



Background information report

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

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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 will investigate the configuration of media policies in the aforementioned countries and will examine 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, will be thoroughly discussed and analysed.

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The case of Turkey

Esra Elmas and Dilek Kurban

1. Introduction

Mass communication studies have gone through three different periods according to their focus of study. The period from 1910 to 1940, the media studies concentrated on the “bullet effect” of the media on the masses. According to the media studies of the time, media had an absolute power in manipulating the agenda and shaping the passive members of the society. Under the influence of WWI, the media was used by totalitarian regimes as a propaganda tool. During the second period from 1940 to 1960, field research that was mainly carried out in the USA showed that the media impact on the masses was limited. However in the third period from the 1960s until present day, the studies have tried to clarify the ideological features of the media power in relation to its economic structure. Today, as a result of the rapid change in the communication technologies we are in an era that is generally named as the “digital era”. The media ecology has deeply reshaped according to the dynamic that came with the emergence of the internet. The internet has had a destructive effect on traditional horizontal relations between the “sender” and the “receiver” as well as on inequalities in society. Personal blogs and interactive internet sides of the traditional media allowed citizens to become visible and have the chance to speak up, increasing citizens’ participation in the production of media content. Traditional media which consists of large media companies and which usually is dependent on government/state subsidies has lost its monopolistic position in the sector when it could no longer control news content. So the digital age has been named as the “uncontrollable age” and the increase of citizen participation is taken for granted as a gain in the way of democratisation. On the other hand, any effort towards understanding the relationship between media and democracy in a given society, as Daniel Hallin and Paolo Mancini put it, needs to dwell upon several dimensions, including the political, social, legal, economic, demographic and cultural traits of the country in question. This is because these dynamics influence the development of the media and democracy as well as the interdependent relationship between these two. So Turkey, as a transition country both in geographical and socio-political terms and in which journalism emerged as tightly attached to the state politics with the mission of modernising society, needs to be handled in the way that Hallin and Mancini suggest.

The media structure in Turkey falls under the “Mediterranean or Polarised Pluralistic Model” in accordance with the analytical and theoretical framework proposed by Hallin and Mancini that is based on four major dimensions and three media models,¹ namely: (1) the development of media markets, in which they particularly focus on 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

¹ Based on the variation on these dimensions they develop three models for the comparison of media systems in Western Europe and North America: (1) Polarised 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).

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

Today as a typical example of the Mediterranean Model, Turkey has a quite low level of newspaper circulation, while the media is occupied with state or government politics which result in advocacy journalism. On the other hand, the media sector in Turkey is structurally divided into congregations. The owners of the biggest media groups are also involved as investors and shareholders in different sectors of the economy, such as health, education, construction, telecommunication and distribution. Although all these media groups may have different ideological stands and political positions as well as conflicting economic interests, they 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. Journalism or any kind of position in the media field is not suitable for professionalism. Moreover, suchlike structure which carries multiple conflict of interests, results in a “mass” in terms of media policy. There are multiple institutions and regulations that shape the media in Turkey which are mainly designed for the state interest rather than guaranteeing the media freedom, a result of specific historical and political reasons. So this report deals with the historical and cultural ruins that result in existing media policy in Turkey.

2. Historical background

This section will provide a brief overview of the political context in Turkey, with a particular focus on the historical development of the state-media relations. The section will discuss 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 and the evolution of multi-party democracy (the national level) and the ongoing democratisation process as part of Turkey’s EU accession (the international level). The evolution of the press, radio and television will be examined during three principal periods (excluding the military regime between 1980 and 1983 during 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, and the “liberalisation process” between 1983 and 1990. Finally, the impact of the international dimension will be examined on the basis of legal and political developments introduced in the media sector as part of Turkey’s economic liberalisation process in the 1990s and the EU accession process in the 2000s.

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 1945 when a multi-party system was installed, journalists have been instrumental in propagating the modernising reforms

² 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, 04/06/2010, available at: http://www.allacademic.com/meta/p170690_index.html (last visited on 29/10/2010).

³ R. Barış, “The Turkish media landscape”, in G. Terzis (ed.) *European media governance: National and regional dimensions* (2005) 289, at p. 292.

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 “discussions” rather than “news”.⁵ On the other hand, because of their crucial role in the modernisation project journalists were the potential targets of state/government repression, harassment or pressure. While the dissident press has always been under the pressure of the power, the statist-elitist faction of the press was by and large free of such intimidation. From the outset of the establishment of the state, journalists have always been in a close relationship with politicians and state institutions. 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-thought journalists” and today although there are some media members in the sector who are coming from journalism schools or communication departments, this feature is still valid.

The establishment of the print media in Turkey predates that of the republic. The first paper was founded during the Ottoman times, in the final years of the empire when Mustafa Kemal Atatürk pioneered a war of independence against the Allied powers. The independent 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 Atatürk and his staff prioritised print media, the only widespread medium of communication at the time, as a form of reaching out to the masses. The *Hakimiyet-i Milliye* (National Sovereignty) newspaper was established by Mustafa Kemal Atatürk himself in Ankara on 10 January 1920. Later renamed as *Ulus*, the paper aimed at publicising Mustafa Kemal’s major decisions during the War of Independence. The *Anadolu Ajansı* (Anatolian Agency), 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 “true” public news about the Turkish Independence War.

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 favor 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 joined 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 the 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 after the first years of the republic were over, however, state-media relations began to change. One principal reason for this change was the breaking away of a group from *Halk Fırkası* (People’s Party), the political party founded by Atatürk, to launch their own party under the name of *Terakkiperver Cumhuriyet Fırkası* (Developmentalist Republican Party) in 1924.

The support from both the people and press of Istanbul for *Terakkiperver Cumhuriyet Fırkası* as the first opposition party in the history of Turkey began to be

⁴ T. Demirel and M. Heper, “The press and the consolidation of democracy in Turkey”, 32 Middle Eastern Studies, No. 2 (1996) 109, at p. 113.

⁵ E. E. Bilgiç, *The role of the press in the construction of national identity 1934-1937*, unpublished PhD thesis, University of Bosphorus (2010), at p. 27.

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 *Takrir-i Sükun Kanunu* (Law on the Maintenance of Order) was enacted, which stifled the freedom of the press and quashed any kind of opposition in the country.⁶ 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 government were shut down and only those newspapers that had supported the law were allowed to operate.

The 1928 Alphabet Reform which replaced the Ottoman script with the Latin alphabet radically changed Turkish society's relation to its past and is largely responsible for the historical 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 technological 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.⁷

During the 27 years *Cumhuriyet Halk Partisi* (Republican People's Party - CHP) ruled the country in a single-party government, all forms of opposition were silenced. In 1927, just two years after the first radio broadcasting had started in the world, two public enterprises co-founded a media company and launched Ankara-and-Istanbul-based radio broadcasting. These two enterprises were *Anadolu Ajansı* and *Türkiye İş Bankası*, in the latter of which CHP was a shareholder. The company followed BBC as a model for its *modus operandi* and made 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*). In 1939, the Ankara Radio began to broadcast news bulletins in foreign languages for the use of other countries. In its broadcasting about the Second World War, this radio emphasised Turkey's neutrality policy.

Law no. 3837 of 22 May 1940 established –what is today called – the Directorate General of Press and Information (DGPI), a public body which is presently under the Office of the Prime Ministry. Atatürk wrote the preamble to this law, where he defined the purposes of this public body 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 scrutinise the foreign press to understand the flow of ideas,

⁶ 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.”

⁷ Bilgiç, *The role of the press in the construction of national identity 1934-1937*, p. 35.

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.”⁸

In 1949, the 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 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 Turkish music on radios. In his address to the parliament in 1934, Atatürk had noted that the music being broadcast at the time was far from being perfect and that “it is necessary to collect noble expressions describing elaborate emotions and ideas and process them according to the contemporary music norms.”⁹ Following Atatürk’s speech, the Ministry of Foreign Affairs dictated that Istanbul and Ankara radios play pieces “composed according to Western technique” instead of Turkish music. This ban continued through 1935 and into the first half of 1936. During this period, a considerable portion of the people who had been accustomed to listening classical and traditional Turkish music instead turned their antennas to the radios of Egypt, Crimea and Yerevan to be able to listen to Arabic and Armenian songs which were closer to Turkish music than Western music. Implemented in the name of modernising the society, the ban was just another example of the Turkish state’s use of communication channels as ideological apparatuses in the Althusserian sense.¹⁰ The transition to the multi-party regime did not alter this reality.

Following the termination of *Terakkiperver Cumhuriyet Fırkası*, Atatürk - who was still the president of the country - founded another opposition party in 1930 under the name of *Serbest Cumhuriyet Fırkası* (Free Republican Party). With the termination of this party shortly after its establishment, 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 (i.e. 1942 wealth tax,¹¹ 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, the close relationship it had with the USSR during the 1920s and 1930s deteriorated. In 1947, to eradicate the USSR’s influence in Turkey, the U.S.A. initiated the Marshall Plan which required Turkey to embrace democracy and free market economy. This stipulation paved the way for the formation of the Democrat Party (DP) and the transition to a multi-party system with DP’s defeat of CHP in 1950 national elections. The press, like the faction of society that brought DP to power, had

⁸ See Directorate General of Press and Information, official website, available at: <http://www.byegm.gov.tr/sayfa.aspx?Id=61> (last visited on 29/10/2010).

⁹ G. Gökçe, “Sanat Kurumlarının Oluşmasında Atatürk’ün Rolü”, 18 *Atatürk Araştırma Merkezi Dergisi* Cilt: VI (1990).

¹⁰ L. Althusser, “Ideology and ideological state apparatuses” in L. Althusser (ed.), *Lenin and philosophy and other essays* (1971) 121.

¹¹ 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 discriminate 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 in 15 March 1944. See A. Aktar, *Varlık Vergisi ve ‘Türkleştirme’ Politikaları* (2000), at p. 135-153.

great expectations, particularly concerning the democratisation of the country. Among the first issues the DP addressed was the freedom of press. On 15 July 1950, a liberal press law was adopted, soon followed by a law granting journalists social rights. Yet at the same time, legal amendments designed to increase government control over the press and universities were passed in 1953. 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.¹² The DP rule between 1956 and 1960 brought legal restrictions on freedom of the press and the closure of the journalists' union. In this period, radio turned into a political apparatus of the government. The names of citizens who joined the Homeland Front, DP's political extension, were announced on a daily basis on the radio to create a surveillance effect on society. In short, radio became a tool for "manufacturing consent"¹³ and monitoring the society.

After the 27 May 1960 coup d'état which brought down DP, the most significant development in mass communications in Turkey was the beginning of television broadcasting in 1967. Public TV broadcasting through the Turkish Radio and Broadcasting Corporation (TRT), established in 1964, gradually became the most innovative and effective means through which the state reached the masses. The TRT television channels, similar to TRT radio channels, began their broadcasting every day with the national anthem. The news headlines followed the order of state protocol, i.e. news related to the President preceded those on the Prime Minister, causing TRT reporting to be labeled as "protocol reporting". TRT started permanent broadcasting in 1974. With the reduction of the price of TV sets, the number of houses with TVs 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 governments¹⁴ and CHP. Military regimes established after each coup d'état also sought to seize the entire media establishment. September 12th, 1980 coup, Turkey's third, was the first time when a military intervention was announced to the public via TRT. It also marks the beginning of the structural transformation of the political and social life in the country that stretches to present day. This period was characterised by attacks on opposition groups and by 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

¹² One of the prime examples of this were the incidents of 6-7 September 1955, when government instigated violent mobs attacked unarmed non-Muslim civilians and their properties and institutions in Istanbul. The incidents were triggered off by a news in *Istanbul Ekspres Newspaper* that Atatürk's house in Thessaloniki was bombed. At a time when relations with Greece were strained over Cyprus, this news incited attacks on non-Muslim minorities, which were 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 news was a product of yellow journalism. See D. Güven, *Cumhuriyet Donemi Azınlık Stratejileri ve Politikaları Bağlamında 6-7 Eylül Olayları* (2006).

¹³ E. S. Herman and N. Chomsky, *Manufacturing consent: The political economy of the mass media*, (1988).

¹⁴ The coalition government established on 31 March 1975 by Suleyman Demirel, constituted of the right-wing political parties in the parliament, was later named as the "First National Front Government." The Second National Front Government was formed in 1977, again by Suleyman Demirel, and remained in power until 1978.

and ready to sacrifice their individuality in the name of the “nation”. The media, especially the television, was the most important tool for realising this aim and 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 longitude of military tutelage over society.

The final instance of military regime came to an end with the coming to power of *Anavatan Partisi* (Motherland Party- ANAP) under the leadership of Turgut Özal after the national elections in 1983. This marked the beginning of the “liberalisation process” in Turkey. ANAP transformed the economy through free-market reforms. While political and social factors mainly shaped the media in 1980s, “economical factors have become the determinant afterwards.”¹⁵ The private entrepreneurship encouraged by ANAP’s liberal economy 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 companies.¹⁶

The launch of the first private television, “Magic Box” (which was later renamed as 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 the existence of 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 TV created a dynamic atmosphere with 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 in 1992 engendered the diversification in Turkey’s media. Consequently, many issues that were previously considered taboos became debatable. After the 1980 coup d’etat, many hitherto repressed and silenced groups in society emerged in the forefront of Turkey’s public sphere, thanks to the dynamism in the media. Throughout this period, the highest ratings were received by televised debates between public intellectuals who delved critically into the recent history of the country until early hours of the morning.

Turkey’s economic transformation during the 1980s gave rise to the emergence of very strong media holdings in the next decade. The big capital penetrated from these holdings into the media, which left no room for smaller media groups in the sector. The media holdings’ organic relations with political power

¹⁵ E. Dağtaş, “Uniformity of media in Turkey: Tabloid journalism accompanied by racy popular culture”, Paper presented at the Fifth International Congress on Culture and Development, Havana International Conference Center, Havana (2007), at p. 2.

¹⁶ Ş. Çağlar and S.Ç. Mengü, “Media groups and their market shares in Turkey during globalization”, XI Revista de Economía Política de las Tecnologías de la Información y Comunicación n. 2 (2009), at p. 2.

caused a cross monopolisation¹⁷ in the industry.¹⁸ 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 broadcasting 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 sensational news journalism. After the passing of the new broadcasting legislation in 1994, concentration in the media sector intensified and commercial media content increasingly became more banal.¹⁹ 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.

At the end of the 1990s, the media that has for long been controlled by the state evolved into a tool of manipulation for private capital groups for their political and economic benefits in their relation with governments. The most important consequence of this media model has been the "post-modern military coup" of 28 February 1997. Mainstream media organisations, prompted by Turkey's military establishment, published fictitious news/content on the rise of Islamism. This catalysed public anxiety over the longitude of the secularist regime and created public support for the toppling of the *Refah-yol* (Welfare-path) coalition government between the center right True Path Party (DP) and the Islamic conservative Welfare Party (RP). During 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 faced 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 Candar and Mehmet Ali Birand, two well-known journalists working for mainstream media, also became the targets of the fictitious news leaked by the Chief of Staff which alleged that they were on the payroll of the Kurdistan Workers' Party (PKK). Based on false documents fabricated by a senior member of the Turkish Armed Forces allegedly based on the testimony of a PKK militant-turned-informant, both journalists were labelled as "PKK agents" by the mainstream media, which did not feel the need to check the accuracy of the information leaked from the military. Journalists implicated in these fabrications were dismissed by the media patrons, while a leading human rights activist also branded as a PKK agent survived an assassination attempt.²⁰

The 1999 national elections resulted in the creation of a coalition government between the Democratic Leftist Party (DSP), Motherland Party (ANAP) and National Action Party (MHP). Meanwhile, RP had an internal schism between the "traditionalists" and the "reformists". The reformist members, who defined themselves as "conservative democrats", founded *Adalet ve Kalkınma Partisi* (Justice and Development Party- JDP), which came to power in 2002. Notwithstanding its

¹⁷ Cross monopolisation 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 making profit.

¹⁸ Dağtaş, "Uniformity of media in Turkey: Tabloid journalism accompanied by racy popular culture", p. 3.

¹⁹ A. Aksoy and K. Robins, "Peripheral vision: Cultural industries and cultural identities in Turkey", A 29(11) *Environment and Planning* 1997 (1997), at p. 52.

²⁰ The PKK informant would years later deny that he has ever made such statements in his testimony.

Islamist roots, JDP 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 legitimacy itself”.²¹ JDP’s pro-European stand suggested that the “historical mission” of the establishment in Turkey has 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 civilisations” was no more 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.

The economic crises of November 2000 and February 2001 had serious repercussions for the media industry because some of the media companies also invested 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.²² 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 were taken over by the Saving Deposit Insurance Fund (*Tasarruf Mevduatı Sigorta Fonu- TMSF*), making TMSF a big player in the media industry in 2004.²³

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 fundamental rights and freedoms and implied not only fundamental legal changes but an overhaul of the prevalent mindset and dominant culture in the media. A crucial aspect of the democratisation process was the redesign of the relations between the military and the civilian actors in politics, media, academia, judiciary, bureaucracy and civil society. The prominence and indeed domination of the military in all walks of social life and political structure in Turkey made the process of change painful and difficult. 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 crucial actors of the political transition in the country. The Turkish media, especially the mainstream media, was caught in between the state that depended on it for the preservation of official ideology and the society which, as never before, started demanding a truly independent and unbiased media.

3. The 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. This shows that Turkey has quite a young reader population; the majority of readers are between the ages of 16

²¹ U. Cizre, *Secular and Islamic politics in Turkey: The making of the Justice and Development Party* (2008), at p. 8.

²² B. Sümer, *The impact of Europeanisation on policy-making in Turkey: Controversies, uncertainties and misfits in broadcasting policy (1999-2009)*, Phd Thesis, University of Westminster (2010), at p. 115.

²³ *Ibid.*

and 34.²⁴ According to the United Nations Development Programme, the rate of literacy in Turkey is 88.7%²⁵ and compared to its population, the total number of readers (of any kind of written press) is considered to be low. Although 60% of the people in Turkey do not read a newspaper regularly, 90% watch TV on a daily basis.²⁶ Turkey, with 5 hours daily viewing, has one of the highest TV audience ratings in the world.²⁷ According to a report which surveyed TV viewing during the first three months of 2009, the serials and the cooking shows are the most popular programs among the Turkish people.²⁸ News channels and discussion programs have high ratings as well. Besides, Turkish people perceive the TV channels as one of the most reliable sources of information.²⁹

According to the recent data of the Advertisers' Association, advertising spending 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.³⁰ 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 (7.03%); internet (6.59%); radio (2.78%); and cinema (1.31%).

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

3.1 Print and broadcasting media

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

Established in 1980, Doğan Media Group is the biggest media holding 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 paper 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. As

²⁴ Barış, "The Turkish media landscape", p. 289.

²⁵ United Nations, "Adult literacy rate (% aged 15 and above), 2007", available at: <http://hdrstats.undp.org/en/indicators/89.html> (last visited on 29/10/2010).

²⁶ H. Nalçaoğlu, "Türkiye'yi Anlama Kılavuzu: Türkiye'de Yaşam Tarzları ve Eğilimler", Ipsos KMG Research Report (2010), at p. 79.

²⁷ G. Terzis (ed.), *European media governance: National and regional dimensions*, (2005), at p. 14.

²⁸ Report of the Radio and Television Supreme Council (Radyo ve Televizyon Üst Kurulu- RTÜK), available at: <http://www.dorduncukuvvetmedya.com/rtukun-arastirmasi-izleyici-en-cok-hangi-programlari-izliyor.html> (last visited on 29/10/2010).

²⁹ Nalçaoğlu, "Türkiye'yi Anlama Kılavuzu: Türkiye'de Yaşam Tarzları ve Eğilimler", p. 77.

³⁰ "Turkey: Advertising spending rises by 36.3 percent in first half of 2010", Financial, 06/08/2010, 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 29/10/2010).

for a digital platform, the group has D-Smart, which includes many thematic and pay-watch channels. Moreover, the group provides access for all of the channels on Türksat satellite. It has activities in the field of cinema and advertising 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.³¹ Doğan runs its own news agency, DHA, and publication house, Doğan Kitap. In the merchandising sector it has D&R.

Zaman has been the most circulated daily in Turkey since 1986. It is also published internationally in Australia, the United States, Azerbaijan, Bulgaria, Germany, Romania, Kazakhstan, Kyrgyzstan, Macedonia, and Turkmenistan. Zaman and the English language daily Today's Zaman were founded 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 organised and close knit conservative community which operates Turkish instruction schools and universities across the world and invests internationally in various sectors of the economy.

Doğuş Media Group was founded in 1999. Its first channel was the news channel, NTV. In addition, the Group is working with international brands such as CNBC, NBA, Billboard, Virgin, and National Geographic.³²

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 1995.³³ Having liberal and left-wing columnists who are outside the Islamic community the paper has emerged from, the paper "offers relatively broader perspective especially about the controversial issues".³⁴ Since 2007 it runs 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 holding entered into the media sector. In September 2007 Ciner Publishing Holding was founded under which Habertürk.com, Habertürk Radyo, Habertürk TV, Ajans Habertürk and Gazete Habertürk are running today. The holding has international TV and radio channels and journals such as Bloomberg TV and Bloomberg HT Radyo. The Turkish language editions of Newsweek, FHM, Marie Claire Maison, Marie Claire, Food and Travel, GEO, and Mother and Baby also belong to the Ciner Group.

Çukurova Holding currently publishes the Akşam, Güneş, Tercüman and Alem newspapers and owns the Show and Sky Turk TV stations. The leader of the GSM sector Turkcell is owned by the Çukurova Holding and Digiturk which broadcasts the national football league matches is another important investment of the group.

The Turkuvaz Group belongs to Çalık Holding. In December 2007 the group bought the Merkez Medya Group from Ciner Holding and so became the owner of the newspapers Yeni Asır (Izmir), Sabah, Takvim, Günaydın and Pas Fotomac, the

³¹ These three media groups together publish 22 magazines in Turkey. See Barış, "The Turkish Media Landscape", p. 291.

³² Ibid.

³³ Ibid., p. 62.

³⁴ Ibid., p.291.

weeklies Bebeğim ve Biz, Sinema, Home Art, Yeni Aktuel and Gobar Enerji, as well as the TV station ATV.³⁵

According to DGPI, as of 2008, there are 2,459 newspapers in Turkey, 55 of which are national, 23 are regional and 2,381 are local.³⁶ “The print media in Turkey are dominated by national newspapers which have a daily circulation of between 4.5 and 5 million. Regional newspapers do not play an important role, though the big national newspapers have supplements for some of the regions (Aegean, Ankara, Black Sea etc.)”.³⁷ 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 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, namely the Yeni Asır, which is known on the national level. The press, with a few exceptions, is characterised by statist and nationalist rhetoric because of its historical ruins that were detailed in the previous sections.

DGPI 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 of the list.⁴⁰ Public broadcaster TRT has 5 national television channels: TRT 1 (general), TRT 2 (culture and art), TRT 3 (youth channel with sports and music programs and broadcasts live from the Turkish National Grand Assembly at specific hours) and TRT 4 (education). TRT also has a regional channel (TRT-GAP) for the south-eastern region of Turkey and two international channels (TRT-INT for Europe, USA and Australia; TRT-AVRASYA for Middle Asia and Caucasus).⁴¹ The most significant change concerning state television TRT in the European Union accession process has been the launch of 24 hours Kurdish language broadcasting on January 1st, 2009. TRT 6 became the first TRT channel ever to exclusively broadcast in a language other than Turkish.

The number of private radio channels currently broadcasting in Turkey is around 1,087 and 100 of them are also available on cable. Of these 36 are national,

³⁵ European Stability Initiative, “Turkey – Armenia manual: Information and contacts to persons and institutions working on Turkey-Armenia relations” (2010), available at: http://www.esiweb.org/pdf/esi_picture_story_-_turkey_armenia_manual_-_august_2010.pdf (last visited on 29/10/2010), at p. 63.

³⁶ “Türkiye'deki gazete, dergi, radyo ve televizyonların sayısı, Basın Yayın ve Enformasyon Genel Müdürlüğünün kayıtları ile gün yüzüne çıktı”, MedyaRadar, 02/10/2008, available at: <http://www.medyaradar.com/haber/gundem-21476/turkiyedeki--gazete--televizyon--radyo-ve-dergi-sayisi-ne-kadar--peki-kac-iletisim-fakultesi-var--iste-cok-iliginc-rakamlar.html> (last visited on 29/10/2010).

³⁷ European Stability Initiative, “Turkey – Armenia manual: Information and contacts to persons and institutions working on Turkey-Armenia relations”, p. 60.

³⁸ “Eylül ayının en çok izlenen kanalı hangisi oldu?”, gazeteciler, 01/10/2010, available at: <http://www.dorduncukuvvetmedya.com/gectigimiz-haftanin-gazete-satis-rakamlari-belli-oldu.html> (last visited on 29/10/2010).

³⁹ “Türkiye'deki gazete, dergi, radyo ve televizyonların sayısı, Basın Yayın ve Enformasyon Genel Müdürlüğünün kayıtları ile gün yüzüne çıktı”.

⁴⁰ “Eylül ayının en çok izlenen kanalı hangisi oldu?”.

⁴¹ Barış, “The Turkish media landscape”, p. 292.

100 are regional and 951 are local radio stations. TRT also has four national radio channels with different broadcasting themes: Radyo 1 (general), Radyo 2 (TRT-FM, native classical, folk and pop music), Radyo 3 (primarily classical music and also jazz, polyphonic and western pop music, broadcasts news in English, French and German) and Radyo 4 (pop music). TRT's international radio service *Türkiye'nin Sesi*/The Voice of Turkey broadcasts in 26 languages. TRT also has ten regional radio stations.⁴²

Additionally there are 14 weeklies selling around 110,000 copies combined. Of these, the four best selling weeklies are *Aksiyon* (founded by Feza Group), *Yeni Aktüel* (Turkuaz Group), *Newsweek* and *Economist*. As a result, the circulation of the weeklies is quite low compared with the dailies.

3.2 News agencies

In Turkey there are a total of 24 news agencies. The official news agency *Anadolu Ajansı* (Anadolu Agency- AA), operating since 1920, is the oldest and the primary source for the press. AA has 41 offices in Turkey and 26 abroad.⁴³ *Doğan Haber Ajansı* (Doğan News Agency-DHA) is the news agency of Doğan Holding and was founded in 1999. It currently has 30 domestic and 19 international offices. The Feza Group has *Cihan Haber Ajansı* (Cihan News Agency- CİHAN), which was established in 1994. The agency has 6 domestic offices. It provides an average of 450 text stories, 400 photos, 180 photo stories and 85 video stories per day. CİHAN also provides news and services in English and Arabic.⁴⁴ *İhlas Haber Ajansı* (İhlas News Agency- İHA) is owned by İhlas Holding. It has 145 offices in Turkey and abroad. *Dicle Haber Ajansı* (Dicle News Agency- DİHA) was founded in 2002 with headquarters in Istanbul, 5 other offices in Turkey and one office in Iraqi Kurdistan. DIHA offers news in Turkish, Kurdish and – occasionally – English.

3.3 Online media

The Internet emerged in Turkey in 1993, for the first time on university campuses and soon after in offices, businesses and homes. According to the Turkish Statistical Institute's survey in April 2010, the access rate household internet use has increased from 30 to 41.6% within one year. Men between the ages of 16-74 amount to 53.4% of the total population while women have a using rate of 33.2%. Internet is mostly used for the purpose of sending e-mails and shopping.⁴⁵ Internet cafes played a massive role in proliferating the use of the internet in Turkey. Many segments of the Turkish society, who have never used a computer or the internet, were introduced to this technology via internet cafes.

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

⁴² Ibid., p. 293.

⁴³ Ibid., p. 295.

⁴⁴ Ibid.

⁴⁵ "İnternet Kullanım Araştırması Sonuçları", *Iv.kuvvetmedia*, 18/08/2010, available at: <http://www.dorduncukuvvetmedya.com/internet-kullanim-arastirmasindan-cikan-dikkat-cekici-sonuclar.html> (last visited on 29/10/2010).

phone usage is still very limited and highly expensive for most Turkish people. On the other hand, the ratio and method of internet usage in Turkey differs from region to region. Whereas the use of internet is very high in the “central-west”, it declines towards the “center-east”. Internet use for access to news, and research and educational purposes is lower compared to the use of game, pornographic and friendship sites.

The use of social media is limited due to the lack of requisite technological infrastructure, yet it is quite popular especially among the young people. The use of mobile phones for access to social media sites is higher than that of the internet, particularly among youth. Facebook, twitter and personal blogs are the most common means of using the social media. On the other hand, access to Youtube continues to be blocked since 2007 due to videos which were found by a Turkish court to be insulting of Atatürk. While small enterprises especially in the agricultural sector use the social media in order to sell their products and compete with the gigantic companies, tourism companies consider the social media as a way to reach out to international customers in a short and the cheapest way.

3.4 Minority and alternative media

There are few, yet quite established, minority newspapers run by non-Muslim communities in Turkey. The daily *Iho* and the weekly *Apoyevmatini* address the Greek Orthodox community located in Istanbul. The Jewish weekly *Şalom* was established in 1947. It was published in Ladino until the 1980s. When Ladino could no longer be transferred to the new generation Jews, the paper switched to Turkish, leaving only one page in Ladino. It has a circulation of nearly 3,500 copies and has 500 subscribers abroad. It has a large staff with 40 authors and 15 employees. The Armenian minority has four newspapers: *Jamanak*, *Marmara*, *Lraper* and *Agos*. *Jamanak* is the oldest Armenian newspaper, published since 1908, and *Marmara* is the second oldest, since 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. *Lraper* 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 to broader segments of society. Originally established with the goal of breaking the walls between the Armenian and Turkish communities in Turkey, *Agos* is published predominantly in Turkish with only a few pages in Armenian. Following the assassination of its editor-in-chief Hrant Dink in 2007, the paper increased its efforts to reach out to the broader public in Turkey by increasing its Turkish pages, employing new columnists from outside the Armenian community, and adding new sections. The paper is popular among dissident political groups as well as those that want to support the paper in protest to Dink’s murder, and has Armenian, Greek Orthodox, Turkish, Kurdish, Sunni and Alevi staff and columnists. *Agos* started with a circulation of 2,000. By the time of Hrant Dink’s death it had reached around 6,000. Dink’s successor until June 2010 was Etyen Mahçupyan, a reputable public intellectual, and since then Rober Koptaş, who has been a columnist at *Agos* 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 safeguard 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, weekly Welat was launched in Istanbul on 22 February 1992. Subsequently closed down by courts, the weekly changed its name to Azadiya Welat in 1996. It has been publishing since, albeit with interruptions due to court-imposed bans. In 2003, the paper moved its headquarters from Istanbul to Diyarbakir and in 2006 it 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 only a few examples of alternative media organs that are not owned by any of the big media groups and that emphasise objectivity and impartiality in reporting as well as independence from the state, military, media industry as well as any power structure in Turkey. The most notable alternative media organs are the daily Taraf, the online Bianet and Açık Radio.

Taraf is owned by Alkım Kitapevi, a bookshop chain which is not a part of the gigantic media outlets. Although praised in Islamist circles, Taraf's stance can be described as neither pro-AKP, 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 AKP circles, it has also criticised the government harshly particularly on the Kurdish question, freedom of the press and police brutality. The paper is a coalition of secular and atheist intellectuals, many with leftist backgrounds, as well as religious writers from the Islamic community. Although its circulation is relatively low, the paper has dominated Turkey's political agenda ever since it was launched in 2007 through publishing confidential documents seemingly leaked by military personnel revealing a series of failed coup attempts by senior military leaders against the JDP government.⁴⁶

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 reports on freedom of expression violations, monitors newspapers' coverage of human rights, extensively covers women's and children's rights and monitors the media's compliance with the ethical codes of the profession.⁴⁷

Açık Radio went on air in 1995 and is an exceptional and independent radio channel which is outside the media establishment. It is a collective where all shareholders have equal shares and is quite close to a non-profit organisation. Its programming is based on citizen/audience participation and it relies on the donations of its listeners collected through biannual drives broadcasted alive on the radio. Açık Radio is a defender of the environmentalist movement in Turkey and has a multi-cultural and liberal stance.

⁴⁶ O. Ogret and S. Martens, "Pressing for freedom: Two centuries of ceaseless struggle in Turkey", *Hürriyet daily news* (2010), available at: <http://www.Hurriyetaidailynews.com/n.php?n=part-iii-requiring-a-gut-feeling-alongside-a-lot-of-guts-2010-06-07> (last visited on 29/10/2010).

⁴⁷ Barış, "The Turkish media landscape", p. 299.

4. The media regulatory framework in Turkey

Economic liberalisation in the 1980s and the EU accession process in the 2000s implied and required the restructuring of the media sector and the undertaking of legal reforms to enhance media independence, pluralism and freedom in Turkey. Successive governments since 1999, when Turkey was officially declared as a candidate for EU accession, in particular the Justice and Development Party which has been in single-party government since 2002, have sought to harmonise the national legal framework with European standards without compromising the official ideology of the state. A further concern has been the ensuring of the continuation of government control over the media. The attempt to simultaneously achieve these mutually exclusive goals has created tensions and contradictions in the development of Turkish media policy and the regulatory framework, which is a characteristic feature of Turkey's reform process in recent years.

4.1 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. Three principal types of actors develop policies for the media and regulate the sector: executive bodies, independent regulatory agencies, and self-regulatory professional media organisations. While all three groups of actors 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 the competence over the Radio and Television Supreme Council (*Radyo Televizyon Üst Kurulu-RTÜK*); DGPI under the Office of the Prime Ministry has mandate over the press, including the accreditation of the press for the purposes of relations 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 broadcasting.

There are few independent bodies that monitor the media from within the profession. *Basın Konseyi* (Turkish Press Council), established with the initiative of a group of journalists in 1998 for the self-regulation of the press' 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 started to select ombudsmen among their columnists or editors to respond to readers' concerns and critiques and to monitor the compliance of their paper with ethical rules of journalism. However, newspapers exempt from ombudsmen's 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: *Türkiye Gazeteciler Cemiyeti* (Journalists Association of Turkey), *Türkiye Gazeteciler Federasyonu* (Federation of Journalists), *Çağdaş Gazeteciler Derneği* (Progressive Journalists Association), *Gazeteciler ve Yazarlar Vakfı* (Foundation of Journalists and Writers), *Medya Derneği* (Association of the Media), *Ekonomi Muhabirleri Derneği* (Association of Economy Reporters), *Foto Muhabirleri Derneği* (Association of Photo Reporters), *Parlamento Muhabirleri Derneği* (Association of Parliamentary Reporters) and *Basın Konseyi* (Press Council). There are two journalist unions called *Türkiye Gazeteciler Sendikası* (Union of Journalists in Turkey-TGS) and MEDYA-SEN (DİSK) but their prominence is low.

The Journalists Association of Turkey represents 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 that are supportive of the AKP 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 to the development of media policy in Turkey.

4.2 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: the Press Law for the print media; Law no. 3984 on radio and television (for private broadcasting); Law no. 2954 on TRT (for public broadcasting); Law no. 5651 for the internet and mobile communication (“the Internet Law”); Law no. 5809 on electronic communications; Law no. 406 on telegram and telephone (“the Telecommunications Law”). Law No. 2813 on wireless and Law No. 3348 establishing the Ministry of Transportation also include provisions regulating the telecommunications industry.

4.2.1 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 STAR 1 TV channel, which broadcasted via satellite from Europe. With the emergence of hundreds of private broadcasting companies within a matter of few years, a chaotic situation emerged in the absence of a 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 current Radio and Television Law (no. 3984), which replaced the 1983 law (no. 2954). With this legal amendment, the name of the regulatory body was changed from the “Radio and Television High Council” to the “Radio and Television Supreme Council” (RTÜK).

RTÜK was established in 1994 for regulating private radio and television as well as monitoring their compliance with Law no. 3984. Its main regulatory function was to issue broadcasting permits and licences and assigning frequencies. Its monitoring function entails enforcement powers against private broadcasters that do

not comply with the law. RTÜK's mandate does not extend to TRT, which is subject to a separate law, Law no. 2954, which applies solely to the public broadcasting agency.⁴⁸ Its nine members are elected by the parliament among candidates nominated by political parties represented at the parliament. Individuals related to RTÜK members up to the 3rd degree cannot be shareholders, managers or partners of radio and TV companies. While RTÜK defines itself as "an autonomous and impartial" public body,⁴⁹ its composition "is considered to be profoundly influenced by the political considerations of governments and, thus, substantially undermining the Council's claim of impartiality."⁵⁰ The second ground of criticisms against RTÜK is the punitive powers 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. The agency's repeated attempts from 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 the parliament.⁵¹ As part of the restructuring of telecommunications services, in 2002, HYK and Türk Telekom have been made partners of RTÜK "to speed up the process of allocating the frequencies and to end the chaos in an unregulated broadcasting market."⁵² Accordingly, frequency planning has been 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."⁵³ The commencement of frequency auctions was halted due to 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".⁵⁴ While Turkey has committed to the EU to carry out the frequency allocations in 2011, there is no progress on this front and private radio and television broadcasters continue to operate without licences.

In the meantime, in 2005, HYK decided not to pursue frequency allocations any longer since Turkey had already started to plan the switchover to the digital. While RTÜK had been planning to switchover to digital since 2002, the process halted due to internal rifts between the public broadcasting TRT and private broadcasters.⁵⁵

While 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

⁴⁸ Barış, "The Turkish media landscape", p. 295.

⁴⁹ See RTÜK, official website, available at: http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=80775e05-caec-4a48-bac5-39fd6375da3b (last visited on 29/10/2010).

⁵⁰ Barış, "The Turkish media landscape", p. 296.

⁵¹ For a detailed discussion, see Sümer, *The impact of Europeanisation*, pp. 113-115 and 118-125.

⁵² Barış, "The Turkish media landscape", p. 295.

⁵³ *Ibid.*, p. 295-296.

⁵⁴ *Ibid.*, p. 296.

⁵⁵ Sümer, *The impact of Europeanisation*, p. 144.

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 the performance standards for manufacturing of systems and equipments to be used in telecommunications sector. Tasked with monitoring compliance with Law no. 3984, BTK has the power to notify relevant bodies on non-compliance and impose sanctions when required; ban access to the internet on grounds, *inter alia*, of obscenity and child abuse; and take measures for consumer protection.⁵⁶

HYK was established under Wireless Law no. 2813 of 1983. Presided by the Prime Minister or a minister he appoints, the high council 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 for the review and approval of communications policies. The Telecommunication Authority (*Türk Telekom*), established after the separation in 1995 of postal and telecommunications services hitherto provided together 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 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 Uydu Haberleşme Kablo TV, which was established in 2004.⁵⁷ The privatisation of Türk Telekom was finalised on 2005 with the sale of 55% of its shares to Oger Telecoms Joint Venture Group.

4.2.2 Ownership regulations

The primary legislative motive in the adoption of the Broadcasting Law in 1994 was “to carry out the frequency allocations as soon as possible to regulate the *de facto* operations of the broadcasters, not regulating ownership.”⁵⁸ With RTÜK's failure in its repeated attempts to undertake frequency allocations due to the rifts between private broadcasters and the government, “the mushrooming of commercial broadcasters got out of control and the loopholes in media ownership regulations enshrined in law were abused by the media proprietors to increase their power.”⁵⁹

Article 29 of the Broadcasting Law regulates media ownership in Turkey. It bars, *inter alia*, political parties, associations, unions, professional associations, foundations, local governments, companies from owning media or partnering with media enterprises. Cross-media ownership and foreign ownership is limited to 20%, and foreign investors are barred from having a share in more than one media enterprise. Individuals who have a 10% share or more in a broadcasting company are precluded from entering into public tenders.

⁵⁶ See Information and Communication Technologies Authority, official website, available at: http://www.tk.gov.tr/Eng/abo_boa/func_authority.html (last visited on 29/10/2010).

⁵⁷ The amendments were made pursuant to Law no. 5189 of 16 June 2004 and Law no. 5335 of 21 May 2005. See, Türk Telekom, “legal”, available at <http://www.turktelekom.com.tr/tt/portal/About-TT/Company-Profile/Legal/> (last visited on 29/10/2010).

⁵⁸ Sümer, *The impact of Europeanisation*, p. 130.

⁵⁹ *Ibid.*

And yet, the largest media groups mentioned earlier 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 the media ownership”.⁶⁰

4.3 Content regulation

Turkey lacks a unified, coherent and concise content regulation for the media. There are multiple laws and regulations governing different sectors of the media. The overregulation of the media sector has been exacerbated in the EU accession process through multiple “reform packages” hastily adopted by the parliament without having gone through a process of deliberation and consultation with civil society and the media. Each package law carries identical titles which give no indication of their content⁶¹ and contains multiple amendments to various laws, ranging from laws from the criminal code to laws governing the media, and from laws governing the environment to financial regulation. The patch work 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.

4.3.1 Constitutional framework

In recent years, relative progress has been achieved in reforming the constitutional provisions on the media. 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 national security, public order, and the integrity of the state with its nation and territory. In case of the violation of these restrictions by 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 rights of others. Under Article 29, there is no requirement to receive prior permit to publish periodicals and non-periodicals. Article 133 guarantees the right of private companies to establish and operate radio and television, subject to conditions laid out in Law no. 3984.

4.3.2 Legislative framework

There are two principal types of laws regulating the content of the media 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.

⁶⁰ S. Papathanassopoulos, *The Mediterranean/Polarized pluralist media model countries*, in G. Terzis (ed.) *European media governance: National and regional dimensions* (2005) 191, at p. 194.

⁶¹ Typically, the names of these reform packages are “Laws on the Amendment of Certain Laws”.

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 the freedom of 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 in the constitution, the law also limits the freedom of the press in the name of "the protection of the independence and impartiality of the judiciary".⁶² 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 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. This provision is being used against editors who have published Turkish translations of foreign language books on controversial political issues, such as Ragip Zarakolu who has been prosecuted for having published books recognising the Armenian Genocide of 1915.

One main difference of the new Press Law is the requirement imposed on printing companies to notify the prosecutor in order to receive publishing permission and to submit two signed copies of each issue to the prosecutor, who is granted the power to seize papers. Under the previous press law, district governors were designated as the authority to notify. The shift of powers from the executive to the judicial branch is potentially restrictive of freedom of press since it enables courts to open cases against printing companies which fail to comply with the red tape. Courts do not refrain from making use of their power to seize printed press on the basis of a very restrictive interpretation of freedom of press and speech.

Law no. 3984 on broadcasting respects the right of reply and rectification,⁶³ guarantees individuals' privacy of life and protects them from offences against their personality beyond the limits of criticism; prohibits broadcasts which "humiliate or insult people for their language, race, color, sex, political opinion, philosophical belief, religion, sect, and any such considerations"; outlaws incitement to hatred and hostility through discrimination; and protects women, minors and the weak against programs inciting to violence and discrimination. On the other hand, it introduces significant restrictions on broadcasting on the basis 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 the community and Turkish family structure".⁶⁴ These amorphous concepts leave a

⁶² Article 3 reads: "The press is free. This freedom includes the right to acquire and disseminate information, and to criticise, 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."

⁶³ Though, compared to the Press Law, the right of reply is held to lesser standards under Law no. 3984, which requires radio and television stations to broadcast disclaimers upon court order only.

⁶⁴ Article 4.

wide margin of appreciation 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.⁶⁵ Still, RTÜK maintains significant punitive powers, and continues to be perceived as “a ‘penalising’ body rather than a regulatory one”.⁶⁶

The agency adopts a restrictive interpretation of the law's limitation clauses and imposes disproportionate sanctions against media operators. In 2005 alone, RTÜK asked defence from 20, issued warnings to 33, suspended programs in 9 and fined 4 national television channels for having broadcasted programs “having negative effect on children”; forced a local radio station off the air for 30 days for “disseminating separatist propaganda” and “inciting hatred and enmity”; and suspended two local television channels for “undermining the state and its independence.”⁶⁷ In 2006, RTÜK relied again on Article 4 of Law no. 3984 for initially suspending for one month the broadcasting of the Anatolia's Voice radio station for playing a song about the Kurdish question and subsequently suspending it without limitation in February 2007. Similar sanctions were brought upon local media run by minorities. In August 2004, RTÜK suspended for 90 days the broadcasting of Gün TV and Can TV in Diyarbakır and Hakkari FM radio station in Hakkari, which are provinces predominantly populated by the Kurds.

While injunction of broadcasting is only possible by court order, exceptions are made to this rule where there is a threat to national security and a serious risk of disruption of public order, in which case injunction is possible with executive order (of the prime minister or a minister). Where an order of injunction is made, broadcasters have the right of appeal to the Court of Cassation, which is required to issue a ruling within 48 hours. Courts frequently resort to their injunctive powers under the law. In *Özgür Radyo v. Turkey*, the European Court of Human Rights (ECtHR) found the warning and licence suspensions imposed on a pro-Kurdish radio station to be an infringement of freedom of expression. The Court held 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.

Public broadcasting falls outside the mandate of RTÜK and is regulated by a separate law, i.e. Law no. 2954 on the TRT. The standards of public broadcasting outlined in the TRT Law are quite similar to those laid out in Law no. 3984 on private broadcasting: 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 the national security politics and 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.⁶⁸

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

⁶⁵ Law No. 4756 of 21 May 2002 and Law No. 4771 of 9 August 2002.

⁶⁶ Sümer, *The impact of Europeanisation*, p. 135.

⁶⁷ Barış, “The Turkish media landscape”, p. 296.

⁶⁸ Barış, “The Turkish Media Landscape”, p. 296.

avoidance from any engagement with controversial issues.”⁶⁹ In recent years, however, there has been a considerable change in TRT’s broadcasting policy following AKP’s coming to power. Political issues such as Cyprus, relations with Armenia and the Armenian genocide, the Kurdish question and the army’s intervention into politics have started to be discussed and debated on TV 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 in the country 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 TV for being too close to and partial towards the government and for not standing at equal distance to all political parties.

The Internet Law (no. 5651) was prepared by BTK and entered into force on 23 May 2007.⁷⁰ The law regulates all content on the internet, without making a distinction between traditional press content online and broadcasting online, including the social media. It lays out the obligations and responsibilities of content, space, access and collective use providers as well as internet crimes. The law identifies the following eight internet crimes: encouraging suicide; sexual abuse of children; facilitation of use of drugs or stimulants; provision of substances that are dangerous for health; obscenity; prostitution; gambling; sports betting and games; and crimes regulated in the 1951 Law no. 5816 on Crimes against Atatürk. Courts have unlimited powers to restrict access to the internet in the name of preventing these crimes.⁷¹ In an internationally notorious incident of internet censorship, an administrative court made use of this power to ban Youtube in January 2008.

A relevant law is the 2004 Law on Information, which requires public institutions to respond citizens’ queries within 15 days. Citizens have the right to apply to administrative courts where this rule is not obeyed. Authorities may decline to disclose the requested information on grounds of “state secrets”.

Indirect content regulation

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

⁶⁹ Ibid.

⁷⁰ Law on the Regulation of Broadcasts on the Internet and on the Fight against Crimes Committed through the Internet, no. 5651 of 4 May 2007.

⁷¹ “Upon the decision of judicial authorities, i.e. Republican prosecutors and courts, the Presidency of Information Technologies Institution (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”.

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 disobedience with 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 of the people to disobedience with the law (Article 217). The sentences under Articles 213-217 and 299 are increased by half and one third, respectively, where the one of the offences is committed through the press or the media.

The restrictive nature of the Penal Code has been taken to the ECtHR which found, in the *Düzgören* and *Ergin* group of cases, the conviction under Article 318 of journalists for having published statements or distributed leaflets considered to incite the abstention from 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 press. Article 6(2) makes it an offence to print or publish declarations or leaflets of terrorist organisations. 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 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 organisation, 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 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.⁷²

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*. In its judgment of 20 October 2009, 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 of 15 June 2010 in the case of *Turgay and Others*,⁷³ the ECtHR noted in particular that

⁷² Constitutional Court, decision no. 2009/90, Official Gazette of 26 November 2009. In its judgment, the Court pointed out the public interest in combating with terrorism: "...taking 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."

⁷³ ECtHR, *Turgay and Others v Turkey*, nos 8306/08, 8340/08 and 8366/08, judgement of 15 June 2010.

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.

Countless journalists have been prosecuted under the Anti-Terror Law for having disclosed and published the names of public officials engaged in fight against terrorism, made the propaganda of the terrorist organisation and published the statements or declarations of the terrorist organisation. Two most recent examples of the implementation of the above mentioned laws concern the weekly *Nokta* and *Express* magazines. The incidents that eventually resulted in the closure of *Nokta* in 2007 started with the magazine's publication on 8 March 2007 of the classification by the Chief of General Staff of journalists and media organs on the basis of their accreditation. 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 article 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. Following the publication of this article, 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 repetitive requests for the inclusion of the coup attempts into the case were rejected by the court. In later years, the allegations of coup attempts proved to be true, but no case was brought against the retired generals for conspiring to stage a coup. Another recent example against freedom of 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 one year and three months imprisonment and the editor of the magazine to a fine for having made "the propaganda of the terrorist organisation" in violation of Article 7 of the Anti-Terror Law.

4.3.3 Cultural and political pluralism in the media

As stated earlier, broadcasting in languages other than Turkish was prohibited until recently, exception 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 greatest impacts the EU accession process has had on the media in Turkey was the lifting of this ban and the allowing of public and private radio and TV broadcasting at the local and national level.

The 2002 and 2003 amendments to Law no. 3984 effectively paved the way for broadcasting in minority languages, without explicitly identifying the purpose of the reforms to be as such.⁷⁴ Broadcasting was allowed in "the different languages and

⁷⁴ 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.

dialects used traditionally by Turkish citizens in their daily lives”⁷⁵ 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 broadcasting 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 benefitting from the law. The selected minority languages were the Zaza and Kirmanci 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 the parliament. The 2002 regulation establishes “direct state control over the content of broadcasting, prohibits children’s programs and the teaching of minority languages, restricts broadcasting to a few hours every week, subjects decisions on the language and dialect of broadcasting and the profile of viewers to bureaucratic authorisation, requires simultaneous and subsequent translation into Turkish for TV and radio programs, respectively, and prohibits broadcasting in violation of national security, general morality and the indivisible territorial and national integrity of the state.”⁷⁶ 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 red tape. Local and regional broadcasters are required to submit RTÜK an audience profile in order to receive permits. Diyarbakır-based Gün TV unsuccessfully challenged this regulation in courts.

On 7 June 2004, TRT commenced broadcasting in the selected five languages. TV broadcasts are for 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 who perceive the reforms as an attempt by the Turkish government to deceive the international community by creating a false impression about the protection of minority media in Turkey. AKP Government’s “reforms” on public broadcasting in minority languages continued with the commencement in 1 January 2009 of public broadcasting in Kurdish at TRT 6 radio and TV stations, followed by the launch in April 2009 of public broadcasting in Armenian at TRT’s Voice of Turkey Radio.⁷⁷ While TRT has 6 exclusively broadcasts in Kurdish for 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 framework for a pluralist media through allowing broadcasting in minority languages, minority media in Turkey continues to be subject to the dual blockade of the state and the mainstream media. Surveillance by the military and the state on the one hand and harassment by the statist and nationalist mainstream media on the other often leads to a degree of self-censorship in the minority media organs. As Etyen Mahçupyan, the successor of Hrant Dink as the editor-in-chief of Agos, points out, “since we have the desire to keep Agos alive and since there is particular pressure on Agos, we implement technical auto-censorship, meaning we say what we have to say

⁷⁵ For the problematisation 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), at pp. 151-214 and p. 197.

⁷⁶ D. Kurban, *A quest for equality: Minorities in Turkey* (2007), at p. 17.

⁷⁷ The broadcasting in Armenian takes place between 7.30-8 am and 6-6.30 pm every day.

but change the way we say it”.⁷⁸ This often causes the minority media to withdraw from political debates for fear of persecution by the state as well as the mainstream media.

Turkey’s recent history is full of banal 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.⁷⁹ One of the most tragic and clear instances of state persecution of dissident journalists has been the conviction of the Armenian-Turkish journalist Hrant Dink for “having insulted Turkishness”, followed by his assassination by agents of a criminal network whose plans were known to the military and police intelligence well in advance.⁸⁰

4.3.4 Non-legal restrictions on the media: the executive and the media

The media and the judiciary are not the only to blame for restrictions on freedom of the press in Turkey. The JDP government in general and the Prime Minister Recep Tayyip Erdoğan in particular have been frequently criticised by both the Turkish media and the international community for their anti-democratic statements, conduct and policies towards the press. 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 the lawsuits he filed against the cartoonists, the Prime Minister’s intolerance against criticism seems to have not changed. This is evident, for example, in his aggressive position against the Doğan Media Group.

In September 2008, the Prime Minister appealed to the public to boycott the newspapers of the group which implicated the complicity of senior JDP officials in one of the biggest fraud cases in Germany concerning an Islamic charity organisation which was found to have embezzled charitable contributions. The Turkish press severely criticised the government for affording protection to individuals in Turkey pointed by the German court as the masterminds of this scheme, including Zahid

⁷⁸ M. Christensen, “Notes on the public sphere on a national and post-national axis: Journalism and freedom of expression in Turkey”, 6 *Global Media and Communication* (2010) 177, at p. 189.

⁷⁹ Ogret and Martens, “Pressing for freedom: Two centuries of ceaseless struggle in Turkey”.

⁸⁰ 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 first Turkish female pilot who has been the symbol of the educated-modern Turkish women, may have been an adopted Armenian orphan who survived 1915. When this news was covered in front page by *Hürriyet*, the most popular daily, a number of columnists in mainstream media reacted strongly to Dink. Finally, the Chief of the armed forces made 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 papers that the latter hated the Turks. For an excellent coverage of Dink’s life and the responsibility of the media in his murder, see T. Çandar, *Hrant* (2010).

Akman, the then head of RTÜK and the highest executives of *Kanal 7*, a pro-government TV channel. The Turkish press accused these individuals with channelling embezzled funds to Turkey and even claimed that some of the money might have been funnelled to the JDP 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.⁸¹ The JDP government's biggest conflict with the Doğan Media Group was in September 2009, when it levied a record high 2,5 billion dollars fine, which nearly corresponded to the total value of the company's assets, for tax evasion. Finally in 2010, the Prime Minister Erdoğan called on media patrons to dismiss those columnists which criticised the government's economic policies, arguing that their distorted portrayals would serve to destabilise the well functioning Turkish economy. Overall, the JDP government, in particular the Prime Minister, has performed miserably on the freedom of press, taking a harsh position against the dissident journalists and media groups.

Law no. 3984 was initially prepared on the basis of the Council of Europe's Convention on Trans-border Television. RTÜK has recently prepared a draft law amending Law no. 3984 on the basis of the EU's Directive on Audiovisual Media Services, introducing a new concept of broadcasting and paving the way to establishing digital broadcasting. The draft replaces the terms "radio" and "television" with "media services providers" and introduces "services upon demand" as a third category. If and when the draft is approved, the law will increase the share of foreign investment in broadcasting companies from 25 to 50% and enable a foreign company to partner with two national broadcasting companies. On the other hand, though the draft has aspects prepared on the basis of the EU law, it is being criticised for further restricting freedom of expression through enhancing the management and auditing powers of RTÜK and authorising it to block broadcasts.

While there is no special law on penalisation of defamation or protection of privacy, the new Penal Code introduces for the first time a number of safeguards on this issue. Article 133 prohibits wire tapping. Article 132 protects the privacy of communication, making the unlawful disclosure of communication between persons punishable by one to three years of imprisonment and increasing the sentence by half where the offence is committed through the media. Article 134 guarantees the right to privacy, increasing in case of violation the sentence by half where the act is committed through the media. The imposition of additional penalties where the offence is committed through the media shows the real purpose of the law to be deterring the coverage of contentious political issues such as the military, minorities and the Kurdish question. 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

⁸¹ *Deniz Feneri e.V.* (Lighthouse), a German-based Islamic charity organization, was found by a German court to have embezzled 58 million euros in charitable contributions mostly collected from the Turks living in Germany, at least 17 million euros of which were channelled to private enterprises within the Islamic community in Turkey. While the Frankfurt court convicted three staff of the company in Germany, it passed the ball to Turkish authorities stating that the actual masterminds of the fraud were in Turkey.

forces and the judiciary to control media content. In 2010, Turkey ranked 138th out of 178 countries.⁸²

5. Media policy and democratic politics: an assessment

Ever since the late Ottoman era, the media has always been considered to be one of the leading actors of Turkish modernisation. On the other hand, the modernisation process was a state-guided project rather than the result of a collective public demand. Thus, the Turkish media has always been in an interdependent relationship with the state. Beginning from the early republican era, modernisation has also been associated with democratisation. State modernisation was based on the assumption that the more the society was modernised, the more democratic the regime would be. The Turkish media, as both the “subject” and the “object” of this process, has until very recently stood by the state. However in recent years, particularly after the initiation of the EU process which encouraged different social groups to be more vocal and persistent in demanding democratisation, the media landscape and its traditional rhetoric began to go through a political, institutional and mentality change. While a number of reforms were carried out in the areas of press freedom, media regulation and economic liberalisation towards fulfilling the EU’s accession requirements, there remains much to be accomplished to realise media freedom, independence and impartiality. The current ownership system and structure of the media in Turkey fall far short of achieving the democratic ideals.

On the other hand, the emergence of dissident media and the internet during the past decade has provided a growing space for alternative news which cannot pass through the filters of the establishment media. This has made possible citizens’ participation in the production and dissemination of the news, a crucial contribution to the process of democratisation. However, citizens’ participation by itself is not sufficient to establish democracy in the media. Crucial in this regard is the process of “constructing citizenship”. As it happens in the Western cases, the modern state in Turkey aims to create “citizens” by the mediation of education. Apart from the education, communication was another apparatus for the state in order to reach the masses and make them “ideal/proper citizens” under its control. So the Turkish national citizenship has been figured as an institution of the republican regime in which the ideal citizens had to have the basic features of being Turk, Muslim, secular, republican and duty-based–passive at once. So the borders of the ideal citizenship in Turkey refer to the borders of the Turkish media. Turkish citizens as the members or the consumers of the media have a direct affect on it. All these features are maintained by the laws and regulations. Because citizenship in Turkey is not a result of the issue of law but the laws is the result of the state-imagined citizenship.

A number of incidents in the past few years demonstrated that the mainstream media in Turkey lacks the ability and will to function as the “Fourth Estate.” The culpability of daily *Hürriyet* as well as a number of columnists writing in this and other mainstream media in the prosecution, conviction, targeting and eventually assassination of Hrant Dink, and the prosecution of many other journalists, intellectuals and writers who express dissenting political views on the Armenian genocide, the Kurdish question and state policies on these issues has been widely

⁸² Reporters Without Borders, “Press freedom index 2010”, available at: <http://en.rsf.org/press-freedom-index-2010,1034.html> (last visited on 29/10/2010).

commented on,⁸³ as well as the assassination of Hrant Dink and the police raid of weekly periodical *Nokta* in April 2007 to seize leaked documents implicating failed coup attempts by senior military leaders. News stories published in alternative media such as *Nokta* and daily *Taraf* on clandestine coup plans by senior military officers became the grounds for struggle between different media groups. The statist-elitist mainstream media generally underestimated such news while those sympathetic to the government selectively published news that suited JDP's interests and policies. Also during this period, the Internet, the "uncontrollable" media, became the medium through which news that would not be covered by the mainstream media were provided to the public. 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. 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 media did or could not provide and on the other hand raised serious issues concerning due process and the right to fair trial of those incriminated by such information.

⁸³ Christensen, "Notes on the public sphere on a national and post-national axis", p. 178.

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