



# Policy Suggestions For Free and Independent Media in Turkey

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## POLICY SUMMARY

Research carried out in Turkey in the frame of the MEDIDEM project, which seeks to identify the policy processes, tools and instruments that can best support media freedom and independence in the country, showed that the media in Turkey has always been in a relationship of interdependence with political power. The state has maintained a tight grip over the press through political pressure and has successfully created a proponent media through practices of political favouritism and financial nepotism. The fear of state oppression, the absence of a culture of independent journalism and economic dependence on state support caused the media to align itself with political power, even after the end of single party rule and transition to multi-party democracy.

The authoritarian regime established by the military junta that staged the 1980 coup d'état disabled the media from covering political issues, which resulted in the production of tabloid news. The rapid processes of economic liberalisation and globalisation after transition to civilian rule in mid-1980s led to the ending of state monopoly over broadcasting and the privatisation of the media. The ensuing rapid proliferation of private broadcasting companies did not bring about greater media independence or content quality. To the contrary, privatisation without regulation

further increased tabloidisation in the media, while economic liberalisation without democratisation enabled the state to preserve its control over the sector. Big conglomerates entered the sector as the new media owners, expanding through mergers and dominating the sector in a short period.

The inability and unwillingness of the state to regulate the market to prevent media owners from participating in public tenders in sectors of the economy where they had large investments, as well as effective lobbying by media companies against any state attempts to impose such restrictions, resulted in high concentration in the media market. There was a tacit understanding that the free hand the conglomerates were given was contingent on their continued loyalty to official ideology. The implication of the state's *laissez faire* policies for journalists and other media employees was an unregulated labour market on the one hand and a repressive legal regime restricting freedom of expression and press freedom on the other. The combination of political pressure by the state and economic exploitation by media owners further repressed an already weak journalistic profession.

The 2001 economic crisis, which resulted in the withdrawal of some of the biggest players from the media, resulted in the restructuring of the sector. The processes of globalisation, the

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advancements in information technology, the growth of the economy and the prospect of stability offered by the EU candidacy rendered the media in Turkey an attractive sector for foreign investors and generated a need for further structural reform. The outcome of these developments has been an extremely complex regulatory framework, which continues to be reshaped and redesigned, causing tremendous uncertainty for both the players and the wider public. In the meantime, despite some progress in the initial years of the EU accession process, there remain significant legal restrictions on freedom of expression and media, which cause hundreds of human rights activists and journalists to be prosecuted for lawful political activities. In light of the domination of the media by corporations which refrain from building adversarial relations with the state and the existence of an authoritarian legal framework which penalizes critical media coverage of sensitive political issues, the emergence and survival of an independent media proves extremely difficult.

In recent years, the Justice and Development Party government's successive victories over military tutelage have not only consolidated, but also monopolised its political power. The lack of a strong and pro-democracy political opposition has facilitated and furthered this process. The transfer of media ownership from companies which backed the military against the government to those who are unconditional proponents of the government has enabled the grip of the executive over the media. The imposition of criminal and fiscal sanctions against the remaining opponent media complemented these developments, exacerbating the culture of censorship and self-censorship that has ruled the media ever since its establishment in Turkey.

On the basis of MEDIADEM's research findings, this report puts forth a set of policy recommendations for the enhancement of media freedom and independence in Turkey. These are:

- Democratise media policy making
- Safeguard the independence of media regulatory agencies
- Ensure media freedom and freedom of expression
- Prevent unfair competition in the media market

## KEY OBSERVATIONS

As in all other areas, **media regulation in Turkey is a centralised and bureaucratic process** where priorities are set by the executive. The parliament's minimal role in lawmaking has been further restricted by the Justice and Development Party (JDP) government's recent strategy to make legislative amendments through executive decrees adopted by the cabinet, as opposed to laws enacted by the parliament. One aim and outcome of this strategy has been the limitation of the autonomy of independent regulatory agencies, including those in charge of the media. For example, an executive decree adopted on 17 August 2011 authorises the Ministry of the EU Affairs to monitor and inspect the activities and transactions of autonomous regulatory agencies.

Various **agencies regulating the media sector suffer from lack of ideological and institutional independence from the state.**

Rather than being tasked with enhancing media freedom and freedom of expression and ensuring fair competition, they are required to police the media by sanctioning content violating the constitutionally protected

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principles of territorial integrity, national unity and general morality. **The High Council of Radio and Television (Radyo ve Televizyon Üst Kurulu- RTÜK) has extremely broad powers to sanction** media organisations which it deems to have violated ‘general morality,’ ‘the protection of the family,’ and ‘the national and moral values of society’. The agency frequently resorts to these powers by issuing warnings, imposing monetary and administrative sanctions, and suspending or revoking licenses of media companies. **The Directorate General of Press Advertisement (Basın İlam Kurumu- BİK), tasked with allocating official advertisements and announcements to the print media, functions as a public body which has sanctioning powers** to prohibit advertisements to any publication it deems to have violated media ethics. This has a censorship effect on the print media. **Authorities frequently block access to Internet sites** on grounds of protecting children and youth, family values, general morality and state interests. Among the blocked sites are news websites reporting on sensitive political issues such as the Kurdish question, LGBT websites and websites on sexuality. In many occasions, authorities go well beyond their powers by issuing blocking orders on grounds that do not exist under the Internet Law. Authorities also censor the Internet through prohibiting the use of words they deem to be inappropriate (such as the word ‘gay’) and attempting to filter the Internet on the pretext of protecting children. The Working Council on Safe Internet Service for Children and Family was established on 22 November 2011 but its working methods and principles have not yet been disclosed to the public.

The media market is highly concentrated due to the domination of the sector by a handful large conglomerates which have investments in various other areas of the economy. There are insufficient legal barriers to prevent these companies from making cross-mergers and entering into public tenders. **The preoccupation of media owners with profit maximisation not only renders them susceptible to political pressure but also potentially enables them to exert political pressure themselves** by using their power in the media against governments.

Despite a number of improvements introduced under the new broadcasting law of February 2011, there remain barriers to entry into the media market. As a result of the liberalisation of laws governing media ownership, of the increasing attractiveness of the Turkish media market for foreign investors and of the withdrawal from the market of companies where the political gains they drive through the media no longer offset their financial losses, the sale of media organs is a recurring phenomenon. **The absence of legal safeguards for editorial independence frequently causes mass layoffs as a result of media sales.**

**There is insufficient competition in the media market in Turkey, owing to the domination of the sector by a few companies.** The advertising pie is almost entirely divided between the big media groups in nearly all of the subsectors of the media. While the Competition Authority is rested with wide powers under the Competition Law, the agency in many cases fails to sanction anti-competition in the media. Turkey lacks a specific law to ensure fair competition in the media market.

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In the absence of direct subsidies for commercial media, official advertisements and announcements are important sources of revenue for small, independent and local press outlets, which are economically vulnerable vis-à-vis the existing media market structure. While local media, minority media and dissident media have had unequal access to this state aid, in recent years efforts have been made to strengthen the local media through increasing their share of official advertisements. Under the new broadcasting law of March 2012, three per cent of the contributions that RTÜK collects from commercial broadcasting companies will be allocated to the local press through the Directorate General of Press Advertisement. However, the minority media continues to be excluded from access to official advertisements, though an ad hoc initiative was made in 2011 to make a one-time payment of 250,000 TL to a total of six minority newspapers as a result of a public campaign protesting the discriminatory treatment of non-Muslim media in the allocation of state advertising.

Despite relatively improved through the EU process, **laws governing media content still contain restrictions on freedom of expression and media freedom.** While these laws pay lip service to fundamental rights and liberties, they treat rights secondary to the protection of the founding principles of the state such as national unity, national security, and the reforms and principles of Atatürk. **The principal obstacles to freedom of press and freedom of expression in Turkey stem from the criminal legal system,** specifically the Penal Code and the Anti-Terror Law. Prosecutors are making increasing use of these laws to censor the media by penalizing them

for reporting on sensitive political issues. In civil cases, high courts tend to rule in favour of plaintiffs who bring defamation cases against intellectuals and public personalities. In criminal cases, they are heavy-handed against individuals who are convicted for merely expressing non-violent dissenting opinions and/or reporting on political issues deemed to be against state interests. The courts tend to be particularly harsh against members of the Kurdish media by sentencing them to upper limits of penalties allowed under the laws. *Journalists are routinely prosecuted on charges of terrorism and treated as 'terrorists' simply for having performed their duties to provide the public with information. Journalists, like other defendants, are detained on remand for such lengthy periods that detention time turns into punishment.* Journalists are often convicted for multiple offences with extremely heavy sentences, facing life sentences without parole.

The European Court of Human Rights issued critical judgments against Turkey. The Court found that the warnings and licence suspensions issued against media organs, the banning of the future publications of newspapers whose content was yet unknown and the sentencing for defamation of journalists criticizing the Prime Minister violated freedom of expression. The Court called for the abolishment of Article 301 of the Penal Code, which makes the defamation of 'Turkishness' a criminal offence and is frequently used against journalists for their coverage of sensitive political issues. The Court also found the wholesale blocking of access to the Internet to be an infringement of freedom of expression protected under Article 10 of the European Convention and held that Turkey's Internet Law lacked the basic

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principles of foreseeability and precision required by the rule of law in a democratic society. **The European Court's judgments are routinely disregarded by regulatory agencies, the government and the judiciary.**

While these laws and policies have a censorship effect on the media, **journalists also exercise self-censorship for fear of hurting the economic and political interests of their patrons, losing their job or being prosecuted.** The historical weakness of trade unions in Turkey, the high level of unemployment among journalists, the high turnover rate in the sector and the deep divisions among journalists due to ideological differences make it very difficult for media employees to engage in a unified struggle against their employers and the state.

## RECOMMENDATIONS

### 1. Democratise media policy making processes

As in all other sectors, regulation in the media in Turkey is a highly centralised bureaucratic process where priorities are exclusively set by the executive and the parliament practically acts as rubber-stamp. Little discussion takes place in the parliament on substantive issues; and where it does, such discussion is extremely partisan and exclusive. In rare cases where non-governmental actors are invited to participate in and provide input to the lawmaking process, they are limited to the associations of broadcasters, advertising agencies, TV producers and media owners. Considered within the rubric of 'civil society', these actors are allowed the political platform to lobby the parliament in accordance with their financial interests. Journalist associations, trade unions and human rights organisations, on the other hand, are excluded

from parliamentary deliberations concerning freedom of expression and media freedom.

The values and principles guiding media policy making in Turkey exhibit a duality. While the constitutional and legislative framework contains formal commitments to rights and liberties, including freedom of expression, freedom of the press and freedom of information, what lies beyond this seemingly liberal facade is a framework where nationalism, statism and cultural conservatism are the supreme values looming over individual rights. The constitution and the laws governing the media are written with an authoritarian, paternalistic and conservative spirit, making the exercise of freedom of expression and media freedom prohibitively difficult due to expansive restrictions. The marginal space left in laws for the exercise of these freedoms is restricted further with media regulatory agencies, which are equipped with extensive sanctioning powers. The principal role designed for these agencies in Turkey is not policy making for the media but rather policing, which they successfully perform.

**Policy makers should ensure that media policy and media regulation processes are rendered democratic by enabling the open and effective representation of journalist associations, media representatives and academics. The reform proposals of civil actors should be duly reflected during the policy making processes.**

### 2. Safeguard the independence of the media regulatory agencies

The selection and appointment of the members of media regulatory bodies such as the RTÜK, the Information and Communication Technologies Authority (*Bilgi Teknolojileri ve İletişim Kurulu- BTK*) and the

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Telecommunications Communication Presidency (*Telekomünikasyon İletişim Başkanlığı –TİB*) are not transparent processes, owing to the absence of meaningful public debate and the exclusion of the parliament altogether where the appointment of BTK and TİB members are concerned. Furthermore, the involvement of the parliament in the appointment of members of some of these agencies does not necessarily render the process democratic given the fact that parliamentarians vote in line with party politics. The authoritarian mandates, non-transparent policies and wide sanctioning powers of agencies regulating the broadcasting media and the Internet pose a fundamental challenge to freedom of press and expression. Where these agencies have powers to protect media freedom through, for example, sanctioning anti-competition, they rarely exercise these powers.

In recent years, the government has developed a clear strategy of bypassing the parliament in the lawmaking process and ruling by decree. The most significant outcome of this phenomenon for the media sector has been the adoption of Executive Decree no. 649 on 17 August 2011. In authorising the Ministry of the EU Affairs to monitor and inspect the activities and transactions of media regulatory agencies, the decree has effectively put an end to the autonomy of these agencies.

**Media policy makers should take measures to ensure the independence of RTÜK, TİB and BTK.** This could be achieved through the following ways:

- Media regulatory agencies should be redesigned, with the participation of journalist associations, media representatives, academics and audience, to create

independent, competent and neutral bodies with effective regulatory powers to sanction hate speech, discriminatory content, labour exploitation and unfair competition in the media.

- The mandate of RTÜK, BTK and TİB should be reviewed to make sure that they are in line with the principles of freedom of expression and media freedom.
- All legal, political and administrative attempts to undermine the autonomy of media regulatory agencies should cease.
- Executive decree no. 649 of 17 August 2011, which brought an end to the autonomy of media regulatory agencies, should be repealed.
- Effective self-regulation is the best system of promoting high professional standards in the media and should be a priority in all matters of regulation.

### 3. Ensure media freedom and freedom of expression

Ever since the establishment of the press, the media freedom has never been fully ensured in Turkey- in laws or in practice.

Authoritarianism, statism and conservatism are prevalent in the text and the spirit of the constitution, the laws governing the media and criminal laws, which deem the protection of state interests above that of rights and liberties. The ambiguous and over-inclusive definitions of crimes and their broad interpretation by judicial authorities as well as the lack of consideration for the public interest in truth result in the prosecution of journalists for simply covering politically sensitive issues and/or expressing dissenting views. A further restraint on media freedom is the executive branch. Government officials, first and foremost the Prime Minister, frequently target

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dissident journalists through making public statements portraying them as sympathisers of terrorism and bringing defamation lawsuits which often result in the sentencing of journalists to pay politicians compensation in amounts that are extraordinarily high in proportion to the low salaries they earn. The combination of these legal, economic and political factors creates an environment of fear and intimidation, deterring journalists from critical news coverage.

While dissident and minority media have always been the target of state oppression and political pressure, in recent years, mainstream media organisations have also been subject to political pressure in retaliation for their stance against the government. For example, the Doğan media group was imposed a disproportionately heavy fine for tax fraud, which is widely believed to have been a punishment for the group's anti-government news coverage..

Since it lost its autonomy in 1971, the Turkish Radio Television Corporation (*Türkiye Radyo ve Televizyon Kurumu- TRT*) has functioned as a state owned institution propagating official ideology and government policies rather than as a public service broadcaster. The members of its administrative board are appointed by the executive among the candidates nominated by RTÜK, which itself is a dependent regulatory body acting in line with the policies of the government.

The Directorate General of Press and Information under the Office of the Prime Ministry is tasked with the issuance and dissemination of press cards, which enables the executive to exert political control and pressure over the media. This goes against established practices in democratic societies

where press cards are issued by independent organs. The state's selective distribution of press cards, whereby individuals outside of the profession are granted cards by way of nepotism and clientelism whereas members of the independent and dissident media are arbitrarily denied press cards, hinders journalists' exercise of their profession and gives unqualified individuals access to the rights, benefits and privileges of journalism. **Policy makers should support freedom of the press and freedom of the media in laws and in practice.** Consideration could be given to the following:

- The Anti-Terror Law must be repealed. All journalists detained on remand for their journalistic activities must be immediately released.
- Media regulation should be redesigned in a holistic manner and with the cooperation of civil society and journalist associations to eliminate restrictions on media freedom and bring it in compliance with the jurisprudence of the European Court of Human Rights.
- The parliament and the executive must adopt political, legal and administrative measures to ensure government's neutrality and equal distance towards all media, including public service broadcasting.
- TRT should be transformed into a truly public broadcaster with a supervisory body which is representative of society at large and protected against interferences, particularly of a political or economic nature, has guaranteed editorial independence and is funded in a manner that protects TRT from arbitrary interference with its budget.
- Legal, political and administrative measures must be adopted to put an end to internet censorship through arbitrary, broad and unlawful access bans and restrictions.

- All branches of the government must fulfil their obligations to execute the judgments of the European Court of Human Rights and implement the recommendations of the Council of Europe and the European Union.
- Government officials should refrain from all actions and statements that have or can be deemed to have censorship effect on the media.
- Government should respect the principles of neutrality and objectivity in enforcing tax laws, social security laws and other relevant laws against all media groups.
- Press cards must be issued and disseminated by an independent body constituted of representatives of journalists unions and associations, should be given to all journalists irrespective of the media outlets they work at and should be taken away from any one who is not a member of the journalistic profession.

#### 4. Prevent unfair competition in the media market

The legal framework in Turkey does not have media specific competition rules; rather, general rules of competition law apply to the media sector. This is a significant problem, in light of the fact that media pluralism – in the sense of multiplicity of viewpoints and not that of ownership – is a precondition for media freedom. The Competition Law confers on the Competition Authority sanctioning powers against the violation of basic competition rules and the abuse of dominant position in the market. Yet, the Authority has refrained from adapting a competition policy to prevent the domination of *Türk Telekom* in the telecommunications market.

Despite a series of EU-induced harmonization reforms in the media sector,

there remain significant restrictions on media ownership. Not only trade unions and associations continue to be prohibited from establishing radio and televisions, but the new law of March 2012 also extended this ban to universities, preventing communication faculties from running their own broadcasting services

**Legal, political and administrative measures must be adopted to ensure free and fair competition in the media.** Consideration could be given to the following:

- The ownership restrictions should be redesigned considering the cross-ownerships transactions and targeting to ensure pluralism in the media market.
- Television and radio broadcasting regulations should be separated according to their specific needs.
- The small and independent moreover non-profit media outlets should be subsidized by independent regulatory bodies to ensure pluralism in the media. The minority media can also benefit from the subsidies.
- The Competition Authority should enforce the terms of the Competition Law in a fair, neutral and equal manner against all companies which abuse their dominant positions in the media sector. In addition, separate competition rules could be developed for the media.
- The restrictions on media ownership should be eased to allow communities, such as universities or civil associations, to own and run television and radio stations which are non-profit and controlled by the communities themselves.
- The participating in public procurements of media owners (and their relatives) should be prevented and also their economic relation-



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ship with the state should be overseen and be made pellucid (transparent) by independent regulatory authorities.

## SUMMARY OF POLICY SUGGESTIONS TARGETING THE EU AND THE COUNCIL OF EUROPE FOR MEDIA FREEDOM AND INDEPENDENCE

The emerging global framework of media communication calls for an increasingly coordinated approach that links national policies to the transnational perspective. In the past decades the institutions of the European Union (EU) and the Council of Europe (CoE) have addressed several aspects of media policy based on their respective competences and enforcement powers.

In the case of the EU, the policy framework recognises both the cultural and the economic dimensions of media regulation, and at the same time fosters the protection of public interest values, such as media pluralism and the protection of human dignity in the media sectors. The involvement of the CoE in the media sector, in turn, has significantly changed over time, leading to an autonomous media policy, deemed necessary to cope with political and technological developments.

Both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) have contributed extensively to the shaping of media policy in the Mediadem countries. The two European courts pursued slightly diverging goals over time, with the ECtHR being more focused on media freedom as a driver of democracy, and the CJEU more oriented towards an economic approach, and thus towards the liberalisation of media industries and the avoidance of concentration of ownership. The ECtHR

jurisprudence and the European Convention on Human Rights have had an overall positive influence on media freedom and independence, especially with regard to libel and defamation cases, restrictions on publishing, protection of private life and protection of sources. However, this does not exclude problems and tensions as regards the effective implementation of ECtHR case law. Against this background, action will be needed to facilitate cooperation between courts, both through direct judicial cooperation and through a more comprehensive elaboration of common concepts and principles at the European level, as will be advocated in the following policy recommendations.

### 1. Foster a more integrated approach to media policy

The CoE should pursue its efforts in the definition of a ‘new notion of media’ by addressing, through recommendations and guidelines, the legal consequences that flow from the adoption of an integrated approach to media, and by providing benchmarking cases where different regulatory strategies are adopted.

The European Commission should lay the foundations for a revised approach to media regulation by clarifying the policy issues that are likely to remain important in the age of convergence, and those that are not likely to raise concerns in the future.

The European Parliament should host a fruitful debate on the meaning of an ‘integrated approach’ to media and its consequences for freedom of expression and pluralism as well as on the viability of the industry players involved.

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## 2. Adopt a technology-neutral approach to media regulation

EU institutions, and primarily the European Commission, should promote and operationalise the principle of technological neutrality in all media policy interventions, from regulation to competition policy, regardless of the type of legal instrument used (soft or hard law).

## 3. Accelerate the shift from public service broadcasting to public service media

The EU and the Council of Europe should interpret user-generated content within the realm of the principle of freedom of expression, supporting its blossom and development.

EU institutions should adopt a clear regulatory strategy regarding the need to safeguard user-generated content from forms of proptertisation. Consideration could be given to the following measures: promoting user-generated content in the key elements of public service across media; granting civil society access to public service media in terms of time, space and visibility; providing funding schemes to support user-generated content, based on a clear and transparent awarding procedure; etc.

## 4. Revise the relationship between ex ante regulation and ex post competition policy taking into account new technological developments and update competition policy

The European Commission and the European Parliament should lead the work on updating the application of competition policy in the media sector. Given the difficulty of capturing anticompetitive behaviour, it is important that pluralism is promoted through a combination of ex ante regulation, and ex post antitrust scrutiny.

## 5. Improve governance and provide for sound institutional arrangements at European level

The Council of Europe should take action to stimulate more direct uptake of its guidelines on the editorial independence and operational autonomy of public service broadcasting/public service media.

The European Commission should revise its guidelines on assessing the impact of regulatory proposals on fundamental rights to include detailed guidance on the policy areas where legislative action might be required to ensure protection of fundamental rights.

Both the ECtHR and CJEU should devise more effective remedies in case of violation of freedom of expression by public and private actors.

The European Commission and the European Parliament should lead a reflection on the independence and autonomy of public and private media regulators, to promote effective and accountable regulation at national level.

## 6. Strengthen institutional and governance arrangements at pan-European level

EU institutions should aim at developing pan-European coordination of regulatory approaches, use of soft law, promotion of private regulation, where appropriate, and effective exchange of best practices.

## 7. Refine and strengthen the evaluation of private regulation in the media domain

The Council of Europe should adopt general guidelines on developing effective and legitimate private regulation in the media sector combined with direct and peer monitoring.

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The European Commission should adopt general guidelines on the ex ante assessment and the ex post evaluation of private regulatory solutions within its overall smart regulation toolkit.

### **8. Enhance coordination of the journalistic profession at the European level**

EU institutions should ensure that domestic media private regulators strengthen their coordination at EU level and move towards a more integrated structure overcoming the current divisions often based on the press/ broadcasting distinction.

EU institutions should foster the coordination of the journalistic profession at the European level.

### **9. Strike a more even balance between copyright protection, Internet neutrality and freedom of expression, in particular on the Internet**

EU institutions should foster a consistent approach to Internet neutrality, copyright enforcement and freedom of expression across countries, as well as develop a policy approach which does not negatively affect the open, end-to-end architecture of the Internet and, along with it, access to all content of choice by Internet users.

EU institutions and the Council of Europe should pro-actively participate to the international debate on Internet governance in order to ensure that the end-to-end principle is preserved, and that the proposed enhanced government control over the Internet does not negatively affect freedom of expression.

### **10. Improve the implementation of ECtHR rulings at national level and promote new forms of judicial cooperation**

The Council of Europe should promote the accountability of institutions in its member countries, providing the Committee of Ministers with the task of developing guidelines aimed at improving the implementation of ECtHR case law, as well as enhance the dialogue between ECtHR judges and national judges by supporting fora where domestic legal traditions can be exchanged and commented.



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*MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It investigates the configuration of media policies in the aforementioned countries and examines the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, are thoroughly discussed and analysed.*

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