

TESEV DEMOCRATIZATION PROGRAM MEDIA STUDIES SERIES – 1

Communicating Democracy - Democratizing Communication

Media in Turkey: Legislation, Policies, Actors

Esra Elmas
Dilek Kurban



TESEV
DEMOCRATIZATION
PROGRAM



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TESEV

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*Turkish Economic and
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Background Information Report

Updated Version

Media policies and regulatory practices
in a selected set of European countries,
the EU and the Council of Europe: the case of Turkey

Esra Elmas
Dilek Kurban

June 2011



Project profile

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.

Project title: European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems

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TESEV's Presentation

Etyen Mahçupyan, TESEV Democratization Program

The depiction of the media as the fourth estate by the theory of democracy makes a reference to an idealized societal system. While this situation reflects a limited reality even in Western countries, it is almost entirely unrealistic in Turkey since the tutelary regime set up and systematized by the Republic has made relations with the army vital for the media and positioned the press as a conveyor of the official ideology and national issues.

This situation also gained an identity-based meaning within the community structure reinforced by the republic. To the extent that it acted as the voice of the "centre" defined by the state, the media also represented the identity-related aspect of this centre. Hence, a media world was born that 'other-ized' those who were outside the centre and that gained privileges and concessions by advocating laicism and the Turkish ethnic identity.

Using political power to take advantage of cyclical opportunities resulted in the media evolving towards an oligopolistic structure while gaining a denominational character, and at the same time expanding towards the other areas of the economy where it created monopolist advantages. Hence, media organs started to see themselves as political actors that could bargain with the government, an approach that rapidly corrupted the sector.

On the other hand, with the broadening of the area of politics within the last two decades, diversification and pluralisation was experienced in the media. Unfortunately, this situation did not imply a transformation in the mentali-

ties or a pluralist perspective. On the contrary, each community started to have their own media, and many habits, from social manipulation to voluntary censorship, became the common traits of the whole sector.

Today, the Turkish media faces the problem of pressure from the state and from governments, as much as it faces problems stemming from its own capital structures and ideological choices. What's more, this situation is taking place in a country that still cannot put democratic laws in place and that maintains a conception of law that is foreign to freedom of expression and of media.

The democratization of the media is vital in terms of creating independent and civilian supervision of politics and bureaucracy and ensuring that social demands find their voice in the public domain. And this requires a change in the legal framework and in the ownership structure, as well as in the actually functioning rules of competition. Yet, a transformation in the mentality of the media in parallel with the domain of politics is also necessary.

In the coming months, TESEV will present the public with a variety of studies on this critical area. This initial report is the first in a series of publications that will be presented, and summarizes the historical background of the media and the past and present of media-related legal arrangements. We hope that the report will offer a meaningful contribution toward triggering discussion on the domain of media, which is one of the main building blocks that will ensure Turkey's democratization.

Preface

Mahmut Mutman, Istanbul Şehir University, Department of Cinema and Television

The role of media in political and civic life is undeniable. The famous expression attributed to Edmund Burke, the “fourth estate,” refers to the institutional and political influence of the media over political affairs and government. This power can be seen in two different ways: *either* the media are perceived as having an instrumental role in communicating information as well as various opinions that exist in society and thus providing a common ground for public discussion; *or*, it can be seen as deciding what is worth telling and setting the agenda, and further determining the vocabulary and syntax of political culture under the pressure of political and economic powers.

In a period of democratisation such as we have in Turkey, the former, instrumental approach appears as imperative, for nothing seems more urgent than having a healthy and free environment of public discussion to which each and every voice has access, and the media are a major strategic actor in providing this environment. Yet the latter approach seems also inevitable given that the instrument that is called the media is itself an institution which is subject to and under the control of powerful social, political and economic forces and interests, and which has its own rules and language that are not always amenable to democratic debate and argumentation (spectacularisation, sensationalism, tabloidisation, etc). The following report appears to have been written in the critical spirit of the latter approach in order to push the Turkish media, legislators, politicians and society

further in the direction of the former approach. It offers a significant survey of the historical development and the present structure of Turkish media, especially in view of the process of democratisation, freedom of the press and the potential role the media play in this process.

A major obstacle appears to be the old legislation that is a legacy of the tutelary structure, which is itself a legacy of the past military interventions. The report gives an extensive account of how these old elitist tutelary structures (both the judiciary and the military) and old regulations restrict and manipulate media content in implicit as well as explicit ways. This is a complex issue for it is not simply the presence of old elite behaviour and repressive legislation which restrict the media but a whole *tutelary, patrimonial and repressive tradition and habits* permeated into the political and institutional structure, including political parties, pressure groups and elected governments all of which would like to instrumentalize media for their own benefit. Thus the old structures and habits persist within the gradual process of emergence of democratic reform and liberalisation. As a result, the new media legislation is often a strange mixture of the old and new: it brings up new freedoms while maintaining the old repressive habits in between the lines (the Press Law of 2004 being a prime example). Generally speaking, although there are a number of positive developments such as a new public television channel in Kurdish, many

aspects of the new legislation as well as the remnants of the old put serious restrictions on the freedom of press and television. The new regulatory agencies that appeared in the process (especially RTÜK) also have considerable punitive power and appear as further instances of this problematic reality. Penal law as well as the “Anti-Terror Law” has provisions that significantly curtail media freedom and thus indirectly control the media output.

The report shows how the liberalisation of the media law, the opening of private television channels and the concomitant process of globalisation has had a compound effect on Turkish media, politics and society. From this point of view, liberalisation presents a dual picture. On the one hand, this process brought on an immense proliferation of various media from all kinds of weekly magazines to a vast array of radio stations, television channels and local media and press, and most importantly, it opened up an entirely new avenue of public expression such as the internet. On the other hand, liberalisation and privatisation had the immediate effect of monopolisation in the media and the emergence of big media companies with investment in other areas as well (what the report calls “cross-monopolisation”). The entry of big capital into the media sector had a number of structural effects: it left no room for smaller media companies and led to the commercialisation of information and tabloidisation of newspapers. Further, as the press changed hands from a small number of newspaper owners to powerful businessmen, each of whom had several channels, newspapers and weeklies, there emerged a new economic pressure group with considerable lobbying power over media legislation. These powerful pressure groups, the old tutelary elites on the one hand and the new economic elite on the other, and sometimes in alliance with each other as in the case

of the 28 February “postmodern coup,” further complicate an already fragile process of democratisation. Eventually, the mainstream media continue to be instrumentalized by the three major branches of the state: the judiciary, the military and the government. This is a situation in which the multiple voices of civil society can find little room.

The report thus gives significant room to small though effective minority and alternative media which depend on limited financial means and have to operate in a repressive legal and political context. In the mainstream public sphere, the survival of the alternative press organs such as the newspaper *Taraf* and the weekly *Nokta* (which in fact no longer survives) has been made possible by the heroic efforts of a couple of journalists. The minority media confront similar circumstances. In this respect, the most interesting site is the internet (personal blogs, interactive sites), especially what is called the “social media” where there is a considerable degree of freedom of expression and a variety of different voices even though the use of internet or public access is not at an optimum level. Hence it is important to underline two major gains of democratisation which came with the new media. They increase citizen participation in the production of media content; and they provide an alternative space for the production of politically dissident views or controversial news which cannot pass through the filters of the mainstream media.

On the negative side however, as the report underlines, there is a manifest use of hate speech, racism and sexism at a significant level in the social media and internet. This is an alarming note, for, if social media gives voice to society independently of the mainstream media, then the presence of such language expresses tendencies that already exist in

society, hence the absolute significance of raising a new democratic awareness in, by and through the media. Interestingly, there is a slightly emerging interest in women's issues and male-chauvinism as a problem (mainly due to the increasing number of cases of extreme male violence), while racism is a word that gets used very rarely and almost never in the mainstream media -except the general and worn- out phrase "the Kurdish question." Given this picture, the widespread use of hate speech and racist slurs against Kurds and Armenians in the social media is a truly frightening reality and shows once more that

the question of democratisation goes much further and deeper than producing democratic legislation and directly involves the question of changing a vast repertoire of behaviour, manners and habits of thought and language, which are full of extremisms and violence regarded as normal.

All in all, the report offers a comprehensive critical analysis of Turkish media in view of the social, political and ethical task of democratisation. We hope that it will be of great help to media professionals, future analysts as well as politicians, legislators and the public.

Introduction*

Mass communication studies have gone through three different periods. In the period 1910-40, they concentrated on the media's "bullet effect" on the masses. Accordingly, the media had absolute power in manipulating the political agenda of societies and shaping their passive members. Media studies of the time pointed out the use of the media as a propaganda tool by totalitarian regimes during World War I. During the second period from 1940-60, field research mainly carried out in the United States showed that the impact of the media on the masses was actually limited. Finally, in the third period from the 1960s to the present day, media studies have tried to look into the ideological features of media power in relation to its economic structure.

Today, as a result of the rapid change in communication technology, we find ourselves in the so-called "digital age." The media ecology has been deeply reshaped with the emergence of the internet, which has had a destructive effect on the horizontal relations between the "sender" and the "receiver" as well as on inequalities in society. Personal

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blogs and interactive internet sites of the traditional media allowed citizens to become visible and finally have a voice, increasing citizens' participation in the production of media content. Traditional media, which consists of large companies and is usually dependent on government/state subsidies, has lost its monopoly and its control over content. Media studies have named the digital age "the uncontrollable age" and considered the increase in citizens' participation in media content as a plus in the name of democratization, often overlooking the potential or real implications of the new media on individual rights and liberties.

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* We are grateful to TESEV Democratization Program's Esra Bakkalbaşıoğlu for meticulously preparing this report for publication and particularly for the tables, and Ebru İlhan for her invaluable research support. We would also like to thank Mahmut Mutman of Şehir University and Ceren Sözeri of Galatasaray University for their thought-provoking comments on earlier drafts of this report. That being said, the responsibility of the content of this report belongs solely to its authors.

This report is an attempt to understand the relationship between media and democracy in Turkey. Towards that end, it situates the media in its political and historical context. It argues that Turkey's media structure falls under the "Mediterranean or Polarised Pluralistic Model!"

While the emergence of journalism dates back to the late Ottoman era, it is not possible to speak of an autonomous profession which is immune to pressure from politicians, interest groups, state institutions, the army and the judiciary.

developed by Hallin and Mancini¹ which is based on four criteria, namely: (1) the development of media markets, in particular the development of the mass circulation press; (2) political parallelism, or “the extent to which the media system reflects the major divisions in society”; (3) the development of journalistic professionalism; and (4) the degree and nature of state intervention in the media system.² According to the Mediterranean Model, “the media in Southern Europe share some major characteristics: low levels of newspaper circulation, a tradition of advocacy reporting, instrumentalisation of privately owned media, politicisation of public broadcasting and broadcast regulation and limited development of journalism as an autonomous profession.”³

Turkey presents a typical example of the Mediterranean Model. Newspaper circulation

is quite low and the media indeed has a tradition of advocacy journalism. The media sector is divided into aggregations where the owners of the big media groups are also investors and shareholders in different sectors of the economy such as health, education, construction, telecommunications and distribution; they use their power in the media sector to maximize their economic gains in other industries. Although the owners of big media groups may have different ideological stands and political positions as well as conflicting economic interests, they by and large share the same “mindset” in upholding the “interests of the state” and “national security” above democracy, human rights and media freedom. Thus, the seeming diversity of the media due to the multitude of media companies is misleading. Furthermore, while the emergence of journalism dates back to the late Ottoman era, it is not possible to speak of an autonomous profession which is immune to pressure from politicians, interest groups, state institutions, the army and the judiciary. The level of unionization in the media continues to be extremely low, owing to the pressure coming from media owners the overall weakness of labour unions in Turkey and the level of labour exploitation to be high.

The multiplicity of conflicting interests in the media and the economic liberalization of the early 1990s have resulted in a complex regulatory framework, both in terms of structure and content. While the various media-specific laws that regulate the field have quite positive aspects, in practice the courts, law enforcement officers and the government take advantage of the legal loopholes or the wide margin of appreciation granted to the implementers to significantly restrict and at times nullify freedom of speech and freedom of the media. While press freedom is protected under the constitution, the judiciary has a tendency to

1 Hallin and Mancini have developed three media models in Western Europe and North America: (1) Polarized Pluralist or Mediterranean Model (for Southern European countries, like France, Greece and Italy); (2) Democratic Corporatist or North/Central European Model (Germany, Netherlands, Scandinavian countries); (3) Liberal or North Atlantic Model (United States, Great Britain, Canada). See E. Özcan, “The Role of the State in Turkish Media in Light of Hallin and Mancini’s Comparative Media Systems”, *Paper presented at the annual meeting of the International Communication Association, TBA, San Francisco, CA Online <PDF>*; available at: http://www.allacademic.com/meta/p170690_index.html (last visited on 07 May 2010).

2 *Ibid.*

3 S. Papathanassopoulos, “The Mediterranean/Polarized Pluralist Media Model Countries,” in G. Terzis (ed.) *European Media Governance: National and Regional Dimensions* (2005), p. 192.

censor dissident and minority media organs under the pretext of combating terrorism, preserving territorial unity and protecting the state.

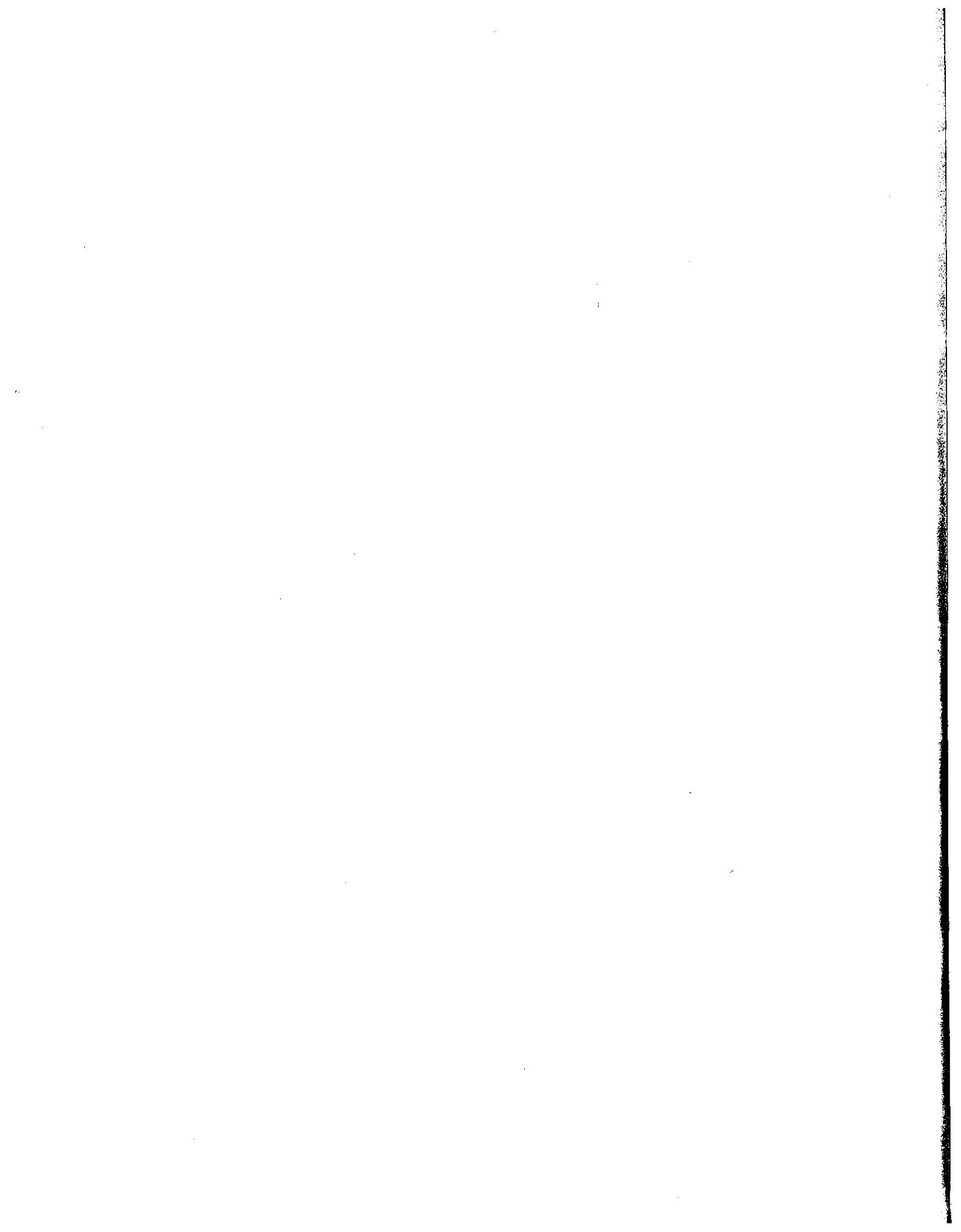
The banking crisis of 2000-2001, which has had significant repercussions for the media sector in Turkey, and the commencement of the European Union (EU) membership process around the same time have further complicated the regulatory framework. While relative progress has been achieved in recent years in regulating media ownership and enhancing media freedom and pluralism, the media sector continues to be in flux and unstable. Further, the laws governing the sector preserve their inconsistent and restrictive nature. The economic and political transition brought by the post-crisis restructuring of the financial sector and the EU accession process increased the role of the regulatory bodies in the media, resulting in administrative agencies becoming

The main factor accounting for the co-existence of democratic reforms and the continuation of the status quo is the prevalent political culture and the historical origins of state-media relations in Turkey.

one of the key players. However, despite relative progress achieved in recent years, Turkey continues to fall far below the goal of harmonizing its legal framework with the EU's *acquis communautaire*. This report argues that the main factor accounting for the co-existence of democratic reforms and the continuation of the status quo is the prevalent political culture and the historical origins of state-media relations in Turkey. An informed analysis of media policies and regulation in the country necessitates a careful reading of the historical and political context, particularly the state's formative years.

First Section

First Section



Historical Background: Development of the Media in Turkey

This section provides an overview of the political context in Turkey, with a particular focus on the historical development of state-media relations. It discusses the evolution of the media and democracy in Turkey on the basis of the national and international anchors of political and social change: the foundation of the republic, the evolution of multi-party democracy, military interventions, economic liberalisation, globalization and EU-induced democratisation. The evolution of the press, radio and television in Turkey is examined during the following principal periods [excluding the military regime between 1980 and 1983 when all means of communication were under the control of the military]: the single party regime from 1923 to 1950, the multi-party regime from 1950 to 1980, the intervening periods of military rule, and the “liberalisation process” of the 1980s and 1990s. Finally, the impact of the international dimension will be examined on the basis of legal and political developments introduced in the media sector as a result of globalization, the economic crisis of 2000-2001 and the ongoing EU accession process.

1.1. THE SINGLE PARTY REGIME: INSTRUMENTALIZATION OF THE MEDIA BY THE STATE

In both the Ottoman Empire and the Turkish Republic, journalists played an important role in the introduction of Western values and institutions to society. From 1923, when the republic was proclaimed, until 1950 when a

Journalists were both the object and the subject of the state-driven modernisation movements in Turkey. In this sense, the press has traditionally dealt with “discussions” rather than “news.”

multi-party system was installed, journalists were instrumental in propagating the modernising reforms of the one-party regime.⁴ Journalists were both the object and the subject of the state-driven modernisation movements in Turkey. In this sense, the press has traditionally dealt with “discussions” rather than “news.”⁵ From the outset, most of the press had a crucial role in the modernisation project and developed a politically and economically interdependent relationship with the state. Dissident press, on the other hand has been the potential target of state/government repression or pressure.

In the early-Republican era, most of the journalists were also writers and their literary writings influenced their journalistic reporting. The first journalists of Turkey can be described as “self-taught” and today, although there are some media members in the sector who are graduates of schools of journalism or commu-

4 T. Demirel and M. Heper, “The Press and the Consolidation of Democracy in Turkey”, 32/2 *Middle Eastern Studies* (April 1996), p. 109-123, 113.

5 E. E. Bilgiç, “The Role of the Press in the Construction of National Identity 1934-1937”, unpublished Ph.D. thesis, Boğaziçi University (2010), p. 27.

nication departments, this feature remains true.

The establishment of the print media in Turkey predates that of the republic. The first newspaper was founded during the Ottoman times, in the final years of the empire when Mustafa Kemal pioneered a war of independence against the Allied powers. The independence movement which culminated in the foundation of the republic in 1923 was based on two primary principles: Battle and Correspondence. In the transition from a decaying empire to a modern nation state, Mustafa Kemal and his staff prioritised the print media, the only widespread medium of communication at the time, in reaching out to the masses. The National Sovereignty (*Hakimiyet-i Milliye*) newspaper was established by Mustafa Kemal himself in Ankara on 10 January 1920. Later renamed *Ulus*, the paper aimed at publicising Mustafa Kemal's major decisions during the War of Independence. The Anatolian Agency (*Anadolu Ajansı*), created on 6 April 1920, shared the same goal. The main objective behind the foundation of *Anadolu Ajansı* was to disseminate to the national and international public "true" news about the Turkish Independence War.⁶

Another example of the instrumentalisation of the media during the years of state formation was Mustafa Kemal's national tours, which sought to rally support in favour of the Independence War and instill the spirit of nationalism across the country. These trips continued after the Republic was founded, with the aim of consolidating the regime, overcoming educational, health and economic

problems, and laying the groundwork for forthcoming reforms. The press was always invited to Atatürk's appearances, which were also attended by military and civilian experts. The creation of the republic was primarily a top-down project and the press was a vital element for the founding elite to proclaim its republican values. While Mustafa Kemal and the founding elite created their own media networks, they were careful to also establish good relations with the existing media. Soon, however, state-media relations began to change. One principal reason for this change was the fragmentation of the People's Party (*Halk Fırkası*)—the political party founded by Mustafa Kemal—by a group intent on forming its own party, the Developmentalist Republican Party (*Terakkiperver Cumhuriyet Fırkası*) in 1924.

Support from both the people and the press of Istanbul for *Terakkiperver Cumhuriyet Fırkası* as the first opposition party in the history of Turkey was perceived as a threat to the regime. Under the pretext of suppressing the Kurdish Sheikh Said Rebellion in 1925, martial law was declared in the southeastern region of Turkey. The Law on the Maintenance of Order (*Takrir-i Sükûn Kanunu*) was enacted, which stifled freedom of the press and quashed all opposition in the country.⁷ In accordance with this law, 13 oppositional journalists along with rebels and dissenting politicians were tried in the Independence Courts (*İstiklâl Mahkemeleri*) and most were exiled. *Terakkiperver Cumhuriyet Fırkası* and 15 newspapers critical of the

6 Following the establishment of the republic, *Anadolu Ajansı* continued to serve the objectives of Atatürk's government by propagating at the international level the righteousness of the newly founded Turkish state.

7 One of the three articles of *Takrir-i Sükun Kanunu* read: "The head of the government—with the approval of the president—is entitled to ban any organization, provocation, encouragement and publications aimed at reactionism, rebellion, and disruption of social order, social peace, security and public order. The government may hand over persons suspected of these actions to the Independence Court."

government were shut down and only those newspapers that had supported the law were allowed to operate.

The 1928 the Alphabet Reform, which replaced Ottoman script with the Latin alphabet, radically changed Turkish society's relationship to its past; it is largely responsible for the lack of an independent media in Turkey. The transition to the Latin alphabet rendered useless the existing technology that media owners had at the time. The state provided financial support to publishers who were forced to change their infrastructure to adjust to the new lettering system. The publishers' financial dependence to the government created an opening for the monitoring and control of ideas.⁸

During the 27 years the Republican People's Party (*Cumhuriyet Halk Partisi* - CHP) ruled the country in a single-party government, all forms of opposition were silenced. In 1927, just two years after the world's first radio broadcasts had started; two public enterprises co-founded a media company called the Turkish Wireless Telephony (*Türk Telsiz Telefon A.Ş.* - TTAŞ) and launched Ankara and Istanbul-based radio broadcasting. These two enterprises were *Anadolu Ajansı* and *Türkiye İş Bankası*; the latter had CHP as a shareholder. With the establishment of TTAŞ, 'broadcasting became part of the state machinery from day one even though it was not directly run by the state.'⁹ The company followed BBC as a model for its *modus operandi* and negotiated a 10-year contract with the government.

In 1936, the company's request for contract renewal was rejected on the grounds that its programming did not live up to the standards of contemporary radio broadcasting. Through an edict issued in the same year, radio broadcasts began to be carried out by the state itself. The company's transmitters were transferred to the Postal, Telephone and Telegraph Authority (*Posta, Telefon ve Telgraf Genel Müdürlüğü*- PTT), which marked the beginning of the period of state monopoly in broadcasting which would last until 1964. In 1939, Ankara Radio began to broadcast news bulletins in foreign languages in order to keep other nations informed about Turkey's stance and policies. In its broadcasting during the Second World War, this station emphasized Turkey's neutrality.

Law no. 3837 of 22 May 1940 established what is today called the Directorate General of Press and Information (*Basın, Yayın ve Enformasyon Genel Müdürlüğü*- BYEGM), a public body presently under the Office of the Prime Ministry. In the preamble he wrote to this law, Mustafa Kemal Atatürk defined BYEGM's purposes as follows: "On the one hand we need to bring out publications with an aim to defend our national and legitimate cause and to constantly scrutinize the foreign press to understand the flow of ideas, while on the other hand we need to bring out publications within the nation to produce a union of ideas and spirits as the modern time dictates."¹⁰

In 1949, Izmir Municipality also established a radio station, which was transformed into a state-run enterprise in 1953. Izmir thus became the third major center for radio

8 Bilgiç, 2010, p. 35.

9 B. Sümer, *The Impact of Europeanisation on Policy-Making in Turkey: Controversies, Uncertainties and Misfits in Broadcasting Policy (1999-2009)*, Ankara University European Research Center Research Series, No: 35 (2010), p. 106.

10 Basın, Yayın ve Enformasyon Genel Müdürlüğü (*Directorate General of Press and Information - BYEGM*), *History and Function*, available at: <http://www.byegm.gov.tr/sayfa.aspx?Id=61> (last visited on 8 October 2010).

Radio broadcasting under state monopoly demonstrates the use of radio in the establishment and consolidation of official ideology.

broadcasting in Turkey after Ankara and Istanbul.

The first decade of radio broadcasting under state monopoly demonstrates the use of radio in the establishment and consolidation of official ideology. The most striking of these was the two year ban on playing traditional folk music on the radio. In his address to parliament in 1934, Atatürk noted that the music being broadcast at the time was far from perfect and that "it is necessary to collect noble expressions describing elaborate emotions and ideas and process them according to the contemporary music norms."¹¹ Following Atatürk's speech, the Ministry of Foreign Affairs dictated that Istanbul and Ankara radios play pieces 'composed according to the classical Western technique.' This ban continued through 1935 and into the first half of 1936. During this period, a considerable number of people who had been accustomed to listening to traditional music now tuned their antennas to the radios of Egypt, Crimea and Yerevan so as to be able to listen to Arabic and Armenian songs; these were closer to the folk music of Turkey than classical Western music. Implemented in the name of modernising society, the ban was yet another instance of the instrumentalization of the media by the government, which had highly identified itself with the state, in order to have direct control over society. The transition to the multi-party regime did not alter this reality.

11 G. Gökçe, "Sanat Kurumlarının Oluşmasında Atatürk'ün Rolü," (The Role of Atatürk in the establishment of the Art Agencies) 18/VI *Atatürk Araştırma Merkezi Dergisi* (1990), p. 707-713, 709.

Following the dissolution of *Terakkiperver Cumhuriyet Fırkası*, Atatürk—who was still the president of the country—founded another opposition party in 1930 under the name of the Free Republican Party (*Serbest Cumhuriyet Fırkası*). With the closure of this party shortly after its establishment because of being perceived by the ruling elites as 'a threat against the regime', there remained no medium for the expression of dissent in the country until the 1950s. By 1945, major landowners, the rural population (comprising 80% of the entire population at the time) and the Turkish bourgeoisie were discontent due to heavy taxes (1942 Wealth Tax,¹² tax on agricultural products), increasing inflation and land reform. At a time when Turkey had to comply with democratic principles after having signed the UN Treaty in 1945, it was no longer possible to continue with the single party regime. In 1947 Turkey accepted the Truman Doctrine; consequently, the Marshall Plan required Turkey to embrace democracy and a free market economy. This stipulation paved the way for the formation of the Democrat Party (*Demokrat Parti*- DP) and the transition to a multi-party system with DP's defeat of CHP in the 1950 national elections.

12 The 1942 Wealth Levy Tax, No. 4305, levied disproportionately high taxes on non-Muslims, discriminating between similarly situated Muslims and non-Muslims for the purpose of transferring wealth from the latter to the former. Non-Muslims unable to pay the high taxes within the one month period were transferred to labour camps around the country. This discriminatory treatment ended *de facto* in December 1943 with the release of the remaining non-Muslims from the labour camps, and *de iure* with the annulment of the law on 15 March 1944. A. Aktar, *Varlık Vergisi ve "Türkleştirme" Politikaları* (2000), p. 135-153.

1.2. MULTI-PARTY YEARS: THE MANIPULATIVE FUNCTION OF THE MEDIA

DP's coming to power in 1950 gave rise to great expectations for democratisation in the country. In response to demands for greater freedoms, DP named freedom of the press a matter of priority. On 15 July 1950, a liberal press law was adopted, soon followed by a law granting journalists social rights. Yet, three years later, legal amendments designed to increase government control over the press and universities were adopted. Press organs critical of the government were subjected to censorship. By 1955, court cases against the press had increased.

The media in Turkey, restricted in its content by the state from its very inception, has often been used as a medium of manipulation.¹³ The DP rule between 1956 and 1960 was no exception. The government introduced legal restrictions on freedom of the press and closed down the journalists' union. The radio turned into a political apparatus of the government, causing the 1950s to be known as the "partisan radio" years.¹⁴ The names of citizens who

joined the Homeland Front, DP's political extension, were announced on a daily basis on the radio to create an uneasy kind of surveillance effect on society. In short, radio became a tool for "manufacturing consent"¹⁵ and monitoring the society.

1.3. MILITARY REGIMES AND THE MEDIA

Turkey has witnessed three military interventions in the conventional sense, whereby the army overthrew the elected government and took over power. Each of the *coup d'états* in 1960, 1971 and 1980 was followed by a period of military rule, which had significant repercussions for media freedom.

The most significant development in mass communications following the 27 May 1960 *coup d'état*, which brought down DP, was the establishment of the Turkish Radio and Broadcasting Corporation (*Türkiye Radyo ve Televizyon Kurumu- TRT*) in 1964. On the other hand, the 1960s were also a time of considerable social and political activity in the country, when leftist, nationalist and Islamic movements became visible in the public sphere. Paradoxically, the 1961 Constitution enacted after the 1960 coup institutionalized the tutelage of the military and the judiciary over elected governments on the one hand, and widened the scope of freedom of expression and association on the other. Public television broadcasting was launched in 1967 under these circumstances and gradually became the most innovative and effective means through which the state reached the masses. The TRT's television and radio channels began their broadcasting every day with the national anthem. The news headlines followed the

¹³ One of the prime examples of this were the incidents of 6-7 September 1955, when government-backed violent mobs attacked unarmed non-Muslim civilians and their property and institutions in Istanbul. The incidents were triggered by a news item in the *Istanbul Ekspres Newspaper* that Atatürk's house in Thessaloniki had been bombed. At a time when relations with Greece were strained over Cyprus, this "news" incited attacks on non-Muslim minorities, which had hitherto been tolerated and even supported by the state. The incidents resulted in the declaration of martial law and the issuing of bans on the press. It was later found out that the item in question had been a product of yellow journalism. D. Güven, *Cumhuriyet Dönemi Azınlık Stratejileri ve Politikaları Bağlamında 6-7 Eylül Olayları* (2006).

¹⁴ Sümer, 2010, p. 108, citing M. Aksoy, *Partizan Radyo ve DP* (1960).

¹⁵ E. S. Herman and N. Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (1988).

order of state protocol, i.e. news related to the president preceded those concerning the prime minister, causing TRT reporting to be labeled as “protocol reporting.” Having said that, while the TRT has always preserved its instrumentality as the medium of the indoctrination for official ideology, it has also held an important place in the Turkish media by providing information for the masses and introducing political and social issues to society, for instance during the short period of leadership under İsmail Cem, TRT began 24 hour broadcasting in 1974. With the drop in the price of TV sets, the number of houses with televisions proliferated.

Turkey experienced its second military coup in 1970, which was followed by a period of great political instability, particularly in the final years of the decade. Between 1974 and 1980, TRT became the battle ground for the political struggle between the National Front governments¹⁶ and CHP. Military regimes established after each *coup d'état* also sought to seize the entire media establishment. The coup of September 12th, 1980, Turkey's third, was the first time that a military intervention was announced to the public via television. It also marks the beginning of the structural transfor-

mation of the political and social life in the country that stretches to the present day. This period was characterised by attacks on opposition groups and a process of uniformisation where even the most benign form of dissent was prohibited and suppressed. The aim was to create a citizenry which was uncritical, non-interfering and ready to sacrifice their individuality in the name of the “nation.” The media, especially television, was the most important tool for arriving at this aim; indeed, it was used very effectively. In 1983, the Communications High Council (*Haberleşme Yüksek Kurulu-HYK*), a hybrid civilian and military body, was established to oversee the communication policies of the government. This and similar bodies regulating different walks of social life consolidated the long reach of military tutelage over society.

1.4. THE ECONOMIC LIBERALISATION OF THE 1980s: THE TRANSFORMATION OF JOURNALISM INTO AN ECONOMIC SECTOR

The military regime established by the junta came to an end with the coming to power of the Motherland Party (*Anavatan Partisi-ANAP*) under the leadership of Turgut Özal after the national elections in 1983. This marked the beginning of the “economic liberalisation process” in Turkey. ANAP transformed the economy through free-market reforms. While political and social factors mainly shaped the media in the 1980s, “economic factors have become the determinant afterwards.”¹⁷ The private entrepreneurship encouraged by ANAP's liberal economic

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¹⁶ The coalition government established on 31 March 1975 by Süleyman Demirel, constituted of the right-wing political parties in the parliament, was later named the “First National Front Government.” The Second National Front Government was formed in 1977, again by Demirel, and remained in power until 1978.

¹⁷ E. Dağtaş, “Uniformity of Media in Turkey: Tabloid Journalism Accompanied by Racy Popular Culture,” Fifth International Congress on Culture and Development, Havana, 11-14 June 2007, p. 2.

policies was also visible in the media industry, where companies entered into a bitter rivalry to dominate the market. This resulted in the transfer of media ownership from “journalist families” to giant corporations.¹⁸

The launch of the first private television station, “Magic Box” (which was later renamed Star 1), in 1990 was a landmark event for mass communication in Turkey. Star 1 had to begin its broadcasting via satellite from Germany due to a constitutional prohibition on private broadcasting at the time. The company was able to circumvent Article 133 which established TRT’s monopoly over all broadcasting activities, mainly because Ahmet Özal, the son of President Turgut Özal, was one of its shareholders. With an amendment to Article 133 in 1993, state monopoly over broadcasting was abolished. In 1994, the Radio and Television Law was adopted, providing the legal framework for private broadcasting.

The launch of a private television station created a dynamic atmosphere and the emergence of a miscellany of actors. Many thematic channels, such as Kral TV (for music videos and entertainment), were the creations of Star TV. The increase in the number of private channels during the 1990s and the opening of the first private radio broadcasting outfit in 1992 engendered the diversification in Turkey’s media. Consequently, many issues that were previously considered taboo became open for debate. After the 1980 *coup d’état*, many hitherto repressed and silenced groups in society emerged in the forefront of Turkey’s public sphere, thanks to the dynamism of the

Star 1 had to begin its broadcasting via satellite due to a constitutional prohibition on private broadcasting at the time. The company was able to circumvent Article 133 which established TRT’s monopoly over all broadcasting activities, mainly because Ahmet Özal, the son of President Turgut Özal, was one of its shareholders.

media. Throughout this period, the highest ratings went to televised debates between public intellectuals who probed into the recent history of the country until the early hours of the morning.

1.5. THE 1990s: A NEW MEDIA MODEL

Turkey’s economic transformation during the 1980s gave rise to the emergence of very strong media holdings in the next decade. The big capital from these holdings into the media left no room for smaller or fringe media groups in the sector. The media holdings’ organic relationships with the political elite caused a cross monopolisation¹⁹ in the industry.²⁰ The Polly Peck Group under the ownership of Asil Nadir was the first group to take the lead in monopolisation. On the other hand, the fastest growing media holding was Doğan Media Group, owned by Aydın Doğan. The result of this change had inevitable consequences for both print and broadcast media. On the press front, the rapid tabloidisation of newspapers in the 1980s and commercialisation/deregulation of the media in the 1990s generated a tendency toward sensationalist journalism. After the adoption of new broad-

18 Ş. Çağlar and S.Ç. Mengü, “Media Groups and their Market Shares in Turkey during Globalization”, *Media and Global Divides*, IAMCR World Congress, Stockholm, 20-25 July 2008 (International Blind Review), available at: <http://www.eptic.com.br/arquivos/Revistas/vol.XI,n2,2009/10-CakarMengüSebnemCaglar.pdf>.

19 Cross monopolization refers to the situation where economically strong large companies investing in other sectors begin to own media organs in the interest of gaining prestige and political power rather than turning a profit.

20 Dağtaş, 2007, p. 3.

casting legislation in 1994, the concentration of ownership in the media sector intensified and commercial media content increasingly became more banal.²¹ Turkey's media was once again not functioning as the "Fourth Estate" on two crucial issues: freedom of expression and freedom of access to information.

The government was not the only target of the February 28th process. Cengiz Çandar and Mehmet Ali Birand, two well-known journalists also became targets of the fictitious news leaked by the chief of staff which alleged that they were on the payroll of the Kurdistan Workers' Party (Partiya Kerkerên Kurdistan- PKK).

At the end of the 1990s, the media that had long been controlled by the state had also become a tool of manipulation for private capital groups for their political and economic benefits in their relationship with governments. Having said that, as stated earlier, although the big media outlets have also entered into political alliances or conflicts, and have had common or conflicting economic interests with one other and with governments, they have by and large shared a common mindset which rests on protecting the 'state interest.' The most important consequence of this media structure has been the "post-modern military coup" of 28 February 1997, what many consider to be the fourth instance of military intervention in politics, though not followed by the establishment of a military regime. Mainstream media organisations, prompted by Turkey's military establishment, published fictitious news/content on the rise of Islamism. This catalysed

public anxiety over the reach of the secularist regime and created public support for the toppling of the Welfare Path (*Refah-Yol*) coalition government between the Islamic conservative Welfare Party (*Refah Partisi- RP*) and the center right True Path Party (*Doğru Yol Partisi- DP*). At its monthly meeting in February, the National Security Council, an executive organ comprised of civilian and military leaders, 'advised' RP leader Necmettin Erbakan to resign. The military's message was clear; Erbakan would face a more direct military intervention had he not agreed to step down.

The government was not the only target of the February 28th process. Cengiz Çandar and Mehmet Ali Birand, two well-known journalists working for a mainstream media organ, also became targets of the fictitious news leaked by the chief of staff which alleged that they were on the payroll of the Kurdistan Workers' Party (*Partiya Kerkerên Kurdistan- PKK*). Based on false documents fabricated by Çevik Bir, the general who was then the second in command of the Chief of Staff, allegedly based on the testimony of a PKK militant-turned-informant, both journalists were labeled as "PKK agents" by the mainstream media, which did not feel the need to check the accuracy of the information leaked from the military. First Birand and later Çandar were fired by their media patrons in national daily *Sabah*,²² while a leading human rights activist also branded as a PKK agent survived an assassination attempt.²³

21 A. Aksoy and K. Robins, "Peripheral Vision: Cultural Industries and Cultural Identities in Turkey", A 29/11 *Environment and Planning* (1997), p. 1937-1952, 1943.

22 For a detailed account by Cengiz Çandar of this process the names "Turkey's Dreyfus Affair," which is commonly known in Turkey as the "Andıç incident", see H. Cemal, *Türkiye'nin Asker Sorunu: Ey Asker Siyasete Karışma!* (2010), p. 292-303.

23 The PKK informant would years later deny that he ever made such statements in his testimony.

The 1999 national elections resulted in the creation of a coalition government between the Democratic Leftist Party (*Demokratik Sol Parti*- DSP), Motherland Party (*Anavatan Partisi*- ANAP) and National Action Party (*Milliyetçi Hareket Partisi*- MHP). Meanwhile, RP had to contend with an internal schism between the “traditionalists” and the “reformists.” The reformist members, who defined themselves as “conservative democrats,” founded the Justice and Development Party (*Adalet ve Kalkınma Partisi* – AK Party), which came to power in 2002. Notwithstanding its roots in political Islam, AK Party formed a single-party government on the basis of a pro-EU agenda, which many considered to be an oxymoron both in Turkey and abroad. Indeed, since the foundation of the republic in Turkey “the depiction of Islam as ‘the other’ or as the symbol of ‘non-modern orientalism’ has always constituted the essential substance of the secular state’s very legitimacy.”²⁴ AK Party’s pro-European stand suggested that the “historical mission” of the establishment in Turkey had been, in a way, “stolen.” This mission, defined by Atatürk himself and internalised by the society as “catching up with the level of modern contemporary civilisation” was no longer under the monopoly of the state’s establishment. This challenged the preconceptions of the establishment and the mainstream media, which has traditionally allied itself with the regime and its agents, namely the military and high bureaucracy.

24 Ü. Cizre, “Introduction: The Justice and Development Party: Making Choices, Revisions and Reversals Interactively”, in Ü. Cizre (ed.), *Secular and Islamic Politics in Turkey: The Making of the Justice and Development Party* (2008), p. 8.

1.6. ECONOMIC CRISIS AND THE RESTRUCTURING OF THE MEDIA SECTOR

Between November 2000 and February 2001, Turkey suffered one of the worst economic crises of its history. The downfall had serious repercussions for the media industry because some of the media companies had substantial investments in the banking sector. The bankruptcy of a number of large private banks showed that this “business-media-banking cycle is no longer operational” in Turkey.²⁵ The banking crises eventually led to the Banking Regulation and Supervision Agency’s (*Bankacılık Denetleme ve Düzenleme Kurulu*- BDDK) revocation of the banking licences of a number of business groups, which also owned media companies. The management of the bankrupt banks was taken over by the Saving Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu*- TMSF) in 2004, making this agency a big player in the media industry.

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1.7. THE EU ACCESSION PROCESS AND THE MEDIA

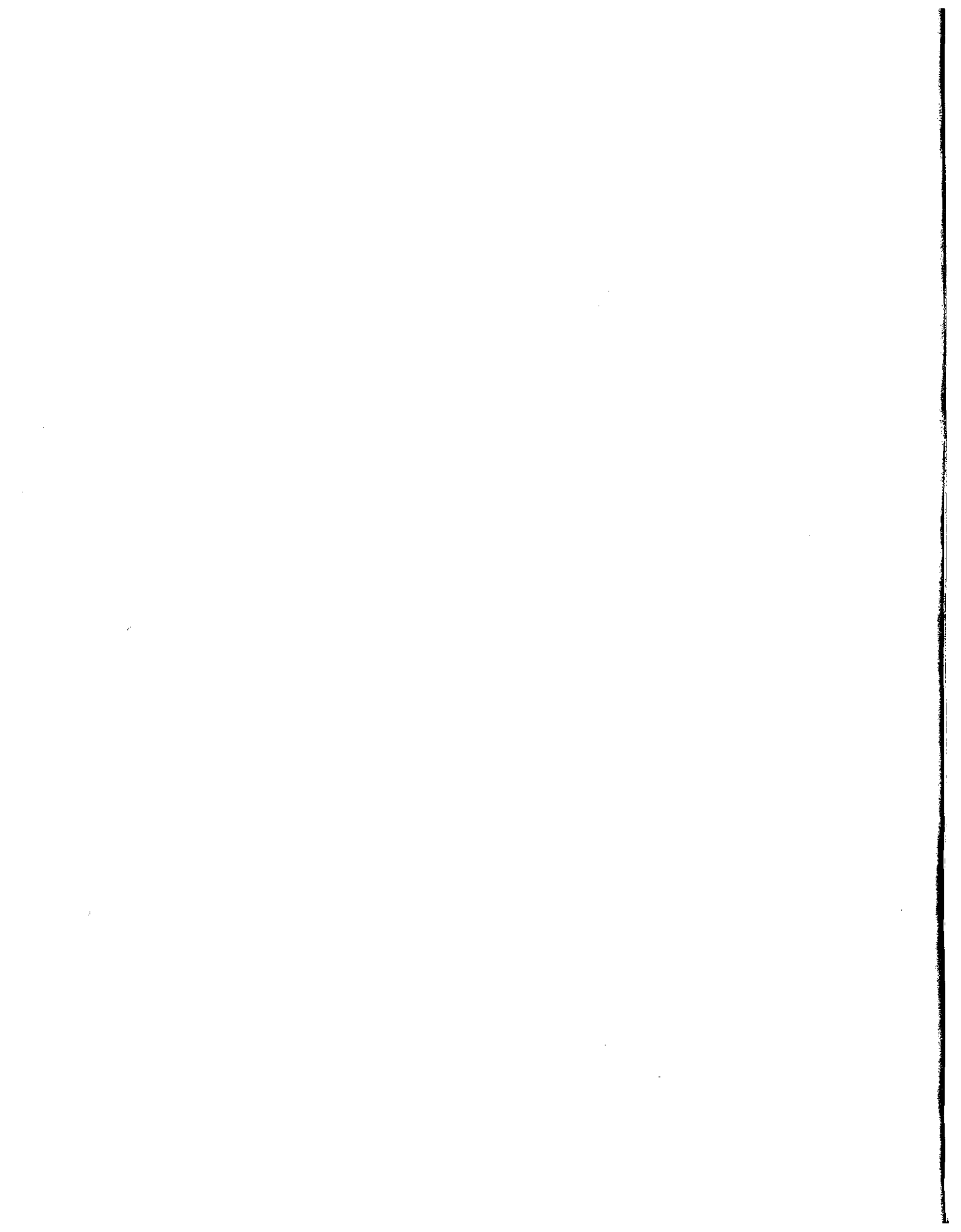
The EU process, which accelerated with the acceptance of Turkey as a candidate country in 1999, required the undertaking of reforms in the media sector as well as in the area of human rights. This implied not only fundamental changes in the legal framework of the

25 Sümer, 2010, p. 115.

country but also an overhaul of the prevalent mindset and dominant culture in the media. A crucial aspect of the democratisation process was the redesign of the relationship between the military and the civilian governments. The prominence and domination of the military in all walks of life and in the political structure of Turkey made the process of change a difficult one. The historical role attributed to the media in consolidating the influence of the army through “state-military correspondence” and reproducing the statist political culture made it one of the most critical actors of this political

transition. The Turkish media, especially the mainstream media, was caught between the military-bureaucratic-judicial tutelage—which depended on the media for the preservation of the official ideology and those segments of society which, as never before, began to demand a truly independent and impartial media. Meanwhile, the increasing pressure on the media from an ever globalised economy as well as by the EU’s *acquis communautaire* required Turkey to further open its media sector to foreign investment.

Second Section



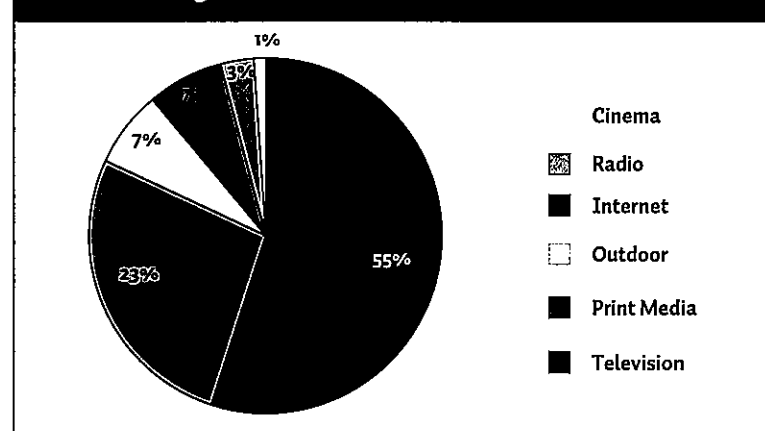
Media Landscape in Turkey

Turkey has a population of 74,816,000, the majority of which consists of young people; 50% of the total population is under the age of 28; thus, it has quite a young readership. The majority of readers are between the ages of 16 and 34.²⁶ According to the United Nations Development Programme, the rate of literacy in Turkey is 88.7%²⁷ and in light of its total population, the rate of literacy is considered low. Although 60% of the people in Turkey do not read a newspaper regularly, 90% watch TV on a daily basis.²⁸ Turkey, with 5 hours of daily viewing, has one of the largest TV audiences in the world.²⁹ According to a report which measured TV viewing during the first three months of 2009, serials and day-time cooking shows are the most popular programs among the Turkish people.³⁰ News channels and discussion programs have high ratings as well.

Also, Turkish people perceive television as one of the most reliable sources of information.³¹

According to recent data by the Advertisers' Association, spending on advertising in Turkey rose by 36.3% in the first half of 2010 to 1.84 billion TL (1.2 billion USD) and is expected to increase by more than 30% by the end of 2010. The total size of the advertising sector is likely to reach 3.7 billion TL by the end of the year.³² Television's share in the advertising market includes 55.59% of the advertising expenditure. The advertising shares of other media forums are as follows: print media (26.70%); outdoor (billboards and the like) (7.03%); internet (6.59%); radio (2.78%); and cinema (1.31%).

The Advertising Shares of Media Forums



Source: Advertiser's Association, 2010 First Quarter Investments on Media, (2010).

- 26 R. Barış, "The Turkish Media Landscape," in G. Terzis (ed.) *European Media Governance: National and Regional Dimensions* (2005), p. 289-302.
- 27 United Nations Development Programme (UNDP), "Adult Literacy Rate" (2007), available at: <http://hdrstats.undp.org/en/indicators/89.html> (last visited on 9 October 2010).
- 28 H. Nalçaoğlu, *Türkiye'yi Anlama Kılavuzu: Türkiye'de Yaşam Tarzları ve Eğilimler*, Ipsos KMG (2010), p. 83.
- 29 G. Terzis, "Editor's Preface," in G. Terzis (ed.) *European Media Governance: National and Regional Dimensions* (2005), p. 14.
- 30 Radio and Television Supreme Council (Radyo ve Televizyon Üst Kurulu - RTÜK), *Radyo ve Televizyon Üst Kuruluna Gelen Bildirimlerin 2007-2008 ve 2009 Yıllarının İlk Üç Aylık Dönemlerinin Karşılaştırması ve 2009 Yılı Genel Değerlendirmesi*, 27 May 2009, available at: <http://www.dorduncukuvvetmedya.com/rtukun-arastirmasi-izleyici-en-cok-hangi-programlari-izliyor.html> (last visited on 12 September 2010).

31 Nalçaoğlu, 2010, p. 83.

32 Advertisers' Association, *2010 Yılı İlk Dönem Medya Yatırımları*, 06 August 2010, available at: http://www.finchannel.com/Main_News/Business/69084_Turkey%3A_Advertising_spending_rises_by_36.3_percent_in_first_half_of_2010/ (last visited on 10 September 2010).

There are 33 communication faculties in Turkey with around 21,000 students. Since 2008, students in Turkey are being given media education starting in primary school.

2.1. PRINT & BROADCAST MEDIA

The media sector in Turkey is divided into aggregations. The biggest eight of the 15 media groups are *Albayrak*, *Doğan*, *Çukurova*, *Ciner*, *Çalık*, *Feza*, *Doğuş* and *İhlas* Groups. All major private television and radio stations, newspapers and periodicals belong to these groups. The Doğan Media Group and Merkez Group also have a monopoly over the distribution of the print media through *Yay-Sat* and *MDP*, respectively.

All major private television and radio stations, newspapers and periodicals belong to the biggest eight media groups in Turkey. The Doğan Media Group and Merkez Group also have a monopoly over the distribution of the print media through Yay-Sat and MDP, respectively.

Established in 1980, Doğan Media Group is the largest media holding company in Turkey. The group has eight dailies: *Hürriyet*, *Milliyet*, *Radikal*, *Posta*, *Vatan*, *Fanatik*, *Referans* and *Hürriyet Daily News*. *Hürriyet* and *Milliyet* have a nationalist and statist position while *Radikal* has a social-democrat point of view. *Posta* is a tabloid newspaper and *Referans* was a financial newspaper that has recently been merged with *Radikal*. Doğan Media Group also owns the national TV channels *Kanal D*, *Star* and *CNN Turk* and radio channels *Radio D*, *Slow Turk Radio* and *Radio Moda*. The group also owns a digital platform called *D-Smart*, which includes many thematic and pay-per-view channels. Moreover, the group provides access for all TV channels on *Türksat* satellite. It has a

stake in the cinema and advertising industries through *D Productions*. *Channel Romania D* is another investment of the group in Romania. The group also includes *Doğan Burda Rizzoli (DBR)*, a joint venture with the German publishing house *Burda* and the Italian media corporation *Rizzoli*.³³ Doğan runs its own news agency, *DHA*, publishing house, *Doğan Kitap*, and merchandising company, *DçTR*.

Zaman has been the most circulated daily paper in Turkey since 1986. It is also published internationally in Australia, the United States, Azerbaijan, Bulgaria, Germany, Romania, Kazakhstan, Kyrgyzstan, Macedonia, and Turkmenistan. It has an English daily called *Today's Zaman*. Both papers are owned by the Feza Group. In 1994, the group also launched its own news agency, *Cihan*, and weekly magazine, *Aksiyon*. Feza has a partnership agreement with Samanyolu Group. Both groups are affiliated with the Fethullah Gülen movement, an extremely well organized and close-knit Muslim conservative community which operates Turkish instruction schools and universities and has investments across the world.

Doğuş Media Group was founded in 1999. Its first channel was the news channel, *NTV*. In addition, the group collaborates with international brands such as *CNBC*, *NBA*, *Billboard*, *Virgin*, and *National Geographic*.

The Albayrak Group was established in 1952. Until 1982, it was active only in the construction sector. The group began publishing the daily *Yeni Şafak* in 1995.³⁴ Having liberal and left-wing columnists who do not belong to the

³³ These three media groups together publish 22 magazines in Turkey. Barış, 2005, p. 291.

³⁴ ESI, *Turkey – Armenia Manual: Information and Contacts to Persons and Institutions Working on Turkey-Armenia Relations* (2010), p. 62.

Islamic community the paper has emerged from, *Yeni Şafak* "offers a relatively broader perspective especially about the controversial issues."³⁵ Since 2007 it has been running *TVNET*, a news channel.

Ciner Holding was an active company in the automotive and energy sectors under the name of Park Holding. In 2002, the company entered the media sector. In September 2007 Ciner Publishing Holding was founded; it currently owns *Habertürk.com*, *Habertürk Radyo*, *Habertürk TV*, *Ajans Habertürk* and *Gazete Habertürk*. The company holds international TV and radio channels such as *Bloomberg TV* and *Bloomberg HT Radyo*. The Turkish language editions of *Marie Claire* and *Maison*, belong to Ciner Group as does the recently closed *Newsweek*, *FHM*, *Food and Travel*, *GEO*, and *Mother and Baby*.

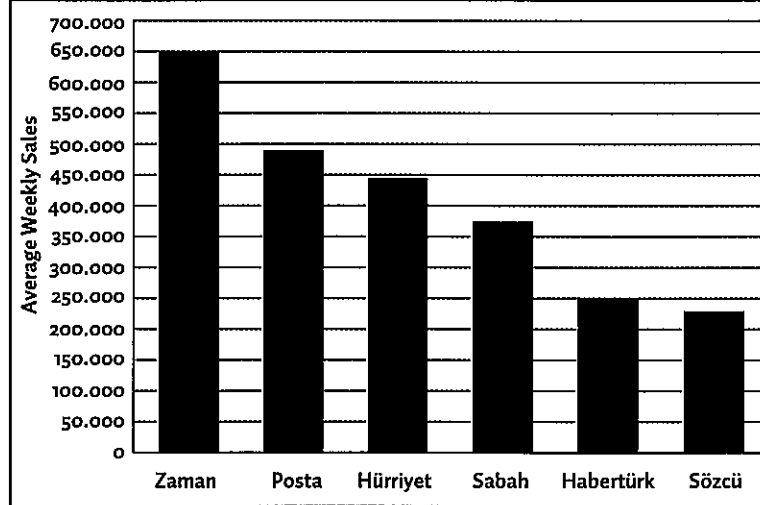
Çukurova Holding currently publishes the *Akşam*, *Güneş*, *Tercüman* newspapers and *Alem* magazine and owns the *Show* and *Sky Turk* TV stations. *Turkcell*, the leader in the GSM industry, as well as *Digiturk*, which broadcasts the national football league matches, also belong to this group.

The Turkuvaz Group belongs to Çalık Holding. In December 2007 the group bought the Merkez Medya Group from Ciner Holding and became the proprietors of the newspapers *Yeni Asır* (Izmir), *Sabah*, *Takvim*, *Günaydın* and *Pas Fotomac*, the weeklies *Bebeğim ve Biz*, *Sinema*, *Home Art*, *Yeni Aktuel* and *Göbal Enerji*, as well as the television station *ATV*.³⁶

According to BYEGM, as of 2008, there are 2,459 newspapers in Turkey, 55 of which are

national, 23 regional and 2,381 local.³⁷ It is the national papers with a daily circulation of 4.5-5 million that have the highest readership. Among the national dailies, according to their average weekly sales, *Zaman* (651,072), *Posta* (485,971), *Hürriyet* (440,345), *Sabah* (371,007) *Habertürk* (255,423) and *Sözcü* (232,812) are the major ones.³⁸ Istanbul and Ankara are the media centers of Turkey. The headquarters of all of the national newspapers and broadcasting companies are located in these two cities. On the other hand, Izmir, the western port city of Turkey, is the only city that has a regional newspaper, *Yeni Asır*, which is known at the national level.

Weekly Sales of National Daily Newspapers



Source: Dördüncükuvvetmedya, <http://www.dorduncukuvvetmedya.com>, (2010).

35 Barış, 2005, p. 291.

36 ESI, 2010, p. 63.

37 Medyadar, *Türkiye'de Kaç Gazete ve Televizyon Var?*, 1 October 2008, available at: <http://www.medyadar.com/haber/gundem-21476/turkiyedeki--gazete--televizyon--radyo-ve-dergi-sayisi-ne-kadar--peki-kac-iletisim-fakultesi-var--iste-cok-ilginc-rakamlar.html> (last visited on 10 September 2010).

38 Dördüncükuvvetmedya, *Geçtiğimiz Haftanın Gazete Tirajları Belli Oldu*, available at: <http://www.dorduncukuvvetmedya.com/gectigimiz-haftanin-gazete-satis-rakamlari-belli-oldu.html> (last visited on 10 October 2010).

BYEGM reports that, as of 2008, the total number of television channels in Turkey is 258, of which 27 are national, 16 regional and 215 local. 65 of these channels are available on cable and 92 on satellite.³⁹ The multimedia groups are the main actors in the private broadcasting market. According to the ratings of September 2010, *Kanal D*, *ATV*, *NTV*, *CNN Türk* and *Habertürk* are the top five heading the list.⁴⁰ Public broadcaster TRT has 13 television channels. The national ones are as follows: *TRT 1* (general), *TRT 3* (National Grand Assembly at specific hours), *TRT Kid*, *TRT News*, *TRT Documentary*, *TRT Sports*, *TRT HD* and *TRT Music*. TRT also has two regional—*TRT 5-Anadolu* and *TRT GAP*—and four international channels—*TRT Turk* for Europe, USA and Australia; *TRT-AVRASYA* for Middle Asia and the Caucasus, *TRT Avaz* for the Balkan countries, Central Asia, the Middle East and the Caucasus and, since April 2010, *TRT-ET-TURKIYYE* for the Arab world. The most significant change concerning public broadcaster TRT in the EU accession process has been the launch of 24-hour Kurdish language broadcasting on January 1st, 2009. *TRT 6* became the first TRT channel ever to broadcast exclusively in a language other than Turkish.

There are currently approximately 1,087 private radio channels broadcasting in Turkey; 100 of these are also available on cable. Of these, 36 are national, 100 regional and 951 are local radio stations. TRT has six national radio channels with different broadcasting themes: *Radyo 1* (general), *Radyo 2* (TRT-FM, native

classical, folk and pop music), *Radyo 3* (primarily Western classical music and also jazz, polyphonic and western pop music, broadcasts news in English, French and German), *Radyo 4* (Turkish folk and traditional music), *TRT 6* (regional and international themes) and *TRT Nagme* and *TRT Türkü* (traditional Turkish and folk music on both the national and international level). TRT's first international radio service The Voice of Turkey (*Türkiye'nin Sesi*) broadcasts in 32 languages and, since July 2009, *Türkiye Avrupa FM* carries Turkey's national news to the Turkish population in Europe. TRT also has six regional and one local radio stations.

Finally, there are 14 weeklies with an approximate circulation of 110,000 copies combined. Of these, *Aksiyon* (Feza Group), *Yeni Aktüel* (Turkuvaz Group), *Newsweek* and *Economist* have the highest circulation. The circulation of the weeklies is quite low compared with that of the dailies.

2.2. NEWS AGENCIES

There are a total of 24 news agencies in Turkey. The official news agency, Anadolu Agency (*Anadolu Ajansı - AA*), in operation since 1920, is the oldest among them and continues to be the primary news source for the press. It has 41 offices in Turkey and 26 abroad.⁴¹ Doğan News Agency (*Doğan Haber Ajansı - DHA*) is the news agency of Doğan Holding and was founded in 1999. It has 30 domestic and 19 international offices. The Feza Group has Cihan News Agency (*Cihan Haber Ajansı*) which was established in 1994. It has six domestic offices. It provides an average of 450 text stories, 400 photos, 180 photo stories and 85 video stories per day. Cihan also provides news and services

39 Medyaradar.

40 *Gazeteciler.com*, *Eylül Ayının en çok İzlenen Kanalları*, 01 October 2010, available at: <http://www.gazeteciler.com/rating/eylul-ayinin-en-cok-izlenen-kanali-hangisi-oldu-23355h.html> (last visited on 10 October 2010).

41 Barış, 2005, p. 295.

in English and Arabic.⁴² İhlas News Agency (İhlas Haber Ajansı- İHA) is owned by İhlas Holding. It has 145 offices in Turkey and abroad. Dicle News Agency (Dicle Haber Ajansı- DİHA) was founded in 2002. Based in Istanbul, it has five other offices in Turkey and one in Iraqi Kurdistan. DIHA offers news in Turkish, Kurdish and occasionally in English.

2.3. ONLINE MEDIA

The internet emerged in Turkey in 1993, first on university campuses and soon thereafter in offices, businesses and homes. According to the Turkish Statistical Institute's survey in April 2010, household internet use increased from 30 to 41.6% within one year. Men between the ages of 16-74 amount to 53.4% of the total population of internet users while women have a rate of use of 33.2%. The

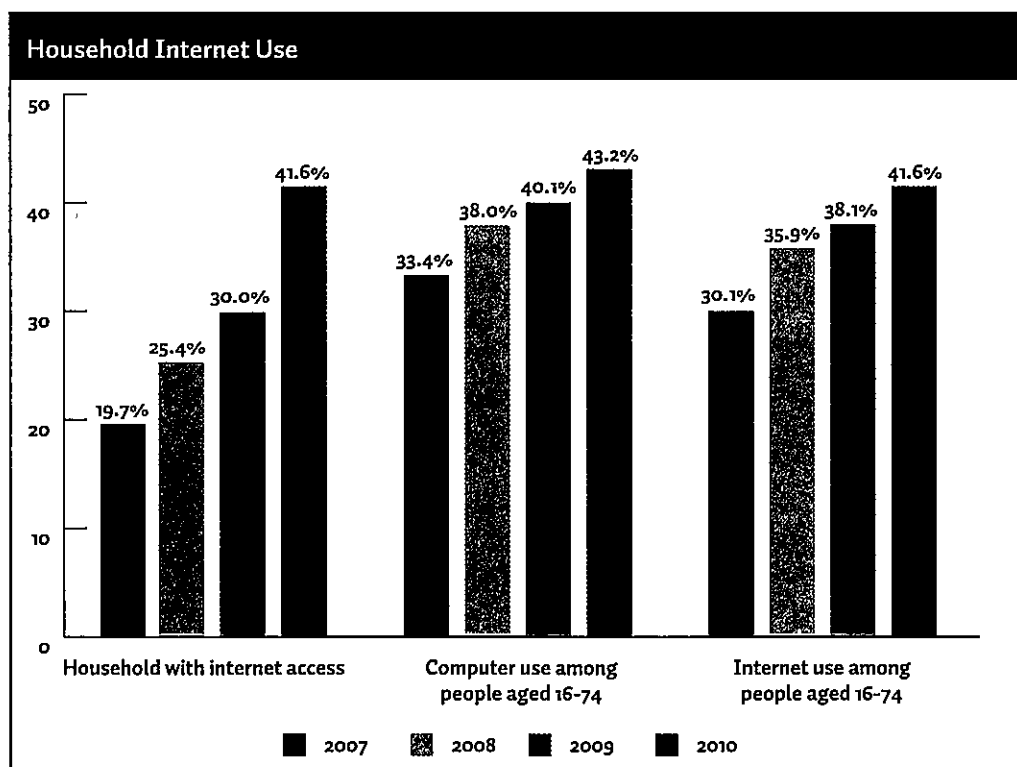
⁴² *Ibid.*

The internet emerged in Turkey in 1993 and first used in university campuses.

internet is mostly used for the purpose of sending e-mails and shopping.⁴³ Internet cafes played a massive role in the proliferation of the internet in Turkey.

Turkey's television and radio broadcasters' increasing use of online services, the proliferation of online daily newspapers, political parties' and politicians' accessibility via e-mail, and people's increased awareness about the internet reveals the speed and breadth of

⁴³ Turkish Statistical Institute, *Hanehalkı Bilişim Teknolojileri Kullanım Araştırması*, 18 August 2010, available at: <http://www.socialmediatr.com/blog/tuikin-2010-yili-hanehalki-bilisim-teknolojileri-kullanim-arastirmasi-sonuclandi> (last visited on 12 October 2010).



Source: Turkish Statistical Institute's Survey on Household Use of Information Technologies, (2010).

internet development in Turkey. However, internet and cell phone usage is still very limited and highly expensive for most people. The rate of internet use differs significantly from region to region. While internet use is very high in the central-west parts of Turkey, it declines towards the central-east. In general, the use of the internet for news, research and educational purposes is lower compared to its use for entertainment purposes (game, pornographic and social networking sites).

The use of social networking sites is limited due to the lack of the requisite technological infrastructure, yet it is quite popular, especially among the young. The use of mobile phones for access to social networking sites is higher than for the internet, again, particularly among the youth. Facebook, twitter and personal blogs are the most common social networking sites.

2.4. MINORITY AND ALTERNATIVE MEDIA

There are few, yet quite well-established, minority newspapers run by non-Muslim and Kurdish communities in Turkey. The daily *Iho* and the weekly *Apoyevmatini* address the Greek Orthodox community in Istanbul. *Apoyevmatini* began publication as a daily in 1925 and has subsequently become a weekly. Today it publishes 580 copies per week, 550 of which are delivered to Greek families in Istanbul. Its editor-in-chief is Mihail Vasiliadis. *Iho* began publication in 1977. The Jewish weekly *Şalom* was established in 1947. It was published in Ladino until the 1980s. When Ladino could no longer be understood by the new generation of Jews, the paper switched to Turkish, leaving only one page in Ladino. It has a circulation of nearly 3,500 and has 500 subscribers abroad. It has a large staff with 40 columnists and 15 staff members. The Armeni-

an minority has four newspapers: *Jamanak*, *Marmara*, *Lrapet* and *Agos*. *Jamanak* is the oldest, in publication since 1908; *Marmara* is the second oldest, begun in 1940. Published six times a week, the Friday edition of *Marmara* contains a section in Turkish. Its circulation is around 1,500. Half of the subscriptions are sent abroad to the Turkish Armenian diaspora around the world. *Lrapet* is the news bulletin of the Armenian Patriarchate in Istanbul, published in Armenian, Turkish and English.

Agos is the only example of a minority paper that reaches broader segments of society. Originally established with the goal of breaking the barriers between the Armenian and Turkish communities in Turkey, it is published predominantly in Turkish with only a few pages in Armenian. Following the assassination of Editor in Chief Hrant Dink in 2007, the paper increased its efforts to reach out to the broader public by increasing the number of its pages in Turkish, employing new columnists from outside the Armenian community and adding new sections. The paper is popular among dissident political groups as well as those who want to support the paper as a form of protest against Dink's murder. It has Armenian, Greek-Orthodox, Turkish, Kurdish, Sunni and Alevi staff members and columnists. *Agos* began with a circulation of 2,000. By the time of Hrant Dink's death it had grown to approximately 6,000. Dink's successor until June 2010 was Etyen Mahçupyan, a reputable public intellectual. He was succeeded by Rober Koptaş, who had been a columnist at the paper since the 1990s.

Aras Publishing is the only Armenian publishing house in Turkey. It was founded in 1993 by a group of Istanbul Armenians. It has now established itself as one of the few publishing houses producing works in two languages, Turkish and Armenian. *Aras* intends to

preserve the cultural legacy of Turkey's Armenians for future generations.

Azadiya Welat is the only daily published in Kurdish. Following a 1991 law that lifted the ban on the speaking and writing of the Kurdish language, the weekly *Welat* was launched in Istanbul in 1992. Subsequently closed down by the courts, the weekly changed its name to *Azadiya Welat* in 1996. It has been publishing since that time, albeit with interruptions due to court-imposed bans. In 2003, the paper moved its headquarters from Istanbul to Diyarbakır and in 2006 became a daily. The paper is distributed across the country and has a circulation between 4,000 and 10,000.

Apart from the minority media, there are a few examples of alternative media organs that are not owned by a large media group and that emphasize objectivity and impartiality in news reporting as well as independence from the state, military, the media big business as well as any other power structure. The most notable alternative media organs are the daily *Taraf*, the online *Bianet* and *Açık Radyo*.

Taraf is owned by *Alkım Kitapevi*, a bookshop chain which is not a part of the multimedia outlets. Although praised in Islamist circles, *Taraf's* stance can be described as neither pro-AK Party, nor pro-Islam, but anti-military. The paper's daring and harsh reporting against the military led to the chief of staff's cancellation of the paper's accreditation for entry into press meetings organised at the headquarters of the armed forces. While the newspaper is sympathetic to AK Party circles, it has also criticised the government harshly, particularly on the Kurdish question, freedom of the press and police brutality. The columnists writing for the paper are a broad coalition of secular and atheist intellectuals, many with leftist and democrat backgrounds, as well as religious individuals from the Islamic community.

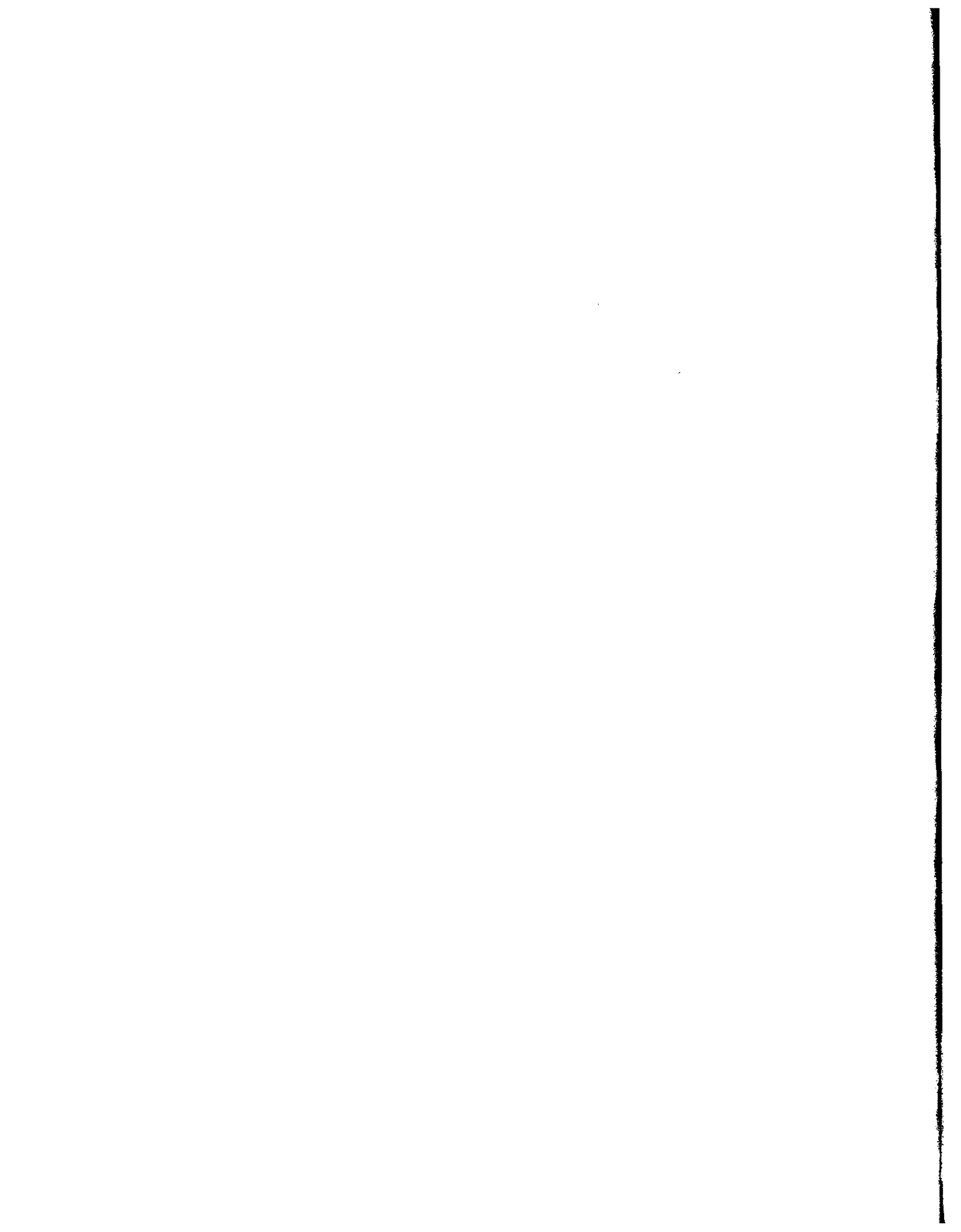
Although its circulation is relatively low compared to the mainstream circulation, the paper has dominated Turkey's political agenda ever since it was launched in 2007 through publishing confidential documents seemingly leaked by military personnel. These leaks revealed a series of failed coup attempts by senior military leaders against the AK Party government.

Bianet, or *BIA*, is an online news portal which was initiated as a project in 2003 with the support of the European Union's Initiative for Democracy and Human Rights. The purpose of the project was to establish a countrywide network in Turkey for monitoring and covering media freedom and independent journalism. *BIA* monitors the coverage of human rights issues in the mainstream media, extensively covers women's and children's rights and monitors the media's compliance with the ethical codes of the profession.⁴⁴

Açık Radyo went on air in 1995 and is an exceptionally independent channel outside of the media establishment. It is a collective where all shareholders have equal shares, similar to the model of national public broadcasters in the United States. Its programming is based on citizen/audience participation and it relies on the donations of its listeners collected through biannual drives broadcasted live. *Açık Radyo* is a defender of the environmentalist movement in Turkey and has a multi-cultural and liberal stance.

⁴⁴ Barış, 2005, p. 299.

Third Section



The Media Regulatory Framework in Turkey

The globalisation of the 1990s, the banking crisis of 2000-2001 and the EU accession process in the 2000s brought about a restructuring of the media sector on the one hand and the adoption of reforms to enhance media independence, pluralism and freedom on the other. While globalization exposed the Turkish media to foreign investment, the bankruptcy of banks which also owned media companies resulted in over-regulation and the emergence of administrative bodies as new key players in the sector. These developments resulted in the redesign of the structural and ownership regulations governing the media as well as the multiplicity of the media policy and regulatory institutions. Successive governments since 1999, when Turkey was officially declared a candidate for EU accession, sought to harmonise the national legal framework with European standards without compromising the official state ideology and losing the government's control over the media. The attempts to achieve these mutually exclusive goals have created tensions and contradictions in the design and implementation of media policies, which have been a characteristic feature of Turkey's reform process in recent years.

3.1. ACTORS OF MEDIA POLICY AND REGULATION

The multiplicity of the media policy and regulatory institutions in Turkey may at times create confusion over their competences and mandates. There are three principal types of

Successive governments since 1999, when Turkey was officially declared a candidate for EU accession, sought to harmonise the national legal framework with European standards without compromising the official state ideology and losing the government's control over the media.

actors that develop policies for the media and (self) regulate the sector: executive bodies, independent regulatory agencies, and self-regulatory professional media organizations. While all three are briefly outlined in this section, the mandates and powers of the first two are discussed in the next section on structural regulation.

At the executive level, the Ministry of Transportation is responsible for regulating the internet; there is a ministry of state in charge of radio and television, which also has competence over the Radio and Television Supreme Council (*Radyo Televizyon Üst Kurulu-RTÜK*); BYEGM under the Office of the Prime Ministry has mandate over the press, including the accreditation of the press for the purposes of liaising with the government; and HYK, a body made up of civilian and military officials, is tasked with the oversight and approval of the government's communication policies.

The Information and Communication Technologies Authority (*Bilgi Teknolojileri ve İletişim Kurumu- BTK*) is an independent agency responsible for regulating the internet and mobile communication. BTK's equivalent in the

broadcasting sector is RTÜK, an independent agency in charge of regulating private radio and televisions.

There are few independent bodies that monitor the media from within the profession. The Turkish Press Council (*Basın Konseyi*), established with the initiative of a group of journalists in 1998 for self-regulation of the press and for ensuring its compliance with professional ethical rules and codes of conduct, is a contentious body whose autonomy from state ideology is widely contested by members of the profession. In recent years, newspapers have begun selecting ombudsmen among their columnists or editors to respond to readers' concerns and critiques and to monitor the compliance of their paper with the ethical rules of journalism. However, newspapers exempt from ombudsmen mandate their website editions, some of which are criticised by human rights groups for their discriminatory content, particularly against women and minorities.

The primary journalist associations in Turkey are: The Journalists Association of Turkey (*Türkiye Gazeteciler Cemiyeti*), the Journalists' Federation of Turkey (*Türkiye Gazeteciler Federasyonu*), the Progressive Journalists Association (*Çağdaş Gazeteciler Derneği*), the Foundation of Journalists and Writers (*Gazeteciler ve Yazarlar Vakfı*), the Association of the Media (*Medya Derneği*), the Association of Economy Reporters (*Ekonomi Muhabirleri Derneği*), the Association of Photo Reporters (*Foto Muhabirleri Derneği*), the Association of Parliamentary Reporters (*Parlamento Muhabirleri Derneği*) and the Press Council (*Basın Konseyi*). There are two journalist unions called Union of Journalists in Turkey (*Türkiye Gazeteciler Sendikası-TGS*) and Media Union (*MEDYA-SEN*) but their prominence is low.

The Journalists Association of Turkey represents the central and statist tendencies of the

mainstream media members. It has members from the Doğan media group as well as from the republican newspaper *Cumhuriyet*. The Progressive Journalists Association was founded by the leftist media members. The Foundation of Journalists and Writers has a religious identity and the Association of the Media was founded by journalists who are supportive of the AK Party government. The Press Council, on the other hand, is entirely the construction of the Doğan media group. None of these associations have the capacity, ability or will to contribute meaningfully to the development of media policy in Turkey.

3.2. STRUCTURAL REGULATION

There are a number of principal laws that regulate the structure and content of the media in Turkey, all of which have been revised and/or re-enacted within the past decade: Law no. 5187 on the print media ("Press Law"); Law no. 6112 on private radio and television broadcasting ("Broadcasting Law"); Law no. 2954 on public broadcasting ("TRT Law"); Law no. 5651 on internet and mobile communication ("Internet Law"); and Law no. 5809 on electronic communications ("Electronic Communications Law").

3.2.1. Licensing Rules

As stated earlier, until 1993, there was a constitutional ban on private broadcasting in Turkey. State broadcaster TRT's monopoly over broadcasting was *de facto* terminated in 1990 with the launch of the STAR 1 TV channel, which broadcasted via satellite from Europe. With the emergence of hundreds of private broadcasting companies within a matter of a few years, a chaotic situation emerged in the absence of any legal framework to regulate the market. To provide a legal basis to this *de facto* situation, the constitutional ban on private broadcasting was abolished in 1993, followed

in 1994 by the adoption of the Broadcasting Law (no. 3984),⁴⁵ which replaced the 1983 law (no. 2954). The name of the regulatory body was changed from the “Radio and Television High Council” to the “Radio and Television Supreme Council”.

RTÜK was established in 1994 for regulating private broadcasters as well as for monitoring their compliance with the Broadcasting Law. Its main regulatory function was to issue broadcasting permits and licences and assign frequencies. Its monitoring function entails enforcement powers against private broadcasters that do not comply with the law. Since the 2000s,⁴⁶ RTÜK’s mandate does not extend to TRT, which is subject to a separate law, no. 2954, which applies solely to public broadcasting.⁴⁷ The nine members of RTÜK are elected by parliament among candidates nominated by political parties represented in parliament. Individuals related to RTÜK members up to the 3rd degree cannot be shareholders, managers or partners of radio and television companies. While RTÜK defines itself as “an autonomous and impartial” public body,⁴⁸ its political composition has been a matter of contention for a long time. The second ground for criticisms against RTÜK is the punitive power it has been equipped with in monitoring private broadcasters’ compliance with the law. This will be discussed in detail below in the section on content regulation.

Though established primarily as a regulatory body to assign broadcasting frequencies, RTÜK has not been able to perform this function as of today. Initially, following the enactment of the Broadcasting Law, provisional licenses were issued to broadcasters. The agency’s repeated attempts in the mid-1990s onwards to complete frequency allocations failed due to the interference of the National Security Council, opposition by broadcasting companies, court orders and political battles in parliament.⁴⁹ As part of the restructuring of telecommunications services and in order to facilitate the allocation of frequencies, in 2002, HYK and *Türk Telekom* were made partners of RTÜK and frequency planning was included within *Türk Telekom*’s mandate. However, this endeavour “has been unsuccessful mainly due to discordance among these regulatory bodies and the pressure of the media conglomerates.”⁵⁰ The commencement of frequency auctions was halted due to the government’s “fear of retaliation by the media giants” and the National Security Council’s intervention “to oblige broadcasters to acquire a national security clearance document which would supposedly prevent the establishment of religious TV channels.”⁵¹ Following the amendment of the Broadcasting Law in 2002, the government issued permanent licenses to

In 1994, the government issued permanent licenses to the 23 broadcasters which had been given temporary licenses for national broadcasting, but could not allocate frequencies to any additional firm. The purchase of one of the existing radio and/or television stations became the only means of entry into the field.

45 Law no. 3984 was replaced by law no. 6112 in February 2011. See below for more on the new Broadcasting Law.

46 TRT was governed under the Broadcasting Law until the 2000s.

47 Barış, 2005, p. 295.

48 Website of RTÜK, available at: http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=80775e05-caec-4a48-bac5-39fd6375da3b (last visited on 08 October 2010).

49 For a detailed discussion, see Sümer, 2010, p. 113-115 and 118-125.

50 *Ibid.*, p. 295-296.

51 *Ibid.*, p. 296.

the 23 broadcasters which had been given temporary licenses for national broadcasting in 1994, but could not allocate frequencies to any additional firm. This has precluded the entry of new players in the broadcasting market, leaving the purchase of one of the existing radio and/or television stations as the only means of entry into the field.

The new Broadcasting Law, no. 6112 and adopted in February 2011, seeks to address this decades-old deadlock.⁵² The law assigned the task of frequency allocation back to RTÜK and prioritizes the existing broadcasters in the allocation of frequencies, which will be completed within two years after the law's entry into force.

Whereas RTÜK is tasked with assigning frequencies, BTK undertakes frequency planning. In accordance with its competences outlined in Law no. 5809, BTK is also tasked with advising the Ministry of Transportation on planning the telecommunications sector; following the new developments in technology and providing support for domestic companies in the production of technology; ensuring free competition in the provision of goods and services in the market; and defining and implementing performance standards for the manufacturing of systems and equipment to be used in the telecommunications sector. Tasked with monitoring compliance with the Broadcasting Law, BTK has the power to notify relevant bodies on non-compliance and impose sanctions where required; ban access to the internet on grounds, *inter alia*, of obscenity and child abuse; and take measures

for consumer protection.⁵³ BTK is also tasked with aligning Turkey's legal framework with that of the EU regarding authorisation, spectrum management, access and interconnection, numbering, number portability, rights of way, and tariffs. Towards that end, the agency introduced a strategic plan for 2010-2012. Yet, the EU has found the primary law and implementing regulations governing the telecommunications sector to fall short of the standards laid out in its *acquis*. In its 2010 Progress Report on Turkey, the European Commission noted that BTK's authorisation procedures "confer a margin of discretion on the regulator that could lead to legal unpredictability" and criticized Turkey's legal framework for failing to ensure transparency and the independence of the regulatory authority.⁵⁴

Presided by the prime minister or a minister appointed by him, the HYK is made up of the ministers of interior and transportation, a high level representative from the chief of staff, the general secretary of the National Security Council and the undersecretary of the National Intelligence Agency. It meets biannually to review and approve communications policies.

The Telecommunication Authority (*Türk Telekom*), established after the separation in 1995 of postal and telecommunications services hitherto provided by the PTT and privatised in 2005, is Turkey's telecom operator in charge of providing telecommunications services. All telecommunications activity in Turkey is regulated under the Telecommunications Law (Law no. 406), which

52 Law on the Establishment and Broadcasting Services of Radio and Televisions (*Radio ve Televizyonların Kuruluş ve Yayın Hizmetleri Hakkında Kanun*), no. 6112, 15 February 2011, Official Gazette no. 27863, 3 March 2011.

53 Information and Communication Technologies Authority (*Bilgi Teknolojileri ve İletişim Kurumu - BTK*).

54 European Commission, *Turkey 2010 Progress Report*, 9 November 2010, p. 56, available at: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2008_en.htm.

was amended in 2000 and 2001 in order to modernise the provision of services and improve the infrastructure. In 2004 and 2005, the power to provide satellite communication services and the services provided over cable TV has been transferred from *Türk Telekom* to *Türksat Uydur Haberleşme Kablo TV*, which was established in 2004.⁵⁵ The privatisation of *Türk Telekom* was finalised in 2005 with the sale of 55% of its shares to Oger Telecoms Joint Venture Group. Although the market was thus opened for competition through the privatisation of *Türk Telekom*, obstacles for entry of new players remain. In fact, currently, *Türk Telekom* has a near monopoly over service provision of the internet, controlling more than 95% of the market.⁵⁶

The financial crisis of 2000-1 and the bankruptcy of a number of big banks which had investments in print and broadcasting media resulted in the emergence of a new regulatory framework and regulatory agencies in the sector. BDDK, TMSF and Competition Agency (*Rekabet Kurulu*) emerged as big players in the media, which has increasingly been regulated under the anti-competition law.⁵⁷

Turkey's structural regulatory framework is still far from being aligned with the EU's *acquis* on audiovisual policy, in particular the Audiovisual Media Services Directive. Among the outstanding issues are the following: very

high taxation on communication services that are not related to administrative costs; the lack of independence of RTÜK and TRT and lack of adequate public funding for these two agencies; the failure of RTÜK to undertake reallocating frequencies and issuing licences; and the near monopoly of *Türk Telekom* as the service provider for the internet. In 2009 alone, more than a dozen TV channels were shut down by RTÜK on the grounds of operating without licences, notwithstanding that they had applied to receive broadcasting licences years before.⁵⁸ Law no. 6112 was enacted in February 2011 partially with the purpose of remedying the national law's incompatibility with the EU law. Prepared on the basis of the EU's Directive on Audiovisual Media Services, the law introduces a new concept of broadcasting and paves the way for the switchover to digital broadcasting, a process which had been halted due to internal rifts between the public broadcaster TRT and private broadcasters.⁵⁹ The law replaced the terms "radio" and "television" with "media service providers" and introduced "services upon demand" as a new category. Critics⁶⁰ find these new concepts and the law's mandate to be ambiguous.⁶¹

55 The amendments were made pursuant to Law no. 5189 of 16 June 2004 and Law no. 5335 of 21 April 2005 Official Gazette no. 25798, 27 April 2005, <http://www.turktelekom.com.tr/tt/portal/About-TT/Company-Profile/Legal/>.

56 European Commission, *Turkey 2008 Progress Report*, 05 November 2008, available at: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_nov_2008_en.htm (last visited on 1 December 2010), p. 50.

57 C. Sözeri, "Türkiye'de Medya Sektöründe Uluslararası Şirket Birleşmeleri," unpublished Ph.D. thesis, Marmara University (2009), p. 131.

58 European Commission, *Turkey 2009 Progress Report*, 14 October 2009, available at: http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2009_en.htm (last visited on 1 December 2010), p. 52.

59 Sümer, 2010, p. 144.

60 For an example of such critiques, see the assessment report by the Association of Communication Research (*İletişim Araştırmaları Derneği-İLAD*), available at: <http://www.iletisimarastirma.org/haberler/71-rtuk-kanun-tasarisi-taslagi-degerlendirme-raporu.html> (last visited on 29 March 2011).

61 Specifically, the term 'media service providers' goes beyond radio and television broadcasting, which is what the law regulates, and connotes other media such as the internet. Critiques argue that the appropriate term should be 'audio-visual broadcasting.'

3.2.2. Ownership Regulations

While the primary legislative motive in the adoption of the Broadcasting Law in 1994 was to rapidly complete the frequency allocations rather than to regulate media ownership,⁶² the law did include a provision restricting media ownership. Article 29 barred, *inter alia*, political parties, associations, unions, professional associations, foundations, cooperatives and local governments from owning media or partnering with media enterprises. Cross-media ownership and foreign ownership was limited to 20%, and each foreign investor was barred from having a share in more than one media enterprise. Individuals who had a 10% share or more in a broadcasting company were precluded from entering into public tenders. And yet, these restrictions failed to preclude “the emergence of media tycoons in the Turkish media sector since the media proprietors abused the loopholes in the monitoring of the law and kept ‘veiling’ their actual shares.”⁶³ Today, the largest media groups in Turkey not only dominate the media sector, but also have investments in many other sectors of the economy and “there seems to be no efficient way to control the concentration of media ownership.”⁶⁴

In June 2001, parliament introduced significant amendments to the Broadcasting Law with the stated goal of introducing transparency to the ownership of the media.⁶⁵ The amendments introduced the annual average ratio of audience as the new criterion for measuring ownership. Accordingly, the capital share of a real or legal entity or a capital group would not exceed 50% in a broadcasting company whose

annual average ratio of viewing or listening was above 20%. The cap on shares of foreign enterprises would be increased from 20% to 25% through a late night amendment to the law as a result of intense lobbying by broadcasting companies.⁶⁶ The most controversial aspect of the amendments was the planned lifting of the ban on shareholders who owned more than 10% shares in any private broadcasting company from entering into public tenders and investing in the stock market. This was the outcome of years of intense lobbying by media conglomerates, in particular the Doğan media group.⁶⁷ Finally, the proposed changes to the law would substantially change the composition of RTÜK, whereby the role of parliament would be reduced in favour of bureaucratic institutions such as the National Security Council in nominating members to the agency.

The amendments were criticized by the opponents of cross-monopolization, who pointed out that the 20% audience ratio was unrealistic since none of the private broadcasters could reach that target.⁶⁸ They argued that the law would facilitate rather than diminish monopolization in the media.⁶⁹ Although provisions of the law concerning the appointments of RTÜK’s members and the cap on shares owned by broadcasting corporations were vetoed by the president, the parliament re-adopted the law without making any changes.⁷⁰ The president this time brought the law before the Constitutional Court. In June

62 Sümer, 2010, p. 130.

63 *Ibid*, p. 131.

64 Papatthanassopoulos, 2005, p. 194.

65 Law no. 4676 of 7 June 2001.

66 However, interestingly, the executing regulation has not been harmonized with the new law and continues to impose a 20% cap on foreign investment.

67 For extensive coverage, see Sümer, 2010, p. 110-129.

68 The president pointed out in his veto that the highest audience rate in Turkey was 14-16%.

69 Sözeri, 2009, p. 133.

70 Law no. 4756 of 14 May 2002.

2002, the Constitutional Court issued a stay of execution of the provisions vetoed by the president and suspended them altogether in September 2004. Thus, limitations on media ownership outlined in the original Broadcasting Law of 1994 remained in force, while the prohibition on private broadcasters from bidding in public tenders was lifted and the limit on foreign investment was increased from 20% to 25%.

In recent years, the debate on media ownership has resurfaced; this time, however, it also concentrated on foreign investment in the Turkish media sector. Law no. 6112 increased the maximum limit on foreign investment from 25% to 50%, on the condition that the same foreign investor cannot invest in more than two broadcasting companies. The increase in the cap on foreign investment will have great repercussions on media ownership in Turkey, already evident from the international companies which have been awaiting the adoption of the law in order to commence bidding on the local media market. The law increases the ceiling on media ownership from 20% to 25%, and limits to four the number of media service providers any real or legal entity can be a partner of. The law preserves the ban on political parties, associations, unions, professional associations, foundations, cooperatives and local governments to own broadcasting companies.

3.3. CONTENT REGULATION

Turkey lacks a unified and coherent content regulation on the media. The overregulation of the sector through multiple laws and regulations has been exacerbated in the EU accession process through multiple “reform packages” hastily adopted by parliament without having gone through a process of deliberation and consultation with civil society and the media. Each package law carries identical titles which

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give no indication of their content⁷¹ and contains multiple amendments to various laws, ranging from the criminal code to the press law, from laws governing the environment to those regulating the financial sector. This patchwork style of law-making has become a characteristic feature of the reform process in recent years, further complicating the already complex regulatory framework concerning the media, fundamental rights and liberties as well as other areas of social life.

The overregulation of the sector through multiple laws and regulations has been exacerbated in the EU accession process through multiple “reform packages” hastily adopted by parliament without having gone through a process of deliberation and consultation with civil society and the media.

3.3.1. The Constitutional Framework

In recent years, relative progress has been made in reforming the constitutional provisions on the media, though Turkey continues to be governed by the 1982 Constitution, a by-product of the 1980 military *coup d'état*. The 2001 constitutional amendments removed the prohibition in Articles 26 and 28 of minority languages in the expression and dissemination of thought and in media. But the amendments left untouched wide restrictions attached to the exercise of these rights on grounds of

⁷¹ Typically, the names of these reform packages are “Laws on the Amendment of Certain Laws.”

national security, public order, and the integrity of the state with its nation and territory. In case of violation of these restrictions by the print media, Article 28 authorises seizure by court order and allows, where delay poses a danger, immediate seizure by competent authorities, pending a court order, within 24 hours. The right to privacy protected under Article 20 is also subject to similar restrictions on grounds of public order, national security, prevention of crime, public morality, public health and protection of the rights of others. Under Article 29, there is no requirement to receive a prior permit to publish periodicals and non-periodicals. Article 133 guarantees the right of private companies to establish and operate radio and television stations, subject to conditions laid out in the Broadcasting Law.

3.3.2. The Legislative Framework

There are two principal types of laws regulating media content in Turkey: the media-specific laws that directly regulate the sector, and laws in the penal system which severely curtail the content of the media.

The Press Law, adopted anew in 2004, is a legislation that is liberal on its face and yet quite authoritarian between the lines. Rights that are tenets of free and independent media go hand in hand with severe restrictions that are characteristic of authoritarian regimes.

Media-specific Laws

The Press Law, adopted anew in 2004, is a legislation that is liberal on its face and yet quite authoritarian between the lines. Rights that are tenets of free and independent media go hand in hand with severe restrictions that are characteristic of authoritarian regimes. The law protects freedom of the press and the right to information, guarantees journalists'

right to protect their news sources, and grants individuals' right of reply to defamatory or untruthful news. At the same time, the law contains a wide catalogue of restrictions. In addition to similar restrictions imposed by the constitution, the law also limits freedom of the press in the name of "the protection of the independence and impartiality of the judiciary."⁷² Prosecutors widely interpret the concepts of "national security," violation of "territorial integrity" and "disclosure of state secrets" to bring cases against journalists who report news deemed to be against state interests, such as the disclosure of human rights abuses by security forces in the name of the fight against Kurdish insurgency, criticisms of the military's interference into politics and disclosure of failed coup attempts by high-ranking military officers. Article 11 attributes criminal liability to editors and translators of written work where the author is abroad or unidentified.

One main difference of the new Press Law is the requirement imposed on the owners of publishing companies to receive permission to publish from the prosecutor and the granting to prosecutors the power to seize printed documents. Under the previous press law, district governors were designated as the authority to notify in order to receive permission to publish. The shift of powers from the executive to the judicial branch is potentially restrictive to the freedom of the press since it

⁷² Article 3 reads: "The press is free. This freedom includes the right to acquire and disseminate information, and to criticize, interpret and create works. The exercise of this freedom may be restricted in accordance with the requirements of a democratic society to protect the reputation and rights of others as well as public health and public morality, national security, public order and public safety; to safeguard territorial integrity; to prevent crime and the disclosure of state secrets; and to ensure the authority and impartial functioning of the judiciary."

enables courts to open cases against the owners of publishing companies that fail to comply with the bureaucratic red tape. Courts in Turkey do not refrain from making use of their powers to seize printed materials on the basis of a very restrictive interpretation of the freedom of press and speech.

The Broadcasting Law guarantees individuals' privacy and protects them from offences against their person, or libel, beyond the limits of criticism, prohibits broadcasts which "discriminate or humiliate people on the basis of their race, colour, language, religion, nationality, sex, disability, political or philosophical opinion, denomination and any such considerations"; outlaws incitement to hatred and hostility through discrimination; and protects minors, the disabled and the weak against programs containing exploitation and incitement to violence. On the other hand, Law no. 6112 preserves most of the content restrictions introduced in earlier broadcasting laws. The law prohibits broadcasting in violation of, *inter alia*, "the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk"; and "the national and moral values of society, general morality and the protection of the family."⁷³ These amorphous concepts leave a wide margin of maneuver to RTÜK, which has the power to sanction broadcasters which do not abide by these standards.

In 2002, amendments made to the law limited RTÜK's sanctioning powers from suspending an entire TV or radio broadcasting operator to suspending the relevant program.⁷⁴ However,

RTÜK still maintains significant punitive powers, and does not refrain from using them through adopting a restrictive interpretation of the law's limitation clauses and imposing disproportionate sanctions against media operators. The new broadcasting law (no. 6112) preserves the enforcing powers of RTÜK, which is authorized to issue fines and suspend programs found to have violated the law. In case of a repeated violation within one year, RTÜK may suspend the entire broadcasting schedule or even revoke the license of the company.

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Public broadcasting falls outside the mandate of RTÜK and is regulated by a separate law, i.e. the TRT Law. The standards of public broadcasting outlined in the TRT Law are quite similar to those laid out in the Broadcasting Law: protecting the indivisible unity of the state with its territory and nation, national sovereignty, the republic, public order and public interest; consolidating Atatürk's ideals and reforms; and complying with national security policies and the national economic interests of the state. Moreover, "TRT's staff, as public employees, has to act in accordance with the mandate of protecting the priorities of the state," laid out in Article 9 of the law.⁷⁵

73 Article 8 (the writing mistakes are not made by the authors).

74 Law no. 4756 of 21 May 2002 and Law no. 4771 of 9 August 2002.

75 Barış, 2005, p. 296.

The Internet Law was prepared by BTK and entered into force on 23 May 2007.⁷⁶ The law regulates all content on the internet, without making a distinction between traditional press and online broadcasting and includes social networking sites. It lays out the obligations and responsibilities of content, space, access and collective use providers as well as internet crimes. The law restricts freedom of expression and access to information in the name of combating the following eight categories of 'internet crimes': encouraging suicide; the sexual abuse of children; facilitation of the use of drugs or stimulators; provision of substances that are hazardous to health; obscenity; prostitution; gambling; sports betting and games; and crimes regulated in the 1951 Law no. 5816 on Crimes Against Atatürk. Courts have unlimited power to restrict access to the internet in the name of preventing these crimes.⁷⁷

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⁷⁶ Law on the Regulation of Broadcasts on the Internet and on the Fight against Crimes Committed through the Internet (*İnternet Ortamında Yapılan Yayınların Düzenlenmesi ve Bu Yayınlar Yoluyla İşlenen Suçlarla Mücadele Edilmesi Hakkında Kanun*), no. 5651, 4 May 2007.

⁷⁷ "Upon the decision of judicial authorities, i.e. Republican prosecutors and courts, the Presidency of BTK can ban access to the internet. However, for our Presidency to release such a decision the content and domain of the internet site to be banned must be located outside of Turkey. The Presidency can place a ban on sites originating in Turkey based on a court ruling on crimes committed by the banned site against children and on obscenity."

Undoubtedly, closely interrelated with freedom of expression and media freedom is the right to information. Access to true information is vital not only for individuals' ability to express themselves but also for the media's ability to provide news to the public. A 2004 law protects citizens' right to information, requiring public institutions to respond to citizens' queries within 15 days. Citizens have the right to apply to administrative courts where this rule is not complied with. Authorities may decline to disclose the requested information on grounds of "state secrets."

Indirect Content Regulation

In addition to the aforementioned laws which are directly relevant for media regulation, the Anti-Terror Law and the Penal Code also regulate the media through restricting freedom of expression and media freedom. Both laws perceive the commitment of offences through the press and media as an aggravating factor in the commission of the crimes under their mandates, increasing sentences by one third to a half.

The new Penal Code (no. 5237), adopted in 2005, has a number of provisions significantly curtailing media freedom. The law criminalises the encouragement of military personnel to break the law (Article 319); alienating the people from the military (Article 318); insulting the president (Article 299), the government and military and security forces (Article 301); incitement to crime (Article 214); praising crime and criminals (Article 215); incitement to hatred and animosity (Article 216); incitement to break the law (Article 217).

The restrictive nature of the Penal Code has been challenged before the European Court of Human Rights (ECtHR) which found, in the *Düzgören* and *Ergin* group of cases, that the conviction of journalists under Article 318 for

having published statements or distributed leaflets considered to be an incitement to refuse to do the mandatory military service to violate Article 10 of the European Convention on Human Rights.

The Anti-Terror Law (no. 3713), as amended in 2006, has similarly restrictive provisions curtailing freedom of the press. Article 6(2) makes it an offence to print or publish the declarations or leaflets of terrorist organizations. Under Article 6(4), where such offence is committed through the press or the media, the owners and editors in chief of the media organs concerned are also liable to a fine. The most problematic provision of the Anti-Terror Law is Article 6(5), which allows the suspension of periodicals for a period of 15 days to up to one month by court order or, where delay is detrimental, by a prosecutor. Article 7(2) makes it an offence to disseminate propaganda in favour of a terrorist organization, subject to 1-5 years of imprisonment. Where such offence is committed through the press and media, the sentence is increased by half. The article also imposes liability to the owners and editors in chief of the press and media organs concerned.

The constitutionality of Article 6(5) was contested by former President Ahmet Necdet Sezer before the Constitutional Court on the grounds that suspension of the future publication and distribution of a periodical pursuant to the ruling infringed upon the freedom of the press as protected under Article 28 of the Constitution. In its judgment of 18 June 2009, the Constitutional Court found Article 6(5) to be compatible with the constitution and rejected the president's request for annulment.⁷⁸

⁷⁸ Constitutional Court, decision no. 2009/90, published in the Official Gazette of 26 November 2009. In its judgment, the Court pointed out the public interest in combating terrorism: "...taking

In this 2009 judgment, the ECtHR observed that the practice of banning the future publication of entire newspapers, whose content was a priori unknown, had a preventive effect on the professional activities of journalists and amounted to censorship.

The compatibility of Article 6(5) of the Anti-Terror Law with Article 10 of the ECHR was contested before the ECtHR in the case of *Ürper and Others*.⁷⁹ In this 2009 judgment, the Court observed that the practice of banning the future publication of entire newspapers, whose content was a priori unknown, had a preventive effect on the professional activities of journalists and amounted to censorship. The issue was raised again before the Strasbourg court. In its judgment in *Turgay and Others*,⁸⁰ the ECtHR noted in particular that in its judgment of June 2009, the Constitutional Court of Turkey did not take into account the judgment of *Ürper and Others v. Turkey* and once again found the suspension of future publications of a periodical to be in violation of Article 10 of the ECHR.

into consideration the nature of acts that result in the suspension of the publication of periodicals, the magnitude of damage caused by the commission of those offences through the press and the media, as well as the aim, extent and methods of terror in our country and the facility of the press and media organs to communicate with the masses and the former's influence on society, it has been concluded that the provision in question aims at the continuity of democratic society."

⁷⁹ ECtHR, *Ürper and Others v. Turkey*, Application Nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20 October 2009.

⁸⁰ ECtHR, *Turgay and Others v. Turkey*, Application Nos. 8306/08, 8340/08 and 8366/08, 15/6/2010, 15 June 2010.

3.3.3. Cultural and Political Pluralism in the Media

Until recently, broadcasting in languages other than Turkish was prohibited in Turkey, except on being made for Armenian, Greek and Hebrew – mother tongues of groups granted minority status under the 1923 Treaty of Lausanne. The Treaty grants not only non-Muslim minorities, but *all citizens* the right to use “any language ... in the press, or in publications of any kind”. However, Turkey has, until recently, never allowed any minority group other than the three Lausanne minorities to exercise this right. One of the impacts the EU accession process has had on the media in Turkey was the lifting of this ban and the subsequent room for public and private radio and TV broadcasting to enter the field at the local and national level.

The 2002 and 2003 amendments to the Broadcasting Law effectively paved the way for broadcasting in minority languages, without explicitly identifying the purpose of the reforms to be as such.⁸¹ Broadcasting was allowed in “the different languages and dialects used traditionally by Turkish citizens in their daily lives”⁸² with the caveat that such broadcasts shall not contradict the constitution and “the indivisible integrity of the state with its territory and nation.” However, the right to broadcast was not granted to all minority languages spoken in Turkey. Instead

of allowing the exercise of this right upon demand, the government *a priori* identified which languages merited to benefit from the law. The selected minority languages were the Zaza and Kırmançi dialects of the Kurdish language, Circassian, Bosnian and Arabic. The duration, scope and nature of broadcasting in these minority languages were not specified in the laws, but were left to the discretion of RTÜK.

Regulations adopted by RTÜK further restricted the already limited and conditional rights granted by parliament. The 2002 regulation established direct state control over broadcasting, prohibited children’s programming and the teaching of minority languages, imposed significant time restrictions on broadcasting in minority languages, subjected broadcasting to rigid bureaucratic control, required simultaneous and subsequent translation into Turkish for TV and radio programs, respectively, and prohibited broadcasting in violation of national security, general morality and the indivisible territorial and national integrity of the state.⁸³ The 2004 regulation allowed private broadcasting in minority languages at the national level for the first time, but again subject to strict time limitations and much red tape. Local and regional broadcasters were required to submit an audience profile to RTÜK in order to receive permits.

In an attempt to address criticisms regarding the incompatibility of these restrictions with freedom of the press, RTÜK adopted a further regulation in November 2009 which lifted the time restrictions for private broadcasters and allowed for 24-hour broadcasting in languages other than Turkish. The regulation also

81 The scope of the right was gradually expanded through a series of laws. Initially, the reforms were limited to public broadcasting in minority languages but were gradually expanded over time to extend to private broadcasting.

82 For a problematization of this phrase, see D. Kurban, “Confronting Equality: The Need for Constitutional Protection of Minorities on Turkey’s Path to the European Union,” 35 *Columbia Human Rights Law Review* (2003), p. 151-214.

83 D. Kurban, *A Quest for Equality: Minorities in Turkey*, Minority Rights Group International (2007), p. 17.

removed the subtitle/simultaneous translation requirement as well as the prohibitions on children's and language-instruction programming. These improvements resulted in the increase in the number of radio stations and TV channels broadcasting in minority languages.⁸⁴ To be able to monitor these broadcasters' compliance with the law, RTÜK recruited new *Kirmançi* and *Zaza*-speaking staff members (the prevalent Kurdish languages spoken in Turkey). However, RTÜK's receiving support from local police in undertaking this monitoring activity is grounds for concern.

On 7 June 2004, TRT commenced broadcasting in the five permitted languages. Television broadcasts are 45 minutes per day five days a week, while radio broadcasts last 30 minutes each day, five days a week. The content and time restrictions imposed on broadcasting, the red tape imposed on local broadcasters and the outdated content of programs have been criticised by minorities. They perceive the reforms as an attempt by the government to deceive the international community by creating a false impression about the protection of minority media in Turkey. On 1 January 2009, 24-hour public broadcasting in Kurdish commenced, followed by the launch in April 2009 of public broadcasting in Armenian.⁸⁵ While TRT has 6 exclusively Kurdish broadcasts every 24 hours, broadcasting in Armenian is limited to a total of one hour per day.

Notwithstanding this significant yet limited progress in establishing the regulatory

Surveillance by the military and the state as well as harassment by the statist and nationalist mainstream media often leads to a degree of self-censorship in the minority media, which withdraws from political debates for fear of persecution.

framework for a pluralist media, minority media in Turkey continues to be subject to the blockade of the state, the mainstream media and the judiciary. Surveillance by the military and the state as well as harassment by the statist and nationalist mainstream media often leads to a degree of self-censorship in the minority media, which withdraws from political debates for fear of persecution. Those who nonetheless 'dare' to report on sensitive political issues face prosecution by the courts. In 2010, for example, the Kurdish newspaper *Azadiya Welat* based in Diyarbakır was banned by the judiciary several times and its journalists were prosecuted on charges of terrorism.

3.3.4. Obstacles to Media Freedom and Impartiality in Turkey

The independence and impartiality of the media in Turkey are curtailed by political pressure coming from multiple actors, from both within and without the media. As explained earlier, the historical development of the state-media relationship since the late years of the Ottoman Empire has left a lasting legacy in the political culture of the country. The mainstream media has traditionally positioned itself in ideological, economic and political proximity to power structures, and has failed to develop a presence independent from the state. While the subject of political pressure on the media has in most cases been the armed forces, at times of transition where civilians have gained relative power and independence vis-à-vis the army, the agent of pressure has become the elected government. A third principal external actor that imposed

84 So far, 14 radio stations and TV channels have been given authorization to broadcast in Kurdish and Arabic. European Commission, *Turkey 2010 Progress Report*, p. 32-33.

85 The daily broadcasting in Armenian takes place between 07.30-08.00 and 18.00-18.30 at TRT's Voice of Turkey Radio.

pressure on the media has been the judiciary, which has prosecuted thousands of journalists, banned dozens of newspapers and journals, and banned scores of radio and television stations simply for writing, publishing, editing and broadcasting news critical of official policies on issues considered to be taboo by the establishment. The way in which the judiciary, the military and the government impose political pressure on the media is discussed in detail below.

Partially as a by-product of these external political and legal restrictions, the media itself has become an obstacle to its own independence and impartiality. The entry of big business into the media sector as a result of the economic liberalization policies of the 1980s has irreversibly changed the economic structure of the media and consolidated the interdependent relationship between the state and the media. How this relationship has translated into self-censorship will be discussed in the final section of this report.

The Press Law, the Broadcasting Law, the Internet Law, the Penal Law and the Anti-Terror Law impose significant restrictions on media freedom and grant wide enforcement powers to the judiciary.

The Judiciary

As stated earlier, the Turkish legal system is extremely restrictive of media content, which is evident not only in legislation regulating the press, radio, television and the internet but also, and more so, in the penal code. The Press Law, the Broadcasting Law, the Internet Law, the Penal Law and the Anti-Terror Law impose significant restrictions on media freedom and grant wide enforcement powers to the judiciary. Courts widely interpret these

restrictions by bringing charges against journalists and media organs based solely on the content of the news they publish.

Some of the cases brought against journalists have been based on legislation regulating media content. Article 11 of the Press Law, which attributes criminal liability to editors and translators of written work where the author is not a resident of Turkey or is unidentified, has been used frequently by the judiciary against editors who have published Turkish translations of foreign-language books on controversial political issues. A prime example of this is the case brought against Ragıp Zarakolu for having published books recognising the Armenian Genocide of 1915. Courts' frequent resort to their injunctive powers under the Broadcasting Law has been criticized by the ECtHR in *Özgür Radyo v. Turkey*, finding that the warning and licence suspensions imposed on a pro-Kurdish radio station to be an infringement of freedom of expression.⁸⁶ Similarly, Turkish courts do not refrain from widely interpreting the powers they are granted under the Internet Law. In an internationally notorious incident of internet censorship, an administrative court in May 2008 banned the video-sharing website *Youtube* on the ground that it contained videos insulting Atatürk. The ban was lifted in November 2010 but courts impose "frequent website bans, which are disproportionate in

⁸⁶ ECtHR, *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım ve Tanıtım A.Ş. v. Turkey*, Application nos. 64178/00, 64179/00, 64181/00, 64183/00, 64184/00, 30 March 2006 (holding that statements made on the radio, which were found by national courts to constitute defamation as well as incitement to violence and separatism, did not incite violence or hate and had already been published by other media organs without being prosecuted).

scope and duration"⁸⁷ and there are ongoing cases against mainstream web portals.

Most of the criminal cases opened against media organs and their members rest upon the Penal Code and the Anti-Terror Law. Two provisions of the Penal Code have recently begun being used against journalists to deter them from reporting on high-profile cases involving the military: Article 285 (breach of the confidentiality of investigations) and Article 288 (attempting to influence a fair trial). A total of 4,091 investigations alone were initiated under Articles 285 and 288 of the Penal Code against journalists who reported on the *Ergenekon* case.⁸⁸ Similarly, countless journalists have been prosecuted under the Anti-Terror Law for having disclosed and published the names of public officials engaged in the fight against terrorism, engaged in propaganda for the terrorist organisation and published the statements or declarations of the terrorist organisation. Two of the most recent examples concern the weekly *Nokta* and *Express* magazines. The incidents that eventually resulted in the closure of *Nokta*

The confidentiality of investigations and attempting to influence a fair trial provisions of the Penal Code have recently begun being used against journalists to deter them from reporting on high-profile cases involving the military.

⁸⁷ European Commission, *Turkey 2010 Progress Report*, p. 21.

⁸⁸ The case concerns an alleged ultranationalist criminal gang involving retired and active senior military personnel, members of the intelligence, bureaucrats, journalists, academics and the mafia who are accused of plotting the overthrow of the government.

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in 2007 started with the magazine's publication of a classification by the Chief of General Staff of journalists and media organs. On 29 March 2007, *Nokta* published sections from a diary reportedly belonging to Özden Örnek, the former Chief of Navy Forces. Based on this diary, the periodical reported that a group of generals conspired to stage a coup against the elected government in 2004 but were obliged to call their preparations off when Hilmi Özkök, the Chief of General Staff at the time, opposed their attempts. On 13 April 2007, the police raided the offices of the magazine, seized its computers and opened an investigation. A defamation case was brought against Alper Görmüş, the Editor in Chief of *Nokta*. While Görmüş was eventually acquitted, his repeated requests for the court to look into the alleged coup attempts were rejected at the time. In later years, the allegations of coup attempts formed the basis of the prosecution of Örnek and his alleged fellow conspirators. Another recent example against freedom of the press is the case against İrfan Aktan, who was prosecuted for an article he wrote on the Kurdish question, published in *Express* on 15 October 2009, where he quoted a PKK militant and a PKK publication. Aktan was convicted to imprisonment of one year and three months and the editor of the magazine to a fine for having engaged in "the propaganda of the terrorist organisation" in violation of Article 7 of the Anti-Terror Law.

The most recent development sparking debates on media freedom in Turkey has been the detention in March 2011 of journalists Nedim Şener and Ahmet Şık as part of the Ergenekon case. Şener and Şık were arrested and subsequently detained on charges of “incitement to hatred and animosity” and “membership of a terrorist organization.”

The most recent development sparking debates on media freedom in Turkey has been the detention in March 2011 of journalists Nedim Şener and Ahmet Şık as part of the Ergenekon case. Şener and Şık were arrested and subsequently detained on charges of “incitement to hatred and animosity”⁸⁹ and “membership of a terrorist organization.” The dissident character of these journalists has led to an unprecedented public debate on a criminal case involving the media in Turkey. Nedim Şener is among the few journalists who have reported on the case concerning the assassination of Hrant Dink; he authored an award-winning book pointing out the culpability of the state in this murder. Ahmet Şık, on the other hand, has worked in media organs that had a critical take on the mainstream media; most notably, he was a reporter for the weekly *Nokta* which revealed the failed coup attempts by senior military officers in 2003-4. The detention of these journalists who are not believed to be affiliated with the Ergenekon terrorist organization has not only given rise to protests by different segments of the media and society, but has also shattered the public’s belief in the Ergenekon case. In response to criticisms, the prosecutor issued a written statement that Şık and Şener were not detained for their acts of journalism, but on

89 This charge was subsequently dropped. Currently, the two journalists are solely charged with “membership to the Ergenekon terrorist organization.”

the basis of “evidence obtained as part of the investigation carried out in the Ergenekon case,” which could not be disclosed due to the “confidentiality of the investigation.” In his written response, the prosecutor also warned that the “ungrounded comments aimed at guiding the public opinion” through alleging that the case was political would “contribute to the aims and purposes of the terrorist organization concerned” and that “such broadcasts were being closely monitored and evaluated with care” by the prosecutor’s office. These statements were interpreted by many journalists as a threat. The subsequent confiscation by the police of the unpublished manuscripts of Ahmet Şık’s book entitled *İmamın Ordusu* (The Army of the İmam) has further heated the debate on media freedom and undermined public trust in the Ergenekon case.⁹⁰

According to the latest data by the International Press Institute (IPI), 48 journalists are in prison and more than 700 are on trial in Turkey in cases brought on the basis of several provisions of the Press Law, the Penal Code and the Anti- Terror Law.

Notwithstanding the relative progress in bringing Turkey’s content regulation on the media in keeping with European standards, the country continues to have a very poor record of press freedom. According to the latest data by the International Press Institute (IPI), 48 journalists are in prison and more than 700 are on trial in Turkey in cases brought on the basis

90 The book is about the alleged links between the Fethullah Gülen movement and the police in Turkey.

of several provisions of the Press Law, the Penal Code and the Anti-Terror Law.⁹¹ In 2009, Turkey ranked 122nd in freedom of the press, falling 20 places in comparison to 2008 due to a surge in cases of censorship, especially towards the Kurdish media, and efforts by government bodies, the armed forces and the judiciary to control media content. In 2010, Turkey ranked 138th out of 178 countries.⁹²

The Army

As discussed earlier, the army's involvement in politics in Turkey dates back to the founding years of the republic. From the outset, the military has positioned itself as the guardian of the fundamental principles of the regime, in particular those of laicism and territorial unity. The myth constructed around the army as the protector of the republic has penetrated into the political culture and consolidated the influence of the military in every walk of life. The military has always exerted power over the political and legal structures of Turkey. What has changed across time is the degree and directness of its interference into politics. At times, the army took over power through staging military interventions, as in 1960, 1971 and 1980. At other times, its interference took milder forms, as in the February 28th post-modern military coup process. The most recent example was the Chief of Staff's ultimatum to the AK Party Government on April 27th, 2007, issued through its website, prior to the presidential elections, which culminated in the election of AK Party's candidate Abdullah Gül. The Chief of Staff 'informed' the public opinion

*According to a document allegedly prepared by the Chief of Staff—and published by *Nokta* prior to its closure—journalists in Turkey were classified as being either pro or anti-military.*

against the government's allegedly fundamentalist activities which 'threatened' the secular nature of the republic, of which it remained the guardian. Interestingly, this was the first incident where the military used the new media for sending its message to influence public opinion.

The media has not been immune from the military's interference into politics. At times, it has provided the platform to announce the military's take-over of power, as in the case of the army's declaration on TRT after each *coup d'état* it has staged. At others, the media has published 'news' provided by the military without checking its accuracy, as in the case of fictitious news against two respected journalists during the February 28th process. A more direct and targeted way in which the military has used the media for its ends is in the Chief of Staff's accreditation system, whereby only select media organs and journalists are allowed to attend press conferences organized by the military. According to a document allegedly prepared by the Chief of Staff - and published by *Nokta* prior to its closure - journalists in Turkey were classified as being either pro or anti-military. The Chief of Staff has never refuted this claim though the article was one of the grounds for the search warrant issued by a military court against *Nokta*, culminating in the closure of the periodical soon after. The price *Nokta* has had to pay for publishing news critical of the army was a vivid indicator of the potential consequences of being a media organ or journalist perceived to be against the army by the military. In addition, a further repercussion of non-accreditation for

91 *Bianet*, "Türkiye'de Kaç Gazeteci Hapiste?" 8 October 2010, available at: <http://bianet.org/bianet/bianet/125321-turkiyede-kac-gazeteci-hapiste> (last visited on 01 December 2010).

92 Reporters Without Borders, *Press Freedom Index 2010*, available at: http://en.rsf.org/press-freedom-index-2010_1034.html (last visited on 1 December 2010).

While all media is subject to these general and specific threats of intimidation or pressure by the military, the minority media is particularly susceptible, mainly because they fall outside the purview of the large media conglomerates protected by the political and economic networks of their owners.

journalists, especially those based in Ankara, is an inability to access information about the military, which is a further deterrence against publishing news critical of the army.

While all media is subject to these general and specific threats of intimidation or pressure by the military, the minority media is particularly susceptible, mainly because they fall outside the purview of the large media conglomerates protected by the political and economic networks of their owners. Turkey's recent history is full of incidents where members of the minority media have been prosecuted under the Anti-Terror Law and the Penal Code; discreetly or openly threatened by state agents, military officers, mafia and criminal networks; killed in daylight by "unidentified perpetrators"; tortured by agents of the military regimes; imprisoned for years for having criticised state policies or advocated the rights of minorities; and reported on taboo issues such as clandestine coup attempts by the military, the Armenian genocide, the Kurdish question etc.⁹³ One of the most tragic instances of persecution of dissident journalists is the conviction of the Armenian journalist Hrant Dink for "having insulted Turkishness" followed by his assassination by agents of a criminal network whose plans were known

93 Ö. Öğret and S. Martens, "Pressing for Freedom: Two Centuries of Ceaseless Struggle in Turkey," *Hürriyet Daily News*, 7 June 2010, available at: <http://www.Hurriyetdailynews.com/n.php?n=part-iii-requiring-a-gut-feeling-alongside-a-lot-of-guts-2010-06-07> (last visited on 10 September 2010).

to the military and police intelligence well in advance.⁹⁴

The Government

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The AK Party government in general and Prime Minister Recep Tayyip Erdoğan in particular have performed quite poorly on matters of freedom of the press, adopting controversial positions and policies against media groups and journalists critical to the government.

94 On 6 February 2004, Hrant Dink, the founder and editor in chief of the Armenian-Turkish weekly *Agos*, published an article in his paper which suggested the possibility of Sabiha Gökçen, Atatürk's adopted daughter and the symbol of the educated, modern Turkish woman, may have been an adopted Armenian orphan who survived 1915. What was particularly striking about this news is that Gökçen was Turkey's first female pilot and the world's first female combat pilot. When this news was covered on the front page by *Hürriyet*, the most popular daily, a number of columnists in the mainstream media reacted strongly to Dink. Finally, the Chief of Staff issued a public statement rejecting as unacceptable the allegations on Sabiha Gökçen and indirectly accusing Dink of threatening national unity and peace in Turkey. This incident made Dink the target of verbal and physical attacks by the media and extreme right wing groups. Meanwhile Dink was convicted of "denigrating Turkishness" on the basis of an indictment which deliberately distorted his writings and portrayed him as a threat to the "Turkish nation." The media's overall coverage of the case was extremely biased, making him a target of further nationalist attacks and hate crimes. Eventually, Dink was assassinated on 19 January 2007 by a 17 year old Turkish nationalist who told the police that he killed Dink because he read in the papers that the latter hated the Turks. For excellent coverage of Dink's life and the responsibility of the media in his murder, see T. Çandar, *Hrant* (2010).

positions and policies against media groups and journalists critical to the government. Erdoğan became notorious for the civil cases he brought against dissident cartoonists who depicted him as various animals in criticising his policies. Though he lost each of these lawsuits, the Prime Minister's intolerance against criticism seems not to have changed.

In September 2008, the Prime Minister appealed to the public to boycott the newspapers of the Doğan media group which had implicated complicity by senior AK Party officials in one of the biggest fraud cases in Germany; the case concerned an Islamic charity organisation which was found to have embezzled its charitable contributions. The Turkish media severely criticised the government for affording protection to individuals in Turkey accused by the German court of being the masterminds of this scheme, including Zahid Akman, the then head of RTÜK and the highest executives of *Kanal 7*, a pro-government TV channel. The Turkish press accused these individuals of channeling embezzled funds to Turkey and even claimed that some of the money might have been funneled to the AK Party government. While Germany cancelled the licence of *Kanal 7 INT* in Germany, Erdoğan rejected persistent appeals to dismiss Akman from his public position as the head of the media watchdog agency.⁹⁵

Another notorious instance where the Prime Minister publicly confronted the media and

⁹⁵ *Deniz Feneri e.V. (Lighthouse)*, a German-based Islamic charitable organization, was found by a German court to have embezzled 58 million Euros in charitable contributions mostly collected from Turks living in Germany, at least 17 million Euros of which were channeled to private enterprises within the Islamic community in Turkey. While the Frankfurt court convicted three staff members of the company in Germany, it passed the ball to Turkish authorities stating that the actual masterminds of the fraud were in Turkey.

attacked freedom of the press was in 2010, when he called upon the media patrons to dismiss columnists who criticised the government's economic policies, arguing that their distorted portrayals would serve to de-stabilise the proper functioning of the Turkish economy.

The AK Party government's biggest and most infamous conflict with the media occurred in September 2009, when it levied on the Doğan Media Group a record 2,5 billion dollar fine for tax evasion. While the government portrayed this as a routine instance of enforcement of tax laws, many interpreted it as a punishment against the company for its anti-government and pro-military position. Although the government announced a tax amnesty in November 2010 by which Doğan media groups' financial debts were reduced by half, the court case against the group continues. The European Commission noted that "the press exercises self-restraint when reporting following the initiation of this case."⁹⁶

Following AK Party's ascension to power, there has been a considerable change in TRT's broadcasting policy. Political issues such as Cyprus, relations with Armenia and the Armenian genocide, the Kurdish question and the army's intervention into politics are now being discussed and debated on television and the radio.

The impartiality of the public broadcaster TRT has always been in question in Turkey and the agency has been criticised for "its permanent endorsement of the official position of the state and/or government on almost any subject ... and careful avoidance from any

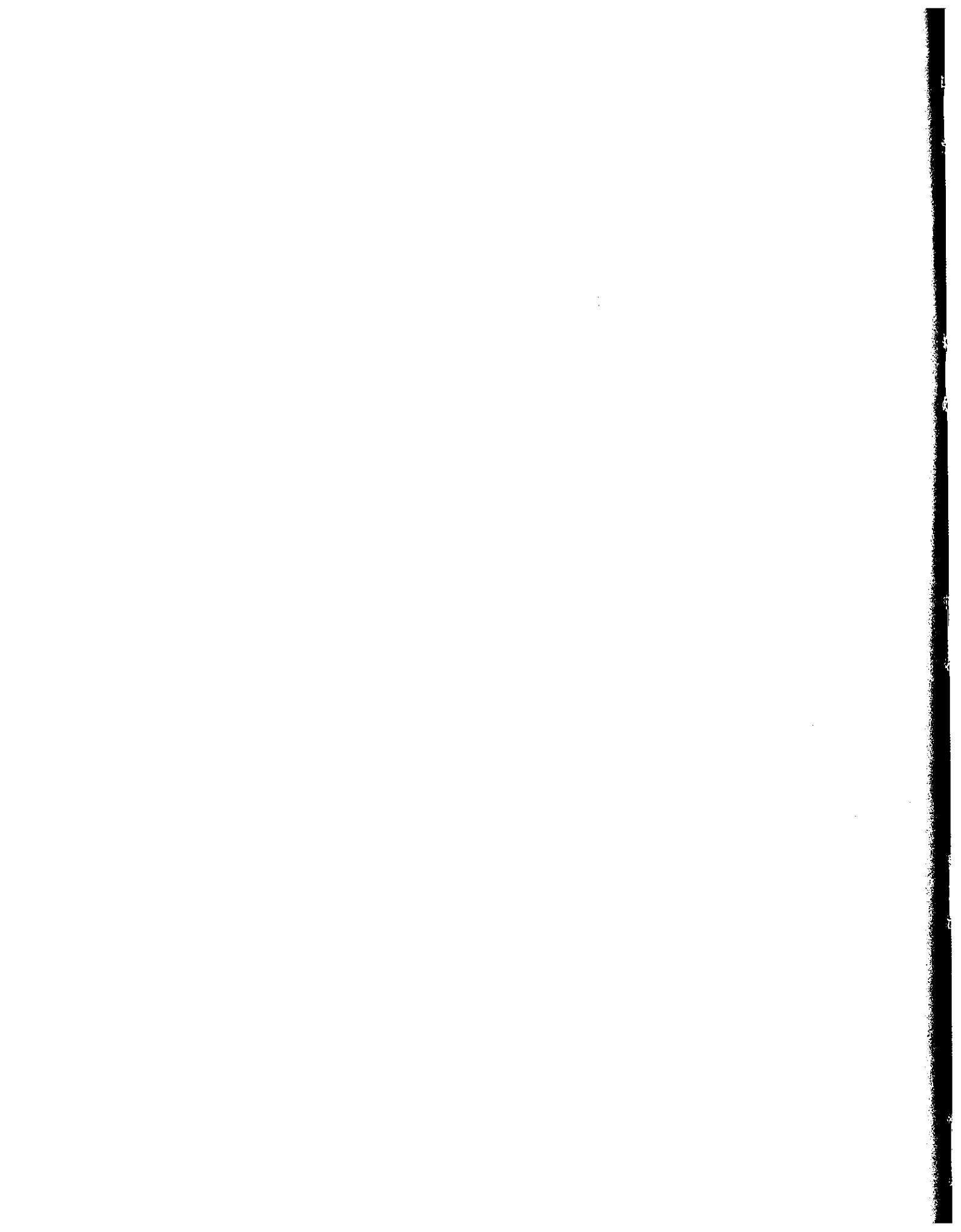
⁹⁶ European Commission, *Turkey 2010 Progress Report*, p. 21.

engagement with controversial issues.”⁹⁷ In recent years, following AK Party’s ascension to power, there has been a considerable change in TRT’s broadcasting policy. Political issues such as Cyprus, relations with Armenia and the Armenian genocide, the Kurdish question and the army’s intervention into politics are now being discussed and debated on television and the radio. Programs investigating the country’s recent past and questioning the official history narrated by the state are regularly being aired by the TRT. This change is a reflection of the weakening of the army’s power over politics as part of the process of democratisation in Turkey. With the coming to

power of a government whose position on the core political issues is in contradiction with the official position of the state and which, based on its democratic legitimacy, claims the power to set Turkey’s official policies on these issues, the state – i.e. the army – has lost its control over TRT. Having said this, TRT’s impartiality continues to be a matter of contention in Turkey. Opposition parties and mainstream media organs critical of the government criticise public television for being too close to and partial towards the government and for not standing at an equal distance from all political parties.

⁹⁷ *Ibid.*

Fourth Section



Media Policy and Democratic Politics: an Assessment

Liberal theory has assumed a critical role in the media in democratic systems. Accordingly, the media is portrayed as the “Fourth Estate” which is independent and free from the executive, the legislature and the judiciary, and monitors the government on behalf of society. Critical theory, on the other hand, has viewed the media as the ideological apparatus of the state, particularly after the experience of WWII, where the media was instrumentalized by governments to “manufacture consent.” Today, the concentration of media ownership and the relationship between media and politics has become the new object of media studies. While it is by and large accepted that the media does not have absolute power over the masses, its ability to determine the public agenda gives it the potential to act in the interest of existing power structures.

In Turkey, since the early days of the republic, modernisation has been associated with democratisation based on the assumption that the more the society was modernised, the more democratic the regime would be. The media has been considered one of the leading actors of the modernisation process and assumed a critical role in this state-guided project as both the producer and the consumer of statist ideology.

Today, the mainstream media in Turkey continues to by and large be instrumentalised by the state and lacks the ability and will to function properly as the “Fourth Estate.” At the same time, however, the emergence of a

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few small but effective independent and alternative media organs in the past years has shattered the ability of the mainstream media to filter controversial news that challenge the state’s interests and policies. The weekly *Nokta* and daily *Taraf* published documents leaked from within the military documenting clandestine coup plans by senior retired and active military officers, documents which evidently had also reached but had not been used by the mainstream media organs. Even after the publication of these documents in *Nokta* and subsequently in *Taraf*, the mainstream media by and large chose to downplay the gravity of the claims, whereas those media organs sympathetic to the government selectively published news that suit AK Party’s interests and policies.

At the same time, the increase in access to the internet and social networking sites has provided another alternative space for the production of politically controversial news which would not make it through the filters of the mainstream media. They made possible citizens’ participation in news making and its dissemination. Particularly striking were

secretly recorded voice and video footage implicating senior military officers and political figures, some of which have been used against suspects in criminal cases, raising serious issues in terms of the due process rights of the implicated individuals. Indictments filed against hundreds of defendants in the *Ergenekon* case frequently relied on such footage. The use of the internet for leaking unlawfully obtained documents showing illegal conduct has on the one hand provided the public with the kind of information that the mainstream media did not or could not provide and on the other raised serious issues concerning due process and the right to fair trial of those incriminated—rightly or wrongly—by such information.

While citizens' active participation in politics through the media may be interpreted as a sign of the strengthening of democracy in Turkey, such participation is not based on a notion of shared citizenship and the embrace of core democratic values such as pluralism, diversity and equality.

While citizens' active participation in politics through the media may be interpreted as a sign of the strengthening of democracy in Turkey, such participation is not based on a notion of shared citizenship and the embrace of core democratic values such as pluralism, diversity and equality. A serious impediment to constructing a democratic and egalitarian idea of citizenship in Turkey is the prevalence of hate speech in the media, which enables and indeed facilitates the spread of animosity and discrimination against minorities and dissidents. Discriminatory news content against ethnic, religious, sexual and other minorities as well as women is quite prevalent in both the

traditional and new media in Turkey.⁹⁸ It is not only the media organs but also the users of the new social media that resort to hate speech against minorities, dissidents and human rights activists. Readers' comments on the internet sites of newspapers, in particular, reveal an ideological dichotomy of "us" versus "them" where the latter refers to any real or legal person that criticizes official policies on controversial issues such as the Kurdish and the Armenian questions, civil-military relations, and the EU process. The absence of a legal framework criminalizing hate speech and the existence of penal laws restricting free speech encourage and indeed empower the "militant citizen" as both producer and consumer of the media.

In conclusion, the processes of economic liberalization, the banking crisis and the EU accession process generated reforms which, albeit slow and at times incoherent, changed the ownership structure of the media in Turkey and enhanced freedom of the press and freedom of expression, at least relatively. Nonetheless, these developments failed to ensure media independence and freedom in Turkey. Much remains to be accomplished to liberalize media regulation, and more importantly and challengingly, to change the prevalent authoritarian mindset in state, society and the media. Nonetheless, the opportunities that the information technologies and the new media provide for accessing hit-

98 S. Erler, "Nefret Suçlarında Medyanın Etkisi," 13 April 2010, available at: <http://www.nefretme.org/2010/09/ nefret-suclarinda-medyanin-etkisi/#more-581> (last visited on 04 June 2010). The 2009 report of an NGO documents the prevalence in the Turkish media within the past decade of hate speech against ethnic and religious minorities. Social Change Association, *Ulusal Basında Nefret Suçları*, 30 April 2009, available at: http://www.sosyaldegisim.org/wp-content/uploads/2010/10/ nefret_suclari_light-.pdf (last visited on 21 March 2010).

herto censored information pose a great challenge not only to the continuity of the state's ability to control the media and society, but also to the hegemony of the mainstream media over news content. In a post-Nokta and post-Taraf world in Turkey, the media is much less able to maintain its ideological alliance with the military and the state. More importantly, the increasing demands from society for transparency, access to true and impartial information and democracy pose a significant challenge to the longevity of media policies, culture and ethics in Turkey.

In a post-Nokta and post-Taraf world in Turkey, the media is much less able to maintain its ideological alliance with the military and the state. More importantly, the increasing demands from society for transparency, access to true and impartial information and democracy pose a significant challenge to the longevity of media policies, culture and ethics in Turkey.

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