

# **Policy Suggestions to Improve Freedom of Media and Expression in Turkey**

**2020**

# Creating Opportunities for Meaningful Expressions in Turkey: COMET Project

## Media Policy Report

2020 May

The COMET Project team thanks all journalists,  
executives, media professionals and media  
organizations who had participated the project and  
offered their opinions for the improvement of media  
atmosphere in Turkey

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# Executive Summary

“COMET: Creating Opportunities for Meaningful Expressions in Turkey” was undertaken by the Freedom Research Association (FRA) with facilitation of International Republican Institute (IRI) to develop policy recommendations for freedom of expression and the press in Turkey.

Following field work carried out from October 2019 to February 2020, the working group members, constitutional lawyer Assoc. Prof. Ali Rıza Çoban, media and communication studies expert Assoc. Prof. Gülseren Adaklı, and Media and Law Studies Association (MLSA) Editor Ece Koçak, offered their insights and contributed to policy recommendations in this paper.

Within the field, project team had visited Ankara, İstanbul, Kars, Eskişehir, Antalya, Aydın, Samsun, Kocaeli, Hatay and Diyarbakır in Turkey, conducted group interviews and semi structured interviews with 182 journalists and executives, and listened the problems and ideas for a solution from the members of the press. In addition, the project team had conducted two separated sets of focus groups in Ankara and İstanbul to investigate the level of trust that the media consumers have in media. The main problem areas that emerged from these focus groups were discussed with over 300 attendees at “Media Caravan” events organized in the cities that were visited.

This study finds that there are structural problems in Turkey’s media landscape that prevent the public from accessing reliable and accurate information, and journalists who are producing this information from practicing their profession in a free and independent manner. Journalists have difficulty accessing information and documents, and they face pressure and censorship when publishing or disseminating the information and documents they were able to access. The public, on the other hand, does not trust the information and news and turns to alternative news sources, but faces political bias in these sources.

The general outlook drawn by the journalists and executives indicates that there is a visible political influence on the legislative, auditing and regulatory mechanisms related to the press, the organizational and working life relations of journalists, and the perception and practice of journalism.

At the root this influence lies the structural and historical economic interdependence between media and politics.

In this context, this report is divided into five sections. In the first section, the reasons behind the influence of politics on the media, the ownership structure of media and the regulatory authorities in Turkey are examined with assessments and orientation of Assoc. Prof. Dr. Gülseren Adaklı. The following sections that examines the problems related to working life, obstacles to the professional practices of journalists, and the problems of the local media have been prepared as a result of the evaluations of journalists, managers and representatives of the professional organizations who have conveyed their views within the scope of the COMET project, and developed a policy recommendation in line with the suggestions of the participants.

The last but not the least, the final section is dedicated to the issue most deeply affecting the current journalistic practices in Turkey, that is the legal proceedings of journalists and the

practices of suspension and blocking of broadcast. In this framework, Constitutional Law Expert Assoc. Prof. Dr. Ali Riza Coban and MLSA's Editor Asli Ece Kocak have evaluated the legal problems and submitted their recommendations within the framework of their areas of work.

In this context basic problem areas are listed as follows:

## **Basic Problem Areas**

- 1- The ownership structure of the media in Turkey leaves media organizations and media workers susceptible to the influence of political power. Competitive opportunities that would allow media organizations to sustainably finance themselves without public resources are lacking; instead, public resource allocation is instrumentalized as a means of pressure or favoritism. Data on the media sector and market shares are not transparent and publicly available.
- 2- The institutions and organizations that organize, supervise and fund the media are open to political influence. This has caused journalists to be deprived of independent and impartial regulation, supervision and funding opportunities, and to be vulnerable to political and financial dependence and pressure.
- 3- As a result of the gradual weakening of judicial independence, criminal law turned into an instrument of pressure against the press. Especially in the last five years, there has been a serious increase in investigations and prosecutions against journalists, and it has become routine to arrest and punish journalists with ambiguous charges. In addition, open censorship mechanisms, such as blocking and banning organizations that broadcast over the internet, have started to be implemented frequently. The deterrence caused by this climate has made it impossible for the media to function as a watchdog.
- 4- As a result of the lack of security in working conditions in the media sector, insufficient employee benefits and rights, barriers to accessing them (such as being obliged to have a full-time employment to be regarded as working in the sector professionally, injustices in the distribution of press cards, etc.), barriers to unionization and weakness of professional organizations, journalists face difficulties in performing their jobs.
- 5- Accreditation practices have been intensified, embargoes have been imposed on media institutions and journalists by public institutions, bureaucrats, officials and politicians, and these practices have seriously restricted journalists' ability to report objectively as they create injustice and bias.
- 6- The fact that internet media is not subject to the Press Labor Law prevents journalists working in this field from accessing the benefits and rights of professional press employees and causes problems in accessing news sources. This situation compels some online journalism outlets to turn into channels that rely on disinformation and political bias, that operate without supervision other than online bans and access restrictions, and that lack fact checking and basic reliability. In addition, the lack of

independent and impartial regulation and defense mechanisms makes online media channels vulnerable to access restrictions.

## Recommended Solutions

- 1- Recommendations related to the structural problems of the media
  - The Radio Television Supreme Council (RTÜK) and the Press Advertising Agency (BİK) need new democratic legal frameworks to guarantee their independence from political power and all power relations. First, the configuration and election principles of the members of these institutions should be changed, and procedures that may cause political bias should be eliminated.
  - Measures should be taken to prevent the BİK's domination over the local press, and mechanisms should be established to strengthen the local press financially and against the pressure of both central and local powers.
- 2- Recommendations related to working life:

Based on the Constitutional Court (AYM) decision, which is explained in detail in the relevant section below, legislative authorities must legislate the conditions for obtaining a press card under Press Labor Law (Basın İş Yasası), and the law should be reformed by taking the following points into an account:

- a. Procedures and principles regarding press cards should be determined by independent professional organizations. This card should be issued by professional organizations and recognized by official institutions and organizations. If not, Press Card Board (Basın Kartı Kurulu) should include professional organizations into the process in a manner that their voice will be more heard in the decision-making processes.
- b. Online media should be included into the Press Labor Law. Sectoral definitions should be updated and businesses carrying out online journalism activities should be included into the Press Labor Law.

It should be ensured that employees working in the online media and freelance and part-time employees for a media organization should be guaranteed the rights provided by the Press Labor Law.

The conditions required for online journalism to get a share from public funding sources should be determined by independent media institutions and organizations, and they should be controlled and regulated by these institutions.

In the event that they operate within the scope of the press law, financial privileges should be provided to encourage the businesses engaged in internet journalism to be included in the business line.

Proportional control mechanisms should be operated independently in order to reduce practices such as unregistered work, receiving outside wages aside from salary and being insured in different sectors.

It should be made possible for the trade unions and professional organizations to organize actively in all provinces of Turkey and to carry out active advocacy for the rights and benefits of national/local newspapers and media employees.

Mechanisms for protecting and controlling the employment benefits and rights of journalists should be strengthened, and independent professional organizations and institutions should be actively involved in these mechanisms.

Job descriptions should be made and supervised by independent press organizations, if necessary. These organizations should have professional sanction power.

### 3- Recommendations related to journalism practices:

Independent news agencies to operate across Turkey should be established.

Reporters should be supported and privileges should be provided for reporters to access news sources. In this context, institutional/independent reporters should be supported with international and/or national funds, and these supports should be provided in a sustainable system.

Communication between local media and national media/agencies should be increased and common working spaces should be created.

The link and exchange between traditional media organizations and internet media should be strengthened, thereby increasing the accountability by providing bidirectionality.

In the “news versus analysis” dilemma, the distinction between routine news and comment-news/analysis should be clarified, and support should be provided for routine news-based media.

Independent news verification institutions and channels should be supported, and the public's awareness and resistance to biased news, political propaganda and disinformation should be increased.

### 4- Recommendations regarding local media:

In order to protect the copyright of original newspapers and journalists, obligation of reference must be imposed in the news and copying of all news should be prohibited.

Training and financial support mechanisms for reporters should be established to support local journalism and reporting.



Financial independence of newspapers should be ensured and alternative financial opportunities should be created.

A mechanism is needed to protect newspapers and journalists from political influence, threats and irregularities.

Professional press organizations and unions should be more effective locally, and more effective work should be performed to protect the personal rights of journalists and newspapers.

#### 5- Recommendations related to the field of law

Legislation on terrorism should be essentially changed and the definition of terrorism and terrorism offences should be rearranged in accordance with international standards. Non-criminal actions should not be accepted as valid evidence of membership in a terrorist organization. The Anti-Terrorism Law should be abolished completely, and the relevant provisions of the Turkish Penal Code should be harmonized with international standards.

The crime of defamation (insult) of the President clearly conflicts with the ECtHR jurisprudence and Article 299 of the Turkish Penal Code should be abolished.

In line with the recommendations of the Council of Europe, “defamation” should be decriminalized, and if this is not done, article 125/3 of the Turkish Penal Code should be annulled or it should be clearly stated that this provision does not include politicians.

The Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications should be reviewed from the beginning and the legal nature of access prevention practice should be clearly regulated in the law.

Blocking all access to news sites' domains should be annulled.

Since banning publication constitutes open censorship, the practice should be eliminated entirely, and a limited publication ban should be allowed in rare cases and exclusively in order to protect the rights of individuals, especially minors.

Judicial independence and impartiality should be guaranteed.

Changes in the structure of the High Courts for political purposes should be avoided.

High courts, including the AYM, should be regulated based on pluralism and merit.

Legislative processes should be reregulated to ensure transparency and participation.

Omnibus Bill practice should be terminated immediately and the use of basic law enforcement should be prevented to be used for the wrong purposes.

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## ABBREVIATIONS AND ACRONYMS

AKP: Justice and Development Party

AYM: Constitutional Court

BASIN-İŞ: Press Broadcasting Printing Workers' Union of Turkey

BİK: Press Advertisement Agency

BTK: Information and Communications Technologies Authority

ÇGD: Progressive Journalists Association

CHP: Republican People's Party

CİB: Presidency of the Republic of Turkey Directorate of Communication

CoE: Council of Europe

DİSK: Confederation of Revolutionary Trade Unions

ECHR: European Convention of Human Rights

ECtHR: European Court of Human Rights

FRA: Freedom Research Association

HAK-İŞ: Rights Confederation of Trade Unions

HRW: Human Rights Watch

MEDYA-İŞ: Media Workers Union

MLSA: Media and Law Studies Association

RSF: Reporters Without Frontiers

RTÜK: Radio Television Supreme Council

TBMM: Grand National Assembly of Turkey

TCK: Turkish Penal Code

TGS: Journalists' Union of Turkey

TRT: Radio Television Association of Turkey

TSE: Turkish Statistical Institute

TURK-İŞ: Confederation of Trade Unions of Turkey

## TRANSLATIONS OF LEGAL TERMS

Criminal Court of Peace: Sulh Ceza Hakimliği

Labor Court: İş Mahkemesi

Labor Law No. 4857: 4857 Sayılı İş Kanunu

Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication: 5651 sayılı İnternet Ortamında Yapılan Yayınların Düzenlenmesi ve Bu Yayınlar Yoluyla İşlenen Suçlarla Mücadele Edilmesi Hakkında Kanun

Law No. 6356 on Trade Unions and Collective Bargaining: 6356 Sayılı Sendikalar ve Toplu İş Sözleşmesi Kanunu

Press Card Commission: Basın Kartı Komisyonu

Press Card Board: Basın Kartı Kurulu

Press Labor Law No. 212: 212 Sayılı Basın İş Yasası

Prime Ministry's Department of Press and Information: Başbakanlık Basın Yayın Enformasyon Genel Müdürlüğü

## FOREWORD

The main principle that the press, described as the “Fourth Estate,” has historically abided by is to monitor the functioning of public institutions and organizations in a democratic structure for the public good and to inform the public. For this reason, problems with freedom of the press also create obstacles to the healthy functioning of a country's democratic system.

In order for freedom of the press to exist, journalists must have the freedom to disseminate information and news, readers and viewers’ access to news must be guaranteed and the independent structure of the media should be legally protected. The right to learn the truth is a prerequisite for people to freely form their own opinions and participate in public debates. It will not be possible for the public to form our original ideas and to participate in social life as long as they cannot learn the facts. Therefore, any obstacle to the freedom of the press is also a threat to the right of society to learn facts.

Studying the history of the press in Turkey reveals that the media in Turkey is in a dependent relationship with political power in terms of its capital structure and as well as the development process. Legal remedies have been attempted to disrupt this mutual relationship, unsuccessfully; this dependent relationship made the influence of politics always dominant in access to and convey information. Susceptibility to this effect has made the media prone to either financial dependence or political oppression with the disposition of political powers. This trend is one of the biggest reasons for the unprecedented decline in the perception of freedom of the press in Turkey in recent years.

Field studies conducted under this program in order to provide political recommendations for the development of freedom of expression in Turkey underlined that there are obstacles preventing the public from accessing sound information and news in Turkey and journalists from producing this information and news to carry out these activities freely and independently.

The findings of this study also showed that this relationship is reflected in the perception and practice of journalism as well as the press, legislative, control and regulation mechanisms, organization and working life relations, under visible pressure and censorship on journalists; it undermines the confidence in the media and ultimately undermines the ability of the media to be the "fourth estate" that it undertakes in democratic countries. Local journalism, which is an important pillar for access to information, is crushed under the relations of political and economic dependence, and struggles to survive in a spiral of increasing unemployment and irregularities.

As part of this study, semi-structured interviews and roundtable meetings were held with 182 journalists and managers in Ankara, Istanbul, Kars, Eskişehir, Antalya, Aydın, Samsun, Kocaeli, Hatay and Diyarbakır from October 2019 to February 2020. The trust relationship media consumers have established with the media in Turkey were investigated through four focus group meetings held in Ankara and Istanbul. Then "Media in Turkey and Trust" discussions were held with more than 300 media consumers in the eight cities listed above through the Media Caravan events and the results of focus group meetings were discussed.

Assoc. Prof. Dr. Ali Rıza Çoban, a constitutional lawyer and a member of the Freedom of Expression Association, Aslı Ece Koçak, Media and Law Studies Association (MLSA) editor and Assoc. Prof. Dr. Gülseren Adaklı, communication studies specialist as representatives of the working group made evaluations and suggestions in view of these findings.

This study reveals that necessary legal and institutional mechanisms need to be strengthened in Turkey to provide universal assurances about the freedom of expression, to improve the freedom of the press in favor of the public good, for the media to be independent from the influence and pressure of political power both sectoral and structurally.

In this context, the working group analyzed the problem areas under the heading of the media's economic and political dependence relations, legal problems, problems related to working life, barriers to journalistic practice and problems of the local media, and offered policy recommendations for each topic.

## PROBLEMS RELATED TO THE STRUCTURE OF THE MEDIA

*"Is the ideal of journalism can be performed in Turkey? No. It cannot be done because of the political pressure. It cannot be done because of clientelism pressure. It cannot be done because of journalists' own spinelessness. Therefore, journalists who are afraid of politics, their boss and editor cannot be fair; s/he cannot be honest, nor can s/he call a spade a spade." Media executive*

Journalists and media executives interviewed during this project expressed that pressures on the news in Turkey are due to problems inherent in the structural development of the media. What lies at the root of the problem is the media's financial dependency on and economic relationship with politics. Interviewed journalists and media executives generally agreed with the opinion that "media in Turkey was always problematic". Based on the interviews, the main problems of the past can be listed as the media's financial relationship with the state and the development of a dependent media ownership structure accordingly, adverse effect of this relationship on the independence of news production and the inability of the supervisory and regulatory mechanisms to fulfil their duties.

Journalists and executives are divided into two groups in their assessment of the difficulties they experience in journalism. In addition to some who thought their professional problems were more severe compared to the past, others shared that these problems existed in the past but are only experienced differently today. Below are varying perspectives of top media executives:

*"We could not have carried out ideal journalism before due to the disruptive effect of state and private sector relations in the news. At the moment, a political shroud has been added on top of all this."*

*"This is what we experience in every period. Politics – our media relationship has always been like this."*

*"So, it's the same. Because the judiciary does not forgive. It does not forgive now, either. But it did not forgive at that time, either. Therefore, we are turning in a vicious circle. We were very free during the (Turgut) Özal period. We were not free during the Mesut Yılmaz period, we were very free in the first ten years of the AKP, now we are not free. We live a continuous cycle."*

*"What if there are no restrictions for freedom of expression in Turkey? What can we do? I think we cannot do anything. It is still inadequate because there are serious weaknesses in the media itself. This is a situation that cannot be solely explained by political reasons. First, the media in Turkey is based on a capital structure that is extremely old."*

The common thread in these perspectives is that the media capital structure and ownership relations in Turkey have developed in a manner that is dependent on political authorities.



In all modern democracies, legitimate or illegitimate relations between the state and media or state intervention in the media exist to some degree. Communication scholars Daniel Hallin and Paolo Mancini, in their work titled "Comparing Media Systems: Three Models of Media and Politics," have listed the areas where these intervention or relations may occur as such: media concentration, ownership, competition laws, public service broadcasting, the state being important source of news, state-run media, bans to reach state-related information, supportive measures such as subsidies or tax reduction, laws that regulate political communication, hate speech laws, professional privacy and ethics, and surveillance-audit legislation.

A general overview of media policies in Turkey indicates that all of those items listed by Hallin and Mancini as an example of political presence in media exist in Turkey. This presence shows the influence of political authorities over media. The lack of a pluralistic and competitive market environment in Turkey contributes to this media ownership structure, which is organically linked to state and political authorities. This also leads to a situation where media is largely financed by direct public funding mechanisms rather than standard income opportunities such as sales and advertising. This structure has created a dual problem. First, the main sources of income of media organizations have been public funds due to lack of independent advertising revenues. This insufficiency, on the other hand, has structurally paved the way for political powers to suppress freedom of the press and use it for their own interests.

Although the underlying problems of keeping media organizations economically independent are older, significant changes in media structure has been experienced with the adoption of export-oriented economic model after 1980 in Turkey. In this period, a new media economic architecture was formed. In the center of this architecture are conglomerates operating in economic sectors other than the press. The notion that these firms with increased conglomeration utilize the media industry as a tool to establish a connection with political power and thereby guarantee their area of profit, is a widely accepted opinion in the field of media studies in Turkey. [2] These conglomerate holdings, which included media organizations, were the ones that received the most share from the privatization efforts that accelerated in the 1990s. [3]

This situation makes it difficult for independent media organizations to survive. Even during the promotional wars of the 1990s, despite the increase in sales, the revenues generated from sales and advertising could not match the Western media market model. As a result of insufficient advertising revenues, the media become more dependent on public funds and politics.

Ceren Sözeri and Zeynep Güney note in their report published in 2011 that many "media companies operated under economically irrational conditions, and some of them published incurring loss". [4] As Sözeri stated, "In the interviews made by the Turkish Parliamentary Commission Investigating Coups and Memoranda, some media bosses stated that they had to enter this sector due to the demand of politicians and they had to grow mostly by acquiring television channels to reduce the losses." [5]

Although the rationalization of the market is largely dependent on sales or rating figures, the sources on which advertising spending is based are not independent, professional audit firms. This causes the advertisements of state institutions to be used as a means of applying pressure and arbitrary favor. [6]

Another media executive, who was interviewed in Istanbul, also drew attention to the problem of ownership structure in Turkish media:

*“The bosses want to be rich. They don't want to lose their business. They want to make a lot of money from their TVs (channels), and they think they will do this by establishing good relations with those in political power. Public institutions are transferring money to them through advertising. The Press Advertising Agency (BİK) is transferring money to them, and they prefer not to see (and report) the mistakes of the government. Because, if they see them, these ads are cut. Thus, clientelism takes sides with money, rather than with ethics and principles. Therefore, a free and fair media cannot be born.”*

In addition to these holding companies' making profit by public procurement, many studies show that public institutions are biased in distributing public funds and advertising, and they tend to allocate public advertisements to the media companies whose broadcasting is more in line with the opinions and demands of the ruling political bodies. For example, the state-owned Halkbank allocated most of its advertising expenditures to Star newspaper and Kanal 24 television in 2012, and signed sponsorship contracts amounting to millions of lira with these organizations. According to the data of Nielsen's AdEx, the three newspapers that received the most advertising from the state in the first half of 2014 are Sabah, Star and Milliyet.

*“This dependency relationship has continued to increase. In this context, while the holdings of media outlets that broadcast or publish in line with the ideas of the political power grew with public procurement and government support, those outside this line were excluded from the support mechanisms or suppressed through supervision and judgement.”<sup>[7]</sup>*

As a result of these factors, it is seen that in today's Turkish media, the ultra-cross media ownership structure (whereby one group controls many media outlets) is integrated with industry and trade network. According to "Media and Ownership" report prepared by IPS and Reporters Without Borders, as of the 2018 in Turkey, "the four biggest owners of media have 71% of the cross-media audience share and media owners invested at least three of the mediums such as radio, television, newspaper and internet-based nes." [8] Again, according to the same report, these four media owners received "various and important public procurements from the Third Airport Project (Istanbul Airport), development of underground construction, and urban transformation projects." [9] A slightly more detailed example of this ownership network can be found in the Turkish Media Owners Network prepared and regularly updated by Networks of Dispossession initiative.<sup>[10]</sup>

Journalists and media executives who were interviewed for the COMET Project stated that this ownership structure has a great impact on editorial freedom. However, they also stated that apart from being under political influence, media executives also intervene the news-making process in the interest of profit.

*“The executive elites in the private sector are deeply affected by the relations of clientelism and power; they take this into account when reporting, and they justify this under the cover of editorial independence. [...] Now it does. Now it is already done. Our newspapers do it too. We are in a cycle. Nothing changed. Conservative media is doing it now. Then it was the liberals and before that it was done by the leftist media. We are like that; our political psychology is very suitable for this.” Media Executive, Istanbul*

The Press Advertising Agency (BİK) which was formed in an aim at fair distribution of public advertisements to the press organizations in the market has become more and more open to political influence due to the dependent ownership structure. BİK has increasingly become a source of pressure and playing favoritism on press organizations that depend on advertising revenues in order to survive. As a result, BİK too has made it difficult for the press organizations to access independent financing opportunities.

*"There are two things that hinder the development of the media in Turkey; one of them is ad distribution policy. The ad distribution policy is also divided into two. BİK distributes the advertisements of the state, and the private sector has ad distributing agencies, big agencies, which also distribute the advertisements of the private sector. These two are not independent from each other. Agencies holding the advertising distribution cake of the private sector are monopolized. All gathered in one agency." Media Executive*

Local media, which are financially dependent on revenues from public ads, do not have a self-sufficient capital structure in the absence of these revenues. This greatly prevents the local media from playing its important role in demonstrating the needs and demands of the society and molding public opinion via their journalistic activities.

Unlike national media, local media ownership runs on a small scale, including, commonly, individual ownership. But the impact of politics on finance and advertising revenues becomes even more visible in local media. Local newspapers, especially those that cannot get enough share from advertising revenues, need local and national public resources to sustain their lives. In turn, political influence has created discrimination and favoritism. This deficiency in funds makes journalism more difficult than the National media.

*"Following the elections, first thing that the newly elected mayor does is to cancel previous subscription arrangements with the newspapers and arrange subscription with those who are politically on their side. The opponent parties may not accept this (accusation) but all the political parties do that. Because they do not have economic independence, newspapers cannot act freely, and they also cannot work freely," Journalist, Eskişehir*

*"The supervisory body is the deputy governor. They have to conduct supervision. They have to implement the relevant regulations, when the regulations are followed, things get better. However, for three or four years, the ones who are working in newspapers are those who are politically close to them, those who are supervising are also politically close to them. People also are afraid to lose their jobs because they had laid off people," Journalist, Aydın*

The lack of independent institutions that will control and regulate the political influence in the ownership structure of the media is a factor that increases this impact and affects journalists' access to the news independently.

The RTÜK, established to regulate and supervise the media sector, is an impartial public legal entity with administrative and financial autonomy. However, the fact that the composition of the Supreme Board is susceptible to the influence of state executive bodies shows that the board is prone to make decisions under political influence, and recent penal sanctions caused criticism of the Supreme Council's punishments and control by political bias.

RTÜK, founded with reference to the Council of Europe Cross-Border Television Agreement, emerged as a result of the need to establish a legal basis for the frequency planning and allocation of private institutions that started broadcasting in the 1990s. The European Union issued the “Audiovisual Media Directive” in 2007 due to the insufficiency over time by revising the frameworks used for the regulation of the sector to cover new technologies. This directive provided a reference for the Law on the Establishment and Broadcasting Services of Radio and Television in 2011,<sup>[11]</sup> but RTÜK, rather than harmonizing the broadcasting world, which has become quite complicated by covering various digital channels, introduced a series of rules limiting freedoms under various titles from national security to protection of the Turkish family structure.<sup>[12]</sup>

The Supreme Council has recently been criticized for acting outside the principle of impartiality in the audit mechanism. According to the report prepared by İlhan Taşçı, a RTÜK member from the opposition Republican People's Party (CHP), from January 2019 to May 2020, the Board imposed only 3 sanctions on organizations close to political power in terms of its ownership, whereas organizations with opposite property structure faced 36 penalties. Twenty-eight of them were given an administrative penalty amounting to TL 11 million (approximately USD \$1.9 million), and a single program had its broadcasting suspended twice. [13]

*“Ours (AKP-affiliated people) also do it. They interfere, affect newspapers, makes lots of mistakes. Political actors cannot interfere with the media; they should not. Can they run their own media? Yes. They can publish a newspaper of its own. For example, that newspaper can be an AKP follower and then they announce that they are followers. Then they can do what they want. Are there such newspapers? Many. But newspapers that do not want to be like this should not be interfered with.” Media Executive*

The chairman of the board, Ebubekir Şahin, responded to the criticism that the sanction penalties were made under the direction of the political authorities as follows:

*“There was no suggestion and instruction by our President, but if it happens, he is the head of our state. His instructions and suggestions concern all the organs of our state. We consider it as an order and say ‘certainly.’ But it's something different. I can easily say that there was no such instruction.”*

According to the evaluation of Adaklı, these supervision mechanisms are not specific to Turkey. Radio and television broadcasts are monitored more closely than other means of expression in all the world's deep-seated democracies and sanctions are imposed on inappropriate content in accordance with the broadcasting principles. However, broadcasting legislation in these countries is compatible with liberal principles in terms of both spirit and word, the concepts or terms used are operationalized and rearranged according to current developments. In other words, the legislation is interpreted flexibly, made free from ambiguous expressions that can benefit any political environment, expressions that seem very clear are not used arbitrarily, rules on hate speech are not applied to protect only members of a particular religion or sect, experts responsible for content control are elected from qualified experts in their field, who internalized freedom of expression, etc. [14]

*“This is something related to the distortion of the ownership relationship. I am not saying that there should not be such ownership. Such ownership exists in all over the world, and*

*it should also exist. But there should be some other institutions or structures where these owners, or ownership structures would feel that they are under supervision, or they can regard as a benchmark. For example, as such benchmark, there is not properly functioning public broadcasting in Turkey,” Media Executive, Istanbul*

Public service broadcasting is a theme of the media freedom debate in Turkey. TRT, (Turkish Radio Television Association) established on the basis of the public service broadcasting model pioneered by the BBC since 1927, five years after its founding in 1922, has evolved into a form that almost entirely lacks autonomy. Today it can hardly be considered compatible with the British example. The extent of the increase of political influence on TRT has been highly visible in recent years.

As a result, in recent years in Turkey, the most important of the obstacles to the realization of journalistic activity has been the media ownership structure’s development in a manner dependent on political authorities.

## RECOMMENDATIONS

- New financial models that can ensure the financial independence of media organizations should be developed, and incentives and funds should be provided for the sustainability of these models.
- Mechanisms that reduce the financial and political dependence of the local press on the BİK and instead ensure its financial independence should be supported. Independent and professional mechanisms to strengthen the local press against both central and local pressure should be supported.
- TRT should be reorganized administratively, legally and financially, and an autonomous corporate identity should be gained where the employees and the audience have a voice.
- Administrative and financial independence of RTÜK should be guaranteed. It should be ensured that the member structure is diversified by representatives of specialized non-governmental organizations, academics and readers.
- Public advertising revenues and distribution should be regulated transparently.
- In the process of awarding public tenders, a more transparent and fair regulation needs to be made and implemented, taking into account the impact of media ownership.

## PROBLEMS REGARDING WORKING LIFE

*“We cannot fully get our rights. There is no mechanism to control this. Neither the association nor any organization of which we are a member does not stand behind it. Neither the association nor the union stands behind it. Every year we have 600 new graduates [from communication faculties]. Naturally, the number of workers is high, the job is low, and we have to keep quiet in some things to protect our job. There is no supervision of [issues] such as our insurance, leave, work, or working on official days. There is no control over whether or not [we’ll get] paid on the day of the salary. There is no control in these matters.”*  
Journalist, Eskişehir

As is often stated, what lies at the root of the obstacles to freedom of press and expression are the deficiencies and/or inadequacy of the conditions required for journalists to perform their professions. The work carried out within the scope of the COMET project revealed that the most basic problem faced by journalists while they are doing their jobs is the lack of a minimally secure working environment. Journalists work in an insecure and unhealthy environment, both in terms of physical working conditions and employment benefits and rights.

The problems faced by journalists regarding working life include the threat of unemployment and violation of employment benefits and rights, which is the most important; the lack of sanction and control power of professional organizations; the obstacles to journalists' enjoyment of trade union rights; the impact of politics in defining and regulating the business sector; and press card and accreditation practices and the sidelining of professional journalist organizations.

## UNEMPLOYMENT

*“There is no media because there is no place to work and perform journalism. People cannot find a job, so they cannot work as a journalist”* Journalist, Istanbul

According to the January 2020 Business Sector Statistics published by the Ministry of Labor and Social Security, the number of registered employees in the press and journalism industry decreased from 97,365 in 2015 to 86,329 in 2020, and the number of workers in the industry decreased by 11%.

There are a total of 1,106 newspapers, 32 common, 10 regional, 642 local, 684 newspapers that qualify for advertising revenue from the Press Advertising Agency (BİK), and 422 local newspapers that qualify for subsidies or revenue from governorships. At least 15,000 people are officially employed in these newspapers, including distribution, print and office workers, including 7,593 white-collar workers. One hundred and nineteen media organizations have been closed by decrees in the last five years. According to the data of Turkish Statistical Institute (TSE) the number of newspapers and journals decreased by 2.3 percent from 2016 to 2018 and the press cards of 804 journalists have been cancelled.

However, the actual unemployment rate is much higher than that captured by the limited scope of the business definition. Unregistered employees and atypical working practices also skew these numbers. The media sector as defined in the Regulation on Business Sectors only covers

employees of newspapers, news agencies and radios and televisions, but there are businesses, especially internet journalism, that are not registered in this category, although they carry out media activity.

*“We often come across these examples, especially in the internet media. One of the five broadcasting companies that we have been working as a union in the last year, one appeared in the communication business, four in the business, office education and fine arts, briefly in the trade business. Even if we do union work there, our friends and colleagues cannot join us because the business sector is different.” Journalists Union of Turkey (TGS)*

According to figures predicted by the Journalists Union of Turkey (TGS), 40% of individuals working in journalism are not technically registered with state authorities as “employed in the media sector.” When freelance, part-time, and incorrectly classified workers are included, the number of employees in journalism that are not classified as “media sector employees” reaches 30,000 to 35,000. When taking this into account, the actual unemployment rate among media workers is believed to have reached 30% in the last three years.

Unemployment particularly affected local newspapers. Due to currency fluctuations that started in the third quarter of 2018, the price of newspaper paper increased and more than 100 daily newspapers that had the right to official advertisement were closed in 2019. Considering that there is an obligation to employ at least six people among the conditions of receiving advertisements for local newspapers, it turns out that at least 600 journalists are unemployed only in local newspapers. Considering the journalists who work unregistered and atypically, this number increases even more.

In addition, local newspapers chose to merge to combat economic difficulties, but mergers returned more journalists to unemployment.

For example, 13 local newspapers merged into two newspapers in Kars, and the majority of those working in these newspapers became and remain unemployed. Similarly, well-established media organizations were closed in Samsun, and according to the figures of the Samsun Contemporary Journalists Association (ÇGD), 67 journalists became unemployed. The number of newspapers in Hatay decreased from 16 to six. The biggest problem that local journalists bring to the fore is that they lack the economic conditions in which they can continue their journalistic activities.

Since there is a minimum number of employees required for local newspapers to receive government funding, some local newspapers employ people who do not carry out journalistic activities but register them as journalists with the social security service. Therefore official figures of the number of journalists working on a local scale do not reflect the truth. Due to these procedures, the employment opportunities of journalists are limited and the effective unemployment rate is even higher.

## BEING DEPRIVED OF PERSONAL RIGHTS AND LEGAL GUARANTEES

*“We have a very strong law, No. 212 (Press Law), a law that protects journalists. But it is not applied and is also diluted. Day by day, it is bent more and more.*

*Unfortunately, we have the worry that we will lose what we have with a new law.” Journalist, Ankara*

Practices such as atypical employment, freelance, piecework, part-time work and unregistered work are barriers for journalists to enjoy their rights set by law. Control mechanisms to ensure employees’ rights, on the other hand, remain idle in this regard. Journalists continue to work under current conditions and are afraid to apply to control mechanisms, either out of fear of unemployment, distrust of control mechanisms and/or political pressure. According to comments from TGS, there is no institutional mechanism whereby unions can apply for a reassessment of the determination of a firm or worker’s business sector.

This situation also deprives journalists of rights that are guaranteed by the Press Labor Law No. 212, the Labor Law No. 4857 and the Law No. 6356 on Unions and Collective Bargaining.

*“One of our big problems is that the Internet media is not covered by the Law No. 212 and therefore they cannot enjoy the personal rights of journalism. This is one of the important problems we face.” TGS*

In addition, many journalists are declared to the social insurance system with a salary that is different from their actual wage they receive—the difference is paid in cash off the books. They are employed without insurance for a long time under “trial periods.” Even if they are journalists, they are registered as non-journalist employees, which prevents them from accessing certain protections. Their overtime is not processed and they work under conditions that ignore health and safety.

*“Our biggest problem is, for example, our right to annual leave is 28 days, but there are often times when we cannot use these 28 days. When we go to the news in the evening after work, it falls into the overtime, but you can't get your overtime pay. When you work on public holidays, you get a regular single wage, this is not the case in the press law. Apart from that, the newspapers fell to 12 pages. 4 of which are said to be closed in the coming months. Obviously there is such a job security problem. People are also worried about whether they can get severance pay or not. I think the problems are more in the economic sense now.” Journalist, Eskişehir*

TGS authorities stated that people working in the press sector are protected within the legal framework in Turkey, but in practice that this legal framework does not work and that constitutional rights have become obsolete by deregulation.

In particular, recently, the personal rights of those working in the media sector within the framework of Law 212 have been restricted by the AYM decisions, which has caused additional loss of rights.

For example, in November 2019, AYM annulled the article of the law, which stipulates that the employer would pay a five percent penalty for every day when journalists' overtime wages were not paid on time. Having reviewed the appellate of the Bakırköy 13th Labor Court, the court stated that it aims to “prevent the disproportionate treatment of people working in the press sector for an objective and reasonable reason than other employees”. The court dismissed this



appellate in 2008 and stated that the law article "does not contradict the principle of measure" and that it protects freedom of the press and should be protected in the same way.

In February 2020, AYM annulled the right of attrition granted to press employees with the Press Law No. 212.

As can be understood from these developments, the personal rights of journalists are deteriorating, but journalists are unable to resist these losses due to the weakness of mechanisms that can protect and control the personal rights of journalists.

## BARRIERS TO TRADE UNION RIGHTS

Many workers in the business cannot benefit from their constitutional rights because of the low rate of unionization, the definition and scope of the sector which do not cover all employees, atypical and unregistered work and conditions of signing collective bargaining agreements.

In Turkey, Press and Media business segment has a total of four unions: BASIN-İŞ (Turkey Press, Publishing, Journalism, Graphic Design, Printing and Packaging Industry Workers 'Union) and TGS (Turkey Journalists' Union) affiliated to TURK-İŞ, MEDYA-İŞ (Media Workers Union) affiliated to HAK-İŞ and BASIN-İŞ (Press Broadcasting Printing Workers' Union of Turkey) affiliated to DİSK.

However, according to January 2020 Business Sector Statistics, while the number of registered employees in this sector is 86,329, the number of unionized employees corresponds to 8% of the entire sector, or 6,893 workers.

NUMBER OF EMPLOYEES	UNION	NUMBER OF MEMBERS	PERCENT
86.329	MEDYA-İŞ	2806	3.26%
	BASIN-İŞ	2410	2.80%
	TGS	1345	1.56%
	DİSK BASIN-İŞ	332	0.39%
	Total:	6893	8.01%

Press  
Employment  
Statistics  
Table

In accordance with Article 17 of the Law No. 6356 on Trade Unions and Collective Bargaining, in order to become a member of a union, it is necessary to be a worker according to the provisions of said law. The full-time work obligation of membership makes union membership impossible for freelance journalists. Freelancers can only be members of professional organizations or societies.

On the other hand, although the union membership process can be facilitated via e-government, journalists consider it risky to collect personal data and register with the ministry. If leaked, they fear, employers may use this information in a way that prevents union activities.

Pursuant to article 41 of the same law, for a union to establish a collective bargaining agreement, “at least one percent of the workers working in the sector in which they are established must be members” of the union. For this reason, only 3 of the 4 unions have the authority to sign collective bargaining agreements. Employees registered with DİSK BASIN-İŞ cannot benefit from union guarantees and the economic and social benefits brought by union membership.

As an additional requirement, union membership must reach a certain rate of total employed people in a firm in order for the union to have the right to make collective bargaining agreements. To qualify for this, it needs a simple majority (50% plus one) in one workplace and 40% in more than one workplace.

Only nine businesses operating in the press sector in Turkey meet these conditions. TGS is authorized in eight of these nine businesses and MEDYA-İŞ, which was established within the body of HAK-İŞ in 2012 was authorized in Anadolu Agency.

It even more difficult for local journalism to benefit from trade unions and guarantees of professional rights due to insufficient practical organization of trade unions throughout Turkey and the prevalence of unregistered working practices at the local level.

According to TGS, another legal regulation that makes union work harder has been the Ministry of Labor and Social Security's recognition of the employer's right to object after determination of the union. Article 43 of the Law No. 6356 on Trade Unions and Collective Bargaining Agreement gives the employer the right to object to the authority of the union. TGS officials state that the union membership information kept by the Ministry should be sufficient to determine whether the union is authorized. TGS officials stated that the judicial process, which starts with the employer's exercise of the right to appeal, is long and wearing, and that this process leaves the employees vulnerable to the employer, and that these legal regulations makes it difficult to make organizational work in businesses.

## PRESS CARD AND ACCREDITATION PROBLEM

One of the biggest problems journalists encounter in accessing news sources is that many official institutions and organizations restrict journalism activities on the basis of accreditation.

The Press Card is a card documenting that a journalist is actively working in the press sector. Apart from the journalist's function of confirming his identity as a press employee, this card is also a vital document for media workers to do their jobs freely as it facilitates access to various sources in the news making process.

This card was issued by the Press Card Commission (Basın Kartı Komisyonu) within the Prime Ministry's Department of Press and Information (Başbakanlık Basın Yayın Enformasyon Genel Müdürlüğü) prior to the Constitutional amendments that came into force in 2018. This commission consisted of 15 members, and the members were elected by the associations and organizations they would represent in the commission. Requirements for the issuance of the card were specified in the Yellow Press Card Regulation.

With the 2018 Constitutional amendments, the Department of Press and Information was folded into the Presidency of the Republic of Turkey Directorate of Communication (CIB) and the number of members of the Press Card Commission was reduced to 9. Members were appointed by the Presidency, two of them representing the members of the CIB, one representing the periodic press card holders, one representing the press holders, one representing the unions, and three representing the professional organizations. In the current commission, four of the nine members are employees and/or executives of the organization close to AKP in terms of ownership structure such as ATV, Star, Sabah; two of them are managers and members of TRT and Anadolu Agency, which are state news organizations; and one is an AKP city council member and former candidate for parliament. This strongly calls into question the independence and impartiality of the commission. Moreover, with the new regulation, neither TGS nor Journalists Association and Confederations were able to take part in the Commission, thus the activity of independent professional organizations in the decision-making process has become difficult.

The fact that the Press Card Commission has become close to political power as a result of its composition means that the professional definition of journalism, which is a profession that should be able to act independently from external authority, is instead determined by political power. This also paves the way for discriminatory practices. In addition, the exclusion of professional organizations and trade unions in the Press Card Commission and in the making of the relevant legislative amendments has left the definition of journalistic activity and accountability under the influence of political power. For this reason, professional organizations and journalists argue that the press card should be given and journalism professional principles defined by independent professional organizations.

The Press Card Board (Basın Kartı Kurulu), which did not convene for a long time after the election of new members in 2018, convened in a secret session in 2019 and stated that after the meeting, the yellow press card would be replaced by the turquoise press card and all journalists should apply for the new press card. The press cards of 860 journalists who applied for renewal, including the president of TGS, have not been renewed.

*"We know that there are 860 journalists already holding a press card are waiting their cards to be renewed. There are journalists, they hold press cards, but there are no information or announcement whatsoever when their cards will be renewed.. This 860 journalists who are actively carrying out journalism activities and already have press cards, face the threat of that their cards not being renewed. Nobody can say that this will not put pressure on journalism activities carried out by journalists."*

On the other hand, since it is necessary to work under the Press Law No. 212 in order to have a press card, many journalists actively carrying out journalistic activities are deprived of the right to

apply for a press card for reasons such as informal employment, freelance journalism and the fact that the legal definition of the journalism sector does not cover internet journalism.

Lack of a press card prevents journalists from accessing many official institutions and meetings, and restricts journalists' access to news sources. In fact, press card inquiry has become routine in all kinds of social events. Journalists who do not have a yellow press card are exposed to discriminatory approaches of law enforcement officers in demonstrations and actions.

*"On May 1, thousands of people enter the area. When I go in, the police ask me, are you a journalist? I know that if I had said yes, I wouldn't have been accepted. So I said no, and entered the area. Because if I am a journalist, I cannot enter. Again, I said I was a defendant and entered the courthouse." Journalist, Ankara*

In addition to the Yellow Press Card, public institutions and organizations started their own accreditation practices, and started to issue special permits and special cards for meetings and press releases. This practice seriously restricts journalists' right to conduct journalism. The access of many journalists to official institutions is prevented by arbitrary practices; media organizations and journalists who are not close to political power cannot get accreditation.

*"Our biggest problem is the accreditation problem. It's a huge problem. This is a line drawn by political power, and this is not specific to just journalism. This is 'you are either for or against me.' The logic applies to everyone, especially for public officials, academics, etc. The difference between receiving or providing public service. When we look at getting public services although it is the right of all the people, we are going through a process where we experience this difference even when receiving public service, so journalists are also experiencing it." Journalist, Ankara*

*"First, you get an accreditation card, namely a turquoise card. Second, you will also receive a card to enter these institutions. Third, after you have received these cards, say you have entered, for example, you have entered the Foreign Ministry, the Supreme Court, but the work does not end there. You also need to be able to find a person there to talk to you." Journalist, Istanbul*

*"They started to implement accreditation in every area of our lives, up to action on the street." Journalist, Ankara*

In addition, the Labor Court appealed to the AYM for the annulment of the regulation on the right of depreciation (early retirement) earned by journalists by Law No. 212. The Labor Court argued in this case that a distinction between 'journalists with a press card' and 'journalists without a press card' had emerged, and that this situation led to being subject to different regulations in terms of access to social security. The Labor Court also found that due to the condition of those classified as "media workers," in order to obtain a press card, it was up to the employer to obtain the press card. This situation, which was caused by the gap in law, violated the right to work and equality.

The AYM ruled on this appeal in February 2020, cancelling the regulation on the grounds that there was discrimination in the media sector between those who had a press card and those who

did not. The Court allowed nine months for the legislators to modify Turkey's Press Law to cover the conditions of granting press cards.

The AYM's decision was crucial for the rights of journalists for two reasons. First, it acknowledges that some people who do not hold press cards are still journalists, and that this difference leads to discrimination for journalists when they try to access certain rights. Second, it requires lawmakers to legislate the press card criteria, which is currently governed by administrative regulations. This means that the Turkish parliament has a unique opportunity to legislate the criteria of press card acquisition in a fair and equitable way.

For this reason, it is necessary to determine the basic principles in the Press Labor Law that include the conditions to be sought in the people to whom the press card will be issued, and the active participation of press professional organizations is vital in making these determinations.

## RECOMMENDATIONS

- In its decision where it cancelled the regulation regarding the attrition share of the journalists, the AYM reached the conclusion that the restriction regarding the right to social security did not meet the criterion that it was made by the law. Having a Press Card was necessary to access certain benefits, but that the principles regarding the acquisition of this card were not regulated by law and were instead regulated in the Press Card Regulation. This violates the Turkish legal principle that a law, not simply a regulation, is required in cases that would take away rights. The Court therefore invalidated the rule and gave the legislature nine months to pass a new law. The legislature should regulate the conditions for obtaining a press card as soon as possible, while abiding by the court's judgement. Failing to do so will result in a situation further violating journalists' rights.

For this reason, while regulating the conditions for obtaining a press card, the following issues should be considered:

Procedures and principles regarding press cards should be determined by independent professional organizations. This card should be issued by professional organizations and recognized by official institutions and organizations.

Media businesses, especially online journalism, should be included in the Press and Journalism sector, and the Regulation on Business Sectors should be updated. Proportional control mechanisms should be operated independently in order to reduce practices such as working unregistered, receiving wages different from salary and being insured in different business sectors.

Arrangements should also be made for internet media employees, freelancers and part-time employees, and these journalists should be ensured to enjoy the rights arising from the law.

- There is no institution to which unions can apply for the determination or reassessment of business sector. It is necessary to facilitate the business sector determination processes.

- The definition of a “worker” as it relates to becoming a member of a union pursuant to Article 17 of the Law No. 6356 on Trade Unions and Collective Bargaining Agreement should be extended to freelance and part-time journalists, and their union membership should be facilitated.
- Pursuant to article 41 of the same law, the condition that “at least one percent of the workers working in the sector in which they are established must be members” should be abolished and the unions should be granted the right to conclude collective bargaining agreements without a threshold.
- Although it is easy to perform union membership through e-government, additional security measures should be taken in order for this data not to be used against workers.
- The 5% raise rate for each day of unpaid overtime wages by the AYM must be redefined by law. Currently, media workers have a right to earlier retirement due to working conditions; this right should not be taken from journalists.
- Article 43 of the Law No. 6356 on Trade Unions and Collective Bargaining Agreement gives the employer the right to object to the authority of the union. As stated by TGS officials, union membership information kept by the Ministry should be sufficient to determine whether the union is authorized.
- Effective organization of trade unions and professional organizations in all provinces of Turkey is required to actively advocate the rights of local journalists.
- Mechanisms for protecting and controlling the personal rights of journalists should be strengthened, and independent professional organizations and institutions should be actively involved in these mechanisms.
- Job descriptions should be made and supervised by independent press organizations. These organizations should have professional sanction power.

## BARRIERS TO JOURNALISTIC PRACTICE

*"I am trying to explain a completely rotting system" Journalist, Istanbul*

The journalists discussed problems about conducting journalism in contemporary Turkey and information on the steps to be taken to address these problems were exchanged at the meetings held within the scope of COMET project. In the light of these meetings obstacles to independent journalism in Turkey can be evaluated under three headings: barriers caused by the political climate, the problems of new media journalism and the problems caused by structural deficiencies.

### BARRIERS CAUSED BY THE POLITICAL CLIMATE

*"I think monotype news is our biggest problem right now. Both in the mainstream media and in the media we define as opposition. Maybe it will be a very ambitious word now, but we do not report, we cannot, unfortunately, under the current media conditions" Journalist, Ankara*

The most frequently expressed obstacles to journalists' ability to make independent and impartial news during the meetings were the difficulties in accessing news sources and confirming the news. Due to increasing political polarization, journalists' access to politicians has become nearly impossible if they are not politically affiliated. Access to people and institutions such as powerful politicians, bureaucratic officials, public institutions officials, prosecutors, judges, etc. is limited to select journalists and media organizations. Journalists are prevented from entering public institutions and not allowed to enter courts. This limits journalists' information gathering, verification and confirmation activities only to the sources they are politically close to, making the neutral journalism impossible, while exacerbating political polarization among media organizations.

*"[To call it] militant journalism is very accurate. This is something that the political atmosphere delivers to us. There is no difference between the rightist and leftist militants, in general; they are the two poles along the same axis. But anyway, you are there or you are here; this is where we are at the moment. You have to, because if you can't position yourself on one side, you have to position on the other. I think this is a very important problem." Journalist, Ankara*

*"In fact, our ideologies and the camps we depend on determine who we support and what news is." Journalist, Istanbul*

As a result of the above-mentioned process, media organizations have also become actual actors of political polarization, making it impossible to carry out impartial reporting. Media organizations and journalists who have are perceived as opposition cannot get news and cannot provide a neutral perspective because they do not have access to public institutions and politicians.

*"You get in contact to have information, just information. But the sources are closed. This paves a way for monotony. Because the only parties that you can get information from are (the opposition parties) CHP or İYİ Party. They act as if the ruling AKP or MHP does not exist. The sources are only those who they claim as close to them (the opposition), for example union or other institutions. For this reason, you are confined where you are, that oppositional circle." Journalist, Ankara*

On the other hand, organizations that are close to the power cannot evaluate this access within the framework of independent journalism even if they have access to politics because of their relations of interest and the threat of exclusion. This situation is clearly observed in practices such as determining the questions to be asked in press conferences in advance, and not being able to get opinions other than written statements from public institutions.

The bias created by the political climate on the media causes polarization and discrimination to become stronger, and this dilemma, which reproduces itself more aggressively, makes it more and more impossible to carry out impartial and independent reporting.

*"Apart from the mainstream media which is 90% and more under the control of the government, there are some media organizations, which we can call independent, which the friends define as opposition media. I think their main problem is often the confusion of journalism and activism. Journalism is a specialist profession. We are not activists. It is not our duty to propagandise a political party or an ideology [but to] inform the public and inform correctly. In this sense, I think professional journalism in Turkey has become worn out." Journalist, Istanbul*

This environment where neutral news content is risky and difficult to obtain leads to an increase of personal opinion and comment-oriented analysis/opinion content rather than fact-based news content in newspapers and televisions. Under these conditions where access to information sources is difficult, the analyses made using the data whose accuracy cannot be confirmed are presented as news. The mainstream media organs turn into propaganda tools over the political view rather than the journalistic activity. On the other hand, Turkey's politically polarized society with poor media literacy wants to follow militant analysts and viewers rather than neutral news, and the supply-demand relationship between the media and the mass of "media consumers" also makes it difficult for independent journalism and reporting to survive.

Another factor that the political climate imposes on media institutions and that prevents independent journalistic activities is the practice of censorship and self-censorship. The fact that journalists and the media institutions they belong to are under the threat of legal and criminal proceedings (examined in detail in the legal issues section below) causes self-censorship practices because of the threat of censorship or other punishment. This self-censorship, which takes the form of getting instructions from the government institutions about the determination of headlines and which issues to be reported in media institutions close to the power, can take the form of avoiding news/comments that would contradict with the representatives of the political viewpoint they are close to. This self-censorship mechanism, which has grown in this working environment and has improved its working practices, has become a common element in the



institutional structure of the media, and it becomes impossible for the journalists to break this mechanism on their own initiative.

*"It's really not up to me to break this [self-censorship]. Therefore, experiencing these problems even in identification reveals that my news is not shaped by me anyway. Actually, I am not writing that news." Journalist, Istanbul*

## THE CHALLENGES OF NEW MEDIA REPORTING

Mainstream media, such as printed news, periodicals, radio, and television, does not satisfy consumers' needs, in large part due to their failure to provide objective news and due to the self-censorship outlined above. Online and social media attempts to fill this gap. However, while online media is growing and starting to take a vital place in the relationship of reporting and publishing news, it remains an area with many problems. Some of the most important problems include bans on access to news sites, inadequate legal regulations, external pressure, negative working conditions, problems of financial income and access to news sources, lack of self-regulatory mechanisms and lack of accountability.

Correspondents, who play a crucial role in journalism, have not been able to thrive in the online media market. A few online news outlets focus on news analysis or commentary rather than standard news content and are not intended to provide material income. However, the vast majority of online and social media outlets simply copy and paste information from traditional media organizations, agencies, social media accounts, etc., without mentioning the source, and without almost any editorial control. This is a consequence of their business model: their value depends on the number of views and clicks they generate and the ensuing advertising revenue.

On the other hand, due to the absence of any internal control mechanisms, many news sites are turning into a media simply aggregating unconfirmed data. With the decreasing gap between the social media dominated by citizen journalism and the Internet media where professional journalists work, Internet media has become a source of disinformation and propaganda, where it is impossible to distinguish between fact and fiction, or to learn about the actual origins of news items.

*"With the widespread use of Internet media, many newspapers were closed after the paper crisis [when the cost of newsprint itself spiked], and they decided to turn to other channels. So, everyone turned to the Internet, turned to online journalism. [And for news sites to succeed, they must] get those first clicks, [so we race to upload news] without even confirming it. For example, there is a lot of wrong news circulating [but] there is no updating to label this news as wrong [or to correct errors], unfortunately. It's kind of making fool of the reader." Journalist, Istanbul*

According to journalists, online media should be included the general definition and understanding of journalism and the professional principles and conditions of online journalism should be determined by independent press organizations and initiatives.

## STATUS OF CORRESPONDENTS AND INDEPENDENT AGENCIES

*"I think that we need to verify [the news] from at least two sources, to give the background correctly, to put enough references on their sources, and to reveal the basic principles a little more. Also, in the Internet media, I think [these standards are not met] because there is no money. No journalism is done; instead there is just editorializing from the desk, [not from field]. Journalist, Istanbul*

Both online and print and broadcast media have difficulty accessing news sources and verifying news because of the difficulties reporters and agencies face; the problem lies earlier in the reporting and publishing process.

Apart from Anadolu Agency, which is not technically a public institution but whose management is in the hands of the government, other non-state news agencies (including Doğan News Agency, Cihan News Agency, İhlas News Agency, Anka, Dicle News Agency, İHA, etc.) that once functioned as independent and diverse news sources have ceased to do so over the past decade. Some have been closed through legal means and others purchased by pro-government capital. The fact that news provided by these agencies is one-sided has increased the importance of correspondents in reaching the news source, confirming and obtaining alternative information.

*"Another problem affecting professionalism is the absence of the concept of a field reporter due to economic challenges." Journalist, Istanbul*

However, it is very difficult for media organizations to remain financially independent, as described in detail in the section 'Problems Related to the Structure of the Media'. For organizations that are not in contact with political power centres and thus cannot earn income from government and partisan sources, it is difficult to invest in costly staff and positions such as correspondents. This causes serious difficulties in impartial reporting: without correspondents, media can only report on press releases and notifications of the agencies or the political institutions they are affiliated with.

Local correspondents are necessary to identify events that may be newsworthy and to obtain accurate and immediate information about these events. However, it is not possible for any private media organization or agency to have permanent correspondents in every province/channel; this would simply be too costly. Today, there are two important sources for media outlets to get local news: public media and local media. Thanks to its use of public resources to pay for reporters at the local level, only the public media can cover local news fully. In addition, local journalism has failed to perform adequately due to elements such as financial problems, irregularities and vulnerabilities to pressure from political power, etc., which are covered in detail below in the section 'Problems of Local Media'. The weakening of local journalism prevents private media outlets from receiving local news and reporting local problems impartially.

As stated above, though agencies and correspondents play a critical role in journalism and news production, they have become less important due to the structures of both traditional and new media institutions. In addition, the profession has become almost extinct under the pressure exerted on these institutions due to political, economic or social crises. While this situation makes it difficult to produce impartial and independent news, the people who have difficulty in

accessing to the most basic news have become vulnerable to disinformation and biased journalism.

## RECOMMENDATIONS

- It is seen that the most important obstacle in front of impartial news making without being subjected to pressure within the polarization created by the political climate is access to news sources. In this context, the activities of the agencies and correspondents, which are vital for accessing the news, should be supported.
- Independent news agencies with the capability to operate across Turkey should be established.
- Establishment of specialized news agencies in different areas (e.g. sports, culture, environmental reporting) should be supported.
- It is necessary to support correspondents and provide privileges to reporters to improve their access to news sources. In this context, institutional and independent correspondents should be supported with international or national funds. This support should be provided in a sustainable system.
- Incentives should be offered to increase the number of correspondents working in press organizations.
- Local media should be strengthened by establishing more organic ties with national media/agencies.
- Legal arrangements regarding internet media should be made within the framework of the Press Law and under the supervision of professional organizations.
- Once they are covered by relevant press law, businesses engaged in internet journalism should be able to access financial privileges available to others in the business sector.
- The link and exchange between traditional media organizations and internet media should be strengthened, thereby increasing the accountability.
- In the news-analysis dilemma, media should clearly distinguish between routine news and comment-news/analysis. Providing the public with high-quality reporting can in turn improve the public's resistance to biased news, political propaganda and disinformation.

## PROBLEMS OF LOCAL MEDIA

*"The newspapers are trying to survive." Journalist, Aydın*

Local media in Turkey face serious problems such as the dependent relationship between media and politics, limited financial resources, a lack of adequate legal regulations, and regulatory and supervisory institutions that are irrelevant or totally missing. While these issues impact national media too, local media is more vulnerable, and has generally lost the ability to conduct journalism. Instead it is trapped in a fight for survival.

The number of local newspapers has seriously decreased over the past five years, both for economic and political reasons. Local journalists have faced unemployment, irregular working conditions, and inappropriately close relations between local media owners and political power.

The basic source of revenue for local media, as for a large part of the printed press in Turkey, is official advertising provided by the Press Advertising Agency (BİK). BİK regularly provides advertisements (and advertising revenue) to papers that meet the criteria set by its law. Local journalists and managers state that the financial burden of meeting the criteria set by BİK (employing at least 4 persons locally under the Press Labor Law, printing certain number of pages maintaining a certain level of circulation, etc.) creates a disproportionate burden compared to the ad revenue, and the ad revenues are insufficient.

In addition to direct advertisements by BİK, local political authorities, municipalities and political parties also support newspapers by advertising in newspapers and with corporate subscriptions. However, these forms of support cause newspapers and journalists to fall under the influence of local political power relations and to be vulnerable to pressure.

*"The first thing that any new mayor does after the election is cut the subscriptions of the newspapers. Or they continue [subscribing to] one close to themselves. The opposition does not accept this, but this is true for all. Unfortunately, because they do not have economic freedom, the papers cannot act or work freely." Journalist, Antalya*

*"Municipalities have certain criteria to keep the local press alive, and there are up to 30 subscribers to the newspapers a year. The mayor can cut it. We have experienced this many times in the past. Even if they do not cut it, they buy your newspaper, throw it into the warehouse, and make it not read by anyone. These are major issues. It happens because they do not have an economic freedom in its full sense and because they are tied to them economically that much. " Journalist, Aydın*

BİK encouraged local newspapers to merge for a more efficient distribution of advertising revenues. This resulted in the merger of many local newspapers and, consequently, a massive increase in unemployment of local journalists. Therefore, although newspaper mergers were seen as an appropriate solution for dealing with economic conditions for newspaper owners, they restrict the possibility to do journalism locally.

Opportunities for local journalists to earn their living from journalism have also declined. The fact that the national press and agencies do not employ local correspondents and that they receive news by piecemeal bits of information makes this situation more difficult. In addition, influenced by local power relations (political, commercial, and even criminal), journalists are exposed to threats, intimidation, or other undue pressure.

BİK's own resource shortages, dependency, and financial difficulties caused newspaper owners to report irregularly, or falsely, to the agency about insurance records, page numbers and circulation. Some newspaper owners even earn income through newspapers called "nylon newspapers:" they record criteria irregularly in order to obtain revenue from BİK even though they do not carry out journalism activities.

*"These are ATM journalists. Every month, they withdraw advertising income from ATMs in Istanbul. They never care about this place." Journalist, Kars*

On one hand, control against these irregularities is weak; on the other hand, due to BİK's connections to political power, inspections are carried out on the basis of favoritism and oppression. According to local journalists, some newspapers never undergo an inspection, while some newspapers may face arbitrary punishment even though their papers are in order. Local and national political relations are the basis of this otherwise arbitrary practice.

In addition to this, journalists and professional organizations stated that there are more and more online media outlets, as well as conventional media. They claim that, although this creates a degree of freedom, there is no professional regulation and supervision for these outlets. This creates the opportunity for unethical journalism practices, such as publishing stories in return for outside funds, to become normal.

Internet journalism is not eligible for BİK advertising or the obligations brought by BİK ads. However, they use the news of the newspapers subject to BİK rules by copying their news. This practice has also distorted media market competition. For this reason, newspapers have argued that the news outlets on the Internet should be inspected or news sites should be included in BİK's scope.

However, as detailed in the following section on legal issues, there are concerns that increasing control via barriers to access to financial opportunities and legal protections for internet news sources will recreate the dynamics of favoritism and repression, or exacerbate them as internet-related inspections will increase the pressure factor.

For this reason, local journalists stated that there is a need for a whole set of principles to be prepared by independent professional organizations, especially regarding professional rules and ethics of journalism, and these principles should be controlled and regulated by these professional organizations.

## RECOMMENDATIONS

- Professional Journalism principles should be defined, these principles should be created and controlled by independent media institutions and organizations.

- Copy-paste journalism disincentivizes original reporting. It provides unfair competitive advantage to those who copy the news while leaving the news cost on the original reporting source. In order to protect the copyrights of original newspapers and journalists, media, including online media, should be obliged to clearly reference their sources, and the wholesale copying of news should be prohibited.
- Online journalism should be regulated. Online journalism should be covered by the Press Labor Law.
- The conditions required for online journalism to get revenue from public sources should be determined by independent media institutions and organizations, and they should be controlled and regulated by these institutions.
- Training and financial support mechanisms for reporters should be established to support local journalism and reporting.
- Financial independence of newspapers should be ensured and alternative financial opportunities should be created.
- A mechanism is needed to protect newspapers and journalists from political influence, threats and irregularities.
- Professional media organizations and unions should be more effective locally, and more effective work should be performed to protect the personal rights of journalists and newspapers.

## LEGAL PROBLEMS

In addition to the structural problems affecting the freedom of the press, there are a number of legal issues that impact the situation. Main problems include the use of criminal law as a means of pressure on opposition press, journalists facing civil lawsuits with the potential for severe financial penalties, censorship of content by blocking access (e.g. to website), broadcasting prohibitions, the use of administrative sanctions as a means of pressure, and the prevention of organizations representing the press from participating in legislative processes. Since the issue of administrative sanctions is discussed above, other issues will be mentioned here.

### PROBLEMS ORIGINATING IN THE CRIMINAL LAW

The most severe and direct pressure on freedom of the press is that journalists are subject to criminal investigations and prosecutions, arrests and/or convictions for news and comments. Freedom of the press in Turkey has always been shaky at best, and the prosecution of journalists is a long-term aspect of the Turkish media sphere. However, since 2010 there has been a noticeable increase in investigations and prosecutions against journalists. In the past five years, hundreds of journalists have been investigated, prosecuted and sentenced.<sup>[15]</sup> The number of journalists who have been imprisoned in recent years has sometimes increased up to 200 and has not generally fallen below 100.

According to the Council of Europe's (CoE) 2020 Press Freedom Report, 93 imprisoned journalists were reported as of 31 December 2019.<sup>[16]</sup> According to the current data of the Council's platform to support journalism protection and the security of journalists, there are 95 detainees of journalists as of 7 May 2020.<sup>[17]</sup> According to the report submitted to the Committee of Ministers of the Council of Europe by the Freedom of Expression Association, at least 100 journalists are being charged for being a member of the PKK or making its propaganda. Ninety-two out of 100 people have been arrested before or during the trial, and at least 79 have been charged only for the institution they work for. 14 journalists from Azadiya Welat newspaper and 22 journalists from Dicle News Agency (DİHA) have been accused of membership of terrorist organizations or terrorist propaganda on the grounds of working in these institutions, among other evidence.<sup>[18]</sup>

The decline in freedom of the press in recent years has also been reflected in international evaluations. While Turkey ranked 151st among 180 countries in 2016 in the World Press Freedom Index of the Reporters Without Frontiers (RSF), it ranked 155 in 2017 and 157 in 2018 and 2019, and 154 in 2020, respectively. According to the index, it was the country with the third highest score of 68.30 of abuse after Eritrea and Egypt. Similarly, in Freedom House's media freedom index Turkey ranked 156 in "partly free" country category in 2016, with 20 points decline compared to 2010. Falling back to 163 in the global index, Turkey was first classified in 2018 in the category of "non-free" countries. Finally, in the World Freedom Report 2020, Turkey's total score is 32 out of 100 and remained in the category of "non-free" countries.<sup>[19]</sup> With -31 points, Turkey has been the second most regressive country in the world in the last decade.<sup>[20]</sup>

One of the main causes and indicators of this decline is the investigation and prosecution of journalists. Dozens of international institutions and observers preparing reports on the freedom of the press observed and reported that criminal proceedings have been used to silence

opponents, especially outside the purpose of terrorist legislation.<sup>[21]</sup> Statistics also confirm these observations.

## BROAD INTERPRETATION OF LEGISLATION ON TERRORISM

According to the judicial statistics of the Ministry of Justice, during the period from 2014 to 2018, a total of 1,232,304 criminal investigations were filed pursuant to Article 314 of the Turkish Penal Code (TCKPC), which regulates membership in armed organizations, and lawsuits were filed against 830,521 people. In 2017 alone, the number of indictments regarding Article 314 of TCK reached 133,505. Although the 2019 statistics have not been published yet, more than 600,000 cases are either pending adjudication or not yet finalized. The situation is similar for those accused of terrorist propaganda. Between 2010 and 2018, a total of 123,390 terrorist propaganda cases were concluded. 33,083 people were sentenced to prison, 8,016 were sentenced to suspended prison terms, and 61,490 sentenced to various other penalties. 20,801 (16%) people were found not guilty.

It seems that the main reason for so many investigations and lawsuits is that the concept of terrorism is interpreted and applied quite differently from how international law regulations define it. International legal norms identify the crime of terrorism with violence.<sup>[22]</sup> In this context, acts involving direct violence such as killing people for political purposes, hijacking aircraft or ships, taking hostages, bombing, etc. seem to be defined as terrorist crimes. However, in the investigations and lawsuits in Turkish cases, people are extremely rarely accused of direct acts of violence. The vast majority of people who are involved in terrorism charges are charged and punished for non-criminal acts or declaration of thought or statements. The United Nations Human Rights and Anti-Terrorism Special Rapporteur Martin Scheinin, in his report on his visit to Turkey in 2006, stated that the scope of the definition of terrorism in Turkish legislation is very wide and terrorist acts are not clearly defined. He observed that people who did not commit any crime were accused of being members of terrorist organizations based on the purpose of the organization, and he stressed that this poses a serious threat to freedom of press and expression. Special Rapporteur Scheinin suggested a definition that meets international standards be made.<sup>[23]</sup>

However, the problem of broad interpretation of the legislation is not just about terrorism charges. Other provisions such as insulting a public official for his duty (TCK art.125/3), insulting the president (TCK art. 299), provoking the people toward hatred and hostility (TCK art. 215), praising crime and criminals (TCK art. 216), essentially outlaw certain thoughts or their declaration. Since the declaration of certain thoughts and statements of expression can be a criminal act, these articles are also used as a means of suppressing all kinds of criticism.

The Council of Europe Commissioner for Human Rights highlighted the problem of the expansive interpretation of legislation in the report based on her visit in July 2019:

*“The Commissioner observes that, in particular since the beginning of the state of emergency, prosecutors, and increasingly also the courts, cast the net ever more widely against those whom they consider as terrorists and members of a criminal organization. Thus criminal proceedings have been initiated in the last years which were not foreseeable even for those who were familiar with the Turkish justice system (Para. 40).” “The Commissioner observes that this approach is not limited to the catch-all use made of the crime of propaganda for a terrorist*



*organization. Prosecutors and courts have also significantly expanded the limits of the offence of membership of a criminal organization, in the sense that increasingly harmless acts are being considered as evidence of such membership (Para 42)."* <sup>[24]</sup>

## PROBLEMS RELATED TO JUDICIAL INDEPENDENCE

Threats to freedom of the press stem not only from deficiencies in the legislation, but especially from problems regarding the worsening independence and impartiality of the judiciary implementing this legislation. The balance of power between the judiciary and the executive has deteriorated in favor of the executive. Radical changes have been made in the constitutional status of the Board of Judges and Prosecutors, which should ensure the independence of the judiciary, twice in the last ten years. After each change, the influence of the executive on the structure of the board has increased and the independence of the board has gradually weakened. After the Constitutional amendments of 2017, some of the members of the board are elected by the President and some are elected by the Grand National Assembly of Turkey (TBMM). However, when the majority of the TBMM belongs to the President's political party, the difference is moot: all authority is actually exercised by the President. In line with the change in the structure of the board, its influence on judges and prosecutors has also steadily increased. After changes were made in the structure of the board, four different legal arrangements changed the number of members of the high courts and the structures of chambers.<sup>[25]</sup>

In the state of emergency after the coup attempt on July 15, 2016, more than 4,200 judges and prosecutors, or one in every three, were dismissed without any individual investigation. The authority to dismiss judges and prosecutors from the profession has been extended for three more years with the law numbered 7145 even after the termination of the state of emergency. More than 10,000 new judges and prosecutors have been recruited during and since the state of emergency.

During the state of emergency, an investigation was launched against a court that had decided to release some journalists. The judges and prosecutors responsible for their release were dismissed. The climate of fear created among judges and prosecutors makes it difficult to make fair decisions in cases filed against dissident journalists. In addition, the close-circuit system established under the supervision of the Criminal Court of Peace (Sulh Ceza Hakimliği) judges and their decisions established in 2014 also plays a serious role in the arrest of journalists: under this system, appeals do not go to a higher court, but to other judges at the same level; essentially, judges are audited by their peers. The effect of the executive on the judiciary, especially criminal cases, is reflected in the Rule of Law Index, which is regularly published by the World Justice Project. One of the sub-categories of the index is the criminal jurisdiction. Turkey ranks 124th among 128 countries with a score of 0.13 in 2020 in the field of "independence from the influence of the executive system", which is one of the indicators within this framework.<sup>[26]</sup> The Council of Europe Commissioner for Human Rights also found that *"the erosion of the independence of the judiciary in recent years fostered a climate of fear within the Turkish judiciary, boosting conformism and exacerbating the already existing tendency to punish persons who are perceived to be against the government (Para. 39)."* <sup>[27]</sup>

Both the weakening of the independence of and the change in the profile of judges and prosecutors have created complete unpredictability in the interpretation of legislation on

terrorism. This has also been confirmed by international observers. It is stated in the Human Rights Watch's (HRW) 2020 World Report, regarding Turkey, that *"[e]xecutive control and political influence over the judiciary in Turkey has led to courts systematically accepting bogus indictments, detaining and convicting without compelling evidence of criminal activity individuals and groups the Erdoğan government regards as political opponents."*<sup>[28]</sup>

It is stated in Memorandum on Freedom of Expression and Media Freedom in Turkey of Council of Europe Commissioner for Human Rights, published in February 2017 that *"[j]ournalists have been among the most affected by the various forms of judicial harassment"* and *"[d]etention is the most visible and chilling form that this harassment has taken."*<sup>[29]</sup>

In the new Commissioner's report following her visit to Turkey in 2019, the picture is set out in a much more comprehensive way.

*"a core reason for the problem of the overbroad interpretation of laws in Turkey is the prevailing attitude within the Turkish judiciary to give precedence to the protection of perceived interests of the state over individuals' human rights[...]. Another manifestation is the use of the Turkish Criminal Code and Anti-Terrorism legislation to punish acts or statements which are deemed by judicial authorities merely to coincide with the aims of, or supposed instructions given by, a terrorist organization, where there is no material evidence to prove membership of the said organization."*<sup>[30]</sup>

The Commissioner has reached the following general conclusion in relation to criminal proceedings in Turkey:

*"In summary, while many of the long-standing concerns regarding the application of criminal law provisions continue to apply, the situation significantly deteriorated in recent years. As a result, the Commissioner observes that unlawful interferences with rights and freedoms enshrined in the ECHR expanded both in scale and scope. Disregard within the judiciary of the most basic principles of law necessary to have a system of rule of law, such as presumption of innocence, nonretroactivity of offences, not being judged for the same facts twice, as well as legal certainty and foreseeability of criminal acts, has reached such a level that it has become virtually impossible to assess objectively and in good faith whether a legitimate act of dissent or criticism of political authority will be re-interpreted as criminal activity by Turkish prosecutors and courts."*<sup>[31]</sup>

These problems can also be seen in the decisions made on appeals by arrested journalists to the AYM<sup>[32]</sup> and ECtHR<sup>[33]</sup>.

It is beyond dispute that under these circumstances, journalists are not able to freely report and publish their comments, and that this environment does not allow the media to properly fulfil the public's surveillance role and makes it impossible for the media to function as the fourth estate of democracy.

## CIVIL CASES

Another dimension of the legal issues regarding the freedom of the press are compensation cases against media organs and journalists. The problems regarding the judicial independence mentioned above have also revealed a situation in favor of power in civil cases. The fact that the judiciary, which has lost its impartiality, takes an attitude in favor of power, causes the dissident journalists to be sentenced to pay heavy compensation and thus become unable to do their jobs.

## ACCESS BARRIERS AND MEDIA BLACKOUT

With the central media being largely governed by government, independent journalism has become somewhat sustainable through internet media that are not affiliated with large capital groups. However, in addition to the criminal and civil lawsuits mentioned above, legal means to block access to certain websites are the most important means of pressure for internet media. The most basic law on blocking access is the Law No. 5651 on the Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication. However, many other laws also contain regulations that authorize access-blocking.<sup>[34]</sup>

Articles 8, 8/A, 9, and 9/A of Law No. 5651 regulate the powers to block access for different reasons. Article 8 grants prosecution offices and Criminal Court of Peace judges authority to order block access concerning certain crimes. Under article 8/A, added to the law in 2015, the Information and Communications Technologies Authority (BTK) is also granted authority to block access only in urgent cases where the content pose a threat to life and national security and only with upon request of the Presidency and related Ministries.

These decisions must be approved by the Criminal Court of Peace judges. This article is the most frequently used provision for the total blocking of access to Internet news sites. Based on this provision, access was blocked to to different domains of news sites such as Sendika.org,<sup>[35]</sup> Siyasihaber.org<sup>[36]</sup>, DiHA, Jinnews. Access to Sputnik has also been blocked.<sup>[37]</sup> Again, based on this article, Wikipedia has been blocked from access for two and a half years until a decision of violation has been made by the AYM.<sup>[38]</sup> Similarly, recently, access to OdaTV and Independent Turkish sites have been blocked several times. Based on this article, access to more than 11,000 content has been blocked by more than 360 decisions.<sup>[39]</sup>

Article 9 of Law No. 5651 gives Criminal Court of Peace judges the power to decide to block access to content upon the request of persons who think that their personal rights have been violated. Likewise, Article 9/A regulates the authority to block access at the request of people who claim that their right to privacy is violated. All the access-blocking provisions based on this law are legally problematic and unconstitutional.

These decisions are ultimately finalized by the decisions of the Criminal Court of Peace judges, who are given very short periods of time, such as 24 or 48 hours, to examine requests. Judges decide on requests during this short period without including the content provider in the process in any way. There are also serious problems regarding the legal nature of these access-blocking decisions. Although the AYM has decided that these decisions are precautionary, since there is no obligation to open civil or criminal cases after the decision to block access, in practice these decisions are processed as a final provision and remain in effect as an independent sanction.

Although the AYM has made many decisions on violations related to each article, in practice, Criminal Court of Peace judges make decisions to prevent access without taking into account the ECHR and ECtHR judgments and in violation of the law. In other words, in practice, this law has become a tool of censorship. Decisions are made on the basis of Article 8/A to block access to critical news or news sites related to any state security operation. Criminal Court of Peace judges, on the other hand, approve decisions to block access by accepting every request without meaningful examination, even if it is against the law. Article 9 has become a tool for blocking access to any kind of news and critical column against the government. Based on this item, 3,306 news addresses were blocked only in 2018. Within this framework, access has been blocked to 204 stories of daily Sözcü, 196 of daily Cumhuriyet and 190 of daily Hürriyet. <sup>[40]</sup>

Another threat to the freedom of the press arises from publication bans. Although not explicitly envisaged in the legislation, broadcasting ban decisions are made in every important event concerning the public, based on Article 3/2 of the Press Law and Article 8 of the Law No. 6112 on Radio and Television High Council (RTÜK). All broadcasting ban decisions are made on issues that concern the public closely, such as major terrorist attacks, expulsion operations, conflicts, occupational accidents, train or aircraft accidents, natural disasters such as earthquake floods, etc. These practices, which defy public interest and which can only be characterized as censorship, violate freedom of the press. Although such decisions mostly have no legal basis, both administrative and criminal sanctions are applied for those who do not comply with these bans. This is a serious interference and limitation on the public's right to receive news and journalists' right to report. It is clear that such decisions do not have a legal basis, nor are they proportionate.

## PRESS PARTICIPATION IN LEGISLATIVE PROCESSES

Stakeholders' participation in the legislative processes regarding the changes to the bylaws has been gradually reduced. Bills on issues related to freedom of the press and the rights of journalists are prepared without the participation of press organizations. The bills are submitted to Parliament without public discussion, and it is not possible to discuss and contribute to the public agenda. The bills requested by the government are accepted through commissions and plenary sessions. Since most of the bills come in the form of omnibus bills, they are usually discussed in the Plan and Budget Committee without even going to expert commissions.

Experts, relevant organizations and non-governmental organizations are not invited to the negotiations, and they are rarely allowed to attend the meetings. With the changes made to the Rules of Procedure, the speech periods of the members of the opposition parties have also been significantly restricted. Basic legislative practices like the omnibus bill are also used outside of its purpose. Bills, which propose changes to many different laws are converted into one bill in the form of an omnibus bill and all these bills are conveyed to the general assembly discussion as an essential law with the majority votes of the ruling party. In this case, certain items are negotiated in groups without any discussion even on the items. It is not even possible to give an opinion about many articles in a limited time.

Regulatory impact analyses are not made in any of the bills, and rational and objective data on the possible effects of the laws are not revealed. This causes laws to be enacted on the issues related to the press without any contribution of the press and no solutions to real problems.

## RECOMMENDATIONS

- Legislation on terrorism should be radically changed and the definition of terrorism and terrorism offences should be rearranged in accordance with international standards. Non-criminal actions should not be accepted as evidence of membership in a criminal organization. The Anti-Terrorism Law should be abolished completely, and the relevant provisions of the Turkish Penal Code should be harmonized with international standards.
- The crime of insulting the President clearly conflicts with the ECHR case law and Article 299 of the Turkish Penal Code should be abolished.
- In line with the recommendations of the Council of Europe, “insult” in general should be decriminalized. If this is not done, Article 125/3 of the Turkish Penal Code should be annulled, or it should be clearly stated that this provision does not include politicians. Today, politicians enjoy more protection from criticism, or “insult,” than ordinary citizens do; this is backwards, and contradicts ECtHR case law.
- Especially in compensation cases filed by politicians, decisions should be made by taking into account the obligations of politicians to bear criticism in accordance with the ECtHR case law, and decisions that would make it impossible for journalists to do their jobs due to high compensation should be avoided.
- Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications should be reviewed from the beginning and the legal nature of access bans should be clearly regulated in the law. Since this practice is a precautionary measure, it is imperative that the person requesting the order should be required to file a lawsuit, and if the case is not filed, the measure should automatically be repealed. Conditions for making a decision of precautionary measure should be regulated in accordance with the judicial decisions of the AYM and ECtHR. The decision of the measure should always be allowed to be reviewed.
- Blocking all access to news sites' domains should be forbidden.
- Since bans on publication constitute open censorship, the law allowing for this practice should be annulled entirely. Limited publication bans should be made exclusively in order to protect the rights of individuals, especially minors.
- Judicial independence and impartiality should be guaranteed. In this framework, the Board of Judges and Prosecutors should be restructured to guarantee pluralism. Their powers over judges and prosecutors should be limited, and the investigation and sanction of judges and prosecutors should be prevented due to their judicial decisions other than the acts of explicitly misusing the judiciary; these acts should be investigated by an independent board by securing their defense rights transparently.
- Changes in the structure of the High Courts for political purposes should be avoided.
- High courts, including the (AYM), should be regulated to be based on pluralism and merit.
- The Criminal Court of Peace (Sulh Ceza Hakimliği) which plays a key role in the arrest of journalists, should be abolished immediately.

- Necessary structural reforms should be made to ensure that law enforcement and criminal procedure are in line with the ECtHR standards.
- Legislative processes should be reworked to ensure transparency and participation. It should be required to publish bills submitted to the Speakership of Parliament on the website of the Parliament and keep them open to the opinion of the citizens for at least one month. Relevant persons and organizations should be allowed to participate and contribute to commission meetings. Short speaking times, which make negotiation difficult, should be reconsidered in internal rules and procedures.
- The practice of the omnibus bill should be avoided and the use of basic law enforcement should be prevented from being used for the wrong purposes.

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[3] Sözeri, Ceren and Güney, Zeynep 2011. *Türkiye’de Medya’nın Ekonomi Polisiği: Sektör Analizi. (Economy Politics of Media in Turkey: Industry Analysis)*. TESEV Yayınları.

[4] Sözeri, Ceren. 2014

[5] For radical changes in the media industry between 1980 and 2002, see for example G. Adaklı and A. Aydoğan. 2018. 2018. AKP Medyasının Tarihsel Arkaplanı (Historical Background of AKP Media): Neoliberal Medya Mimarisinin Bir Kroniği (A Chronicle of Neoliberal Media Architecture) (1980-2002)”

[6] Adaklı, Gülseren. 2014. Medya Sermayesi ve Ultra-Çapraz Bütünleşmeler (Media Capital and Ultra-Cross Integration). *Perspectives*, 8 (April) p. 19

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[7] See also Gülseren Adaklı. 2010. “2002-2008: Türk Medyasında AKP Etkisi” (AKP Influence in Turkish Media), İ. Uzel & B. Duru (comp.), in *AKP Kitabı: Bir Dönüşümün Bilançosu (AKP Book: Balance Sheet of a Transformation)*, 559-613, Ankara: Phoenix.

Yesil, Bilge. 2016. *Media in New Turkey: The Origins of an Authoritarian Neoliberal State*, Urbana: University of Illinois Press.

[8] *Medya Sahipliği İzleme Raporu: Türkiye* (Media Ownership Monitor: Turkey.) Reporters Without Borders (RSF) in association with Bianet <http://turkey.mom-rsf.org/tr/bulgular/gostergeler/#!751c8e3e9cbf4c99d88e9d2f6ba7e6dc>

[9] *ibid.*

[10] Türkiye Medya Sahipleri Ağı, Mülksüzleştirme Ağları (Turkey Media Owners Network, the Network of dispossession) <http://mulsuzlestirme.org/turkiye-medya-sahipleri-agi/> (access: 10/05/2020)

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[11] For a critical assessment of the draft law, see for example Burcu Sümer and Gülseren Adaklı. 2011. 6112 Sayılı Radyo ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkındaki Kanun'a İlişkin Değerlendirme Raporu" (Evaluation Report on the Law on the Establishment and Broadcasting Services of Radio and Televisions No. 6112), *İletişim Araştırmaları Dergisi*, 5 (2), Ankara: Ankara Üniversitesi Basımevi, 141-158.

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[12] <https://www.rtuk.gov.tr/ust-kurul-kararlari>

[13] İlhan Taşçı, report, 18.05. 2020

[14] The content communication principles and practices of the British communications office Ofcom can be shown as a good example despite all its problems. <https://www.ofcom.org.uk/about-ofcom/jobs/policy-jobs/content-media-policy> (access: 09/05/2020). Although RTÜK's guide to broadcasting principles of 2014 was an important initiative in this regard, it has not been very useful in practice, and on the contrary, new provisions have been introduced in the broadcasting principles after the military coup on July 15, 2016.

[15] [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)007-e)

[16] <https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>

[17] <http://www.coe.int/en/web/media-freedom/all-charts>.

[18] Notification of ARTICLE 9.2 by the Freedom of Expression Association related to Oner and Turk Litigation Group (no. 51962/12); Akcam Litigation Group (no. 27520/07) and Sener Litigation Group (no. 38270/11)/Turkey,

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[19] <https://freedomhouse.org/country/turkey/freedom-world/2020>

[20] [https://freedomhouse.org/sites/default/files/2020-02/FIW\\_2020\\_REPORT\\_BOOKLET\\_Final.pdf](https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf) p.14.

[21] See especially preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20891> Council of Europe's platform to support the protection of journalism in Turkey stated that Turkey has the highest number of alerts and that the majority these alerts are about the detention of journalists. 123 of 626 alerts in the database are for Turkey and 69 of them fall in the first level warning



category. Platform for the Protection of Journalism and Safety of Journalists  
<http://www.coe.int/en/web/media-freedom/all-charts>.

[22] "crime of terror" according to Article 1 of the Council of Europe Convention on Combating Terrorism. Offenses defined in 10 different international conventions annexed to the convention constitutes a terrorist crime .

These conventions are:

1. The Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at the Hague on 16 December 1970.
2. The Convention on the Suppression of Unlawful Acts Against the Safety of Civil Aviation signed in Montreal on September 23, 1971
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted on 14 December 1973 in New York;
4. International Convention Against the Taking of Hostages, adopted in New York, on 17 December 1979,
5. The Convention on the Physical Protection of Nuclear Material, adopted on 3 March 1980 in Vienna,
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed on 24 February 1988 in Montreal,
7. Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation, concluded on 10 March 1988 in Rome,
8. Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, signed on 10 March 1988, in Rome,
9. International Convention for the Suppression of Terrorist Bombings, adopted on 15 December 1997 in New York,
10. International Convention for the Suppression of the Financing of Terrorism, adopted on 9 December 1999 in New York.

Turkey is a party to this Convention. It was ratified by the Law number 6135 and it was published in the Official Gazette dated 13.01.2012 with the decision of the Council of Ministers dated 28.11.2011 and numbered 2011/2510.

[23] The report in question was discussed and adopted at the 62nd session of the UN Human Rights Commission. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>

[24] <https://rm.coe.int/avrupa-konsevi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>

[25] The number of members of the Supreme Court and the Council of State, the number of Chambers, the members and duties of the Chambers, and the conditions of being the head of the Chamber and the Court were amended by the Law No. 6110 In 2011, Law No. 6572 in 2014, Law No. 6723 in 2016 and the Decree Law No. 696 in 2017. The main goal of these changes was to bring courts under control by appointing pro-government members to these higher courts.

[26] <https://worldjusticeproject.org/rule-of-law-index/country/2020/Turkey/Criminal%20Justice/>

[27] <https://rm.coe.int/avrupa-konsevi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187> para. 39

[28] <https://www.hrw.org/world-report/2020/country-chapters/turkey>

[29] CommDH (2017)5, para. 79.

[30] <https://rm.coe.int/avrupa-konsevi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187> para. 38

[31] *Ibid.* Para. 50.

[32] *Mümtazer Türköne*, B. No: 2017/17839, 27/11/2019 § 67; *Erdem Gül and Can Dündar*, B. No: 2015/18567, 25/02/2016; *Murat Aksoy*, B. No: 2016/30112, 02/05/2019; *Ahmet Şık*, B. No: 2017/5375, 02/05/2019; *Murat Sabuncu*, B. No: 2016/50969, 02/05/2019; *Abdullah Zeydan*, B. No: 2016/29875, 18/11/2018; *İzzet Pirbudak*, B. No: 2015/392, 27/06/2018; *Atilla Taş*, B. No: 2016/30220, 29/5/2019; *Ahmet Kadri Gürsel* [GK], B. No: 2016/50978, 2/5/2019; *Önder Çelik and others* [GK], B. No: 2016/50971, 2/5/2019; *Akın Atalay* [GK], B. No: 2016/50970, 2/5/2019; *Ali Bulaç*, B. No: 2017/6592; *Ahmet Hüsrev Altan*, B. No: 2016/23668.

[33] *Mehmet Hasan Altan/Türkiye*, B. No: 13237/17, 20.03.2018; *Şahin Alpay/Türkiye*, B. No: 16538/17, 20.03.2018

[34] In the Disabled Web report published by the Freedom of Expression, it was examined in detail which laws and which institutions were granted the right to block access. [https://ifade.org.tr/reports/EngelliWeb\\_2018.pdf](https://ifade.org.tr/reports/EngelliWeb_2018.pdf)

[35] *Ali Ergin Demirhan Application*, B. No: 2015/16368, 11.03.2020

[36] *Tahsin Kandamar Application*, B. No: 2016/213, 28.11.2019

[37] <https://tr.sputniknews.com/turkiye/201608081024268110-sputnik-tib-erisim-engeli/>

[38] *Wikimedia Foundation and Others, Application*, B. No: 2017/22355, 26.12.2019

[39] *Yaman Akdeniz & Ozan Güven, Engelli Web 2018: Web Sites Access from Turkey Blocked, News and Social Media Content Analysis Report*, Freedom of Expression Association Publications June 2019, [https://ifade.org.tr/reports/EngelliWeb\\_2018.pdf](https://ifade.org.tr/reports/EngelliWeb_2018.pdf)

[40] *Ibid*, s. 16.