these journalists.

The December 17 investigation, which has been clearly supported by the Gülen movement that once allied itself with Mr. Erdoğan's government, has created a furious purge of alleged Gülenists inside and outside of the government that is still ongoing, as well as a wave of repressive legislation. Several key parts of this effort directly target the ability of journalists and others to access and disseminate information.

One of the key steps was the passage of amendments to the law governing blocking internet services, Law 5651. The new amendments mandated the retention of user data for 1-2 years, to be specified by later legislation; required Internet Service Providers to join an "ISP Union" that would not be able to write its own bylaws and will be essentially under government control; and made it possible for the government to block individual URLs. The original legislation also allowed websites to be blocked without a court order, although after President Gül's intervention there will be a special court created to handle blocking requests. It is unclear what rights users and website owners will have to contest blocking requests. The clear objective of the new law is to make it easier and faster to block websites and to determine the identities of internet users.

Again it is important to note that the European Court of Human Rights had ruled in 2012 in *Yildirim v. Turkey* that the earlier version of Law 5651 violated the European Convention on Human Rights by lacking sufficient safeguards against abuses. The new version of 5651 has not resolved this problem, and indeed it has made it worse.

In another violation of the *Yildirim* ruling, in the week prior to the March 30 local elections, the government completely blocked both Twitter and YouTube in Turkey prior to the March 30 local elections. Twitter and YouTube had been the two main platforms for disseminating leaked recordings of corruption. Although the Constitutional Court overturned both blockings after the election, they still violated freedom of expression and the right to access information, especially during a political campaign.

The most disturbing legislative development following the December 17 investigation is the new law granting special powers to the National Intelligence Organization, or MİT. The law entitles the MİT to collect all information, documents or data from any entity in Turkey. The law does not refer to a warrant or other judicial process for approving this collection. Interference with the activities of the MİT, for instance by refusing a request for data, is punishable by 2-5 years in prison. Obtaining information about the MİT is punishable by 4-10 years in prison. Publishing

information about the MIT by any form of media including social media is punishable by 3-9 years in prison. These provisions are a clear threat to journalists' and citizens' rights to freedom of expression, access to information, and privacy.

The law also places the MIT and its employees outside of normal structures of accountability. Article 8 of the law says that any requests coming from the MIT will be considered superior to all other legal obligations, and that any person complying with these requests will be relieved of legal liability for violations of the law created by compliance. The article explicitly states that this law is superior to any other laws on this subject.

This supra-legal National Intelligence Organization constitutes a grave threat to Turkish democracy.

Most of my testimony has focused on freedom of the media and of expression, but I also want to mention an important case concerning freedom of association and assembly.

The prosecution of the members of Taksim Solidarity – the group that organized the original small Gezi Park protests in May 2013 – is especially disturbing and should be a matter of serious Congressional interest. In a case that opened last month, 26 Taksim Solidarity members are facing charges related to the protests. Most disturbingly, five of the members are being charged with “forming an illegal organization,” a crime that can carry up to 15 and a half years in prison. Civil society is concerned that this case could eventually be used to prosecute others through guilt-by-association.

Finally, I will turn to the topic of the panel, the future of Turkish democracy. Like most people I believe Prime Minister Erdoğan will win the presidential election in August, quite likely in the first round. It is clear that his top priority is to create first *de facto* presidential rule, and then following the June 2015 parliamentary elections, a *de jure* presidential system through constitutional reform.

A presidential system is not inherently bad, and Turkey needs a new constitution. But given Mr. Erdoğan's “with us or against us” style of governance, I fear constitutional reform will be neither inclusive nor consultative. Mr. Erdoğan sees himself as leading a revolution against secularist elites and outside powers. And a revolution requires constantly creating enemies--real or imagined--who must be defeated. I fear Mr. Erdoğan's presidency will sharpen divisions within Turkish society and further weaken institutions in favor of personalized rule. This will harm human rights and fundamental freedoms, and also the rule of law and economic management.

If there is a slim silver lining from the last 13 months, it is that the U.S. government no longer casts Turkey as a model democracy. For many years of AK Party rule, U.S. policy towards Turkey ignored highly visible problems with human rights, democracy, and rule of law. This exercise in positive thinking did not serve Turkey and it did not serve the United States. The new

frankness about Turkey's internal dynamics offers an opportunity for the U.S. to make Turkey's democracy a serious part of its policy planning.

The European Union remains the best mechanism for the U.S. to support the development in Turkey of effective independent institutions with checks and balances. Yet right now Turkey's accession has lost momentum. The U.S. has been committed to Turkey's E.U. membership, but primarily through rhetorical support to what is treated as an E.U.-Turkey process. The U.S. should elevate Turkey's accession as a strategic priority and designate a high-level official specifically tasked with accession to guide U.S. strategy in support of Turkey's membership. The U.S. should request an appropriate-level interlocutor from the Turkish side with an agreed schedule for high-level dialogue on progress. Designated working-level groups from both sides should meet more frequently. This process should be transparent to and inclusive of Turkish civil society. It is important that it be in consultation with the E.U. through an interlocutor who can brief on the E.U. perspective and support the efforts of the working group to advance the process.

Turkey's E.U. membership should not be treated as a "nice if it happens" outcome – it should be regarded as a top-level priority for the United States in the region, on par with security and economic goals. A good immediate step towards this goal would be helping lift E.U. member state blocks on accession and opening chapters 23 and 24 of the E.U. acquis on Judiciary and Fundamental Rights and Justice, Freedom and Security. Turkey's process for E.U. accession has been long and it will still stretch longer, but every step along the way makes an important contribution to securing democracy in Turkey.

The best way for the U.S. to support democracy in Turkey is by integrating democracy and human rights into the bilateral policy relationship, just as security and trade have been integrated. The United States' long-term vision of its relationship with Turkey should be built on the country's institutional and democratic development.