Executive Summary

The importance of internet and social media is growing and there have been recent changes to legislation like Law 5651 on internet. Pending amendments to the Press Law would allow a possibility for websites to be seen as mass media in the legal sense with benefits (press cards for contributors, eligibility for official advertisements) but also responsibilities. Regarding internet content the Telecommunications Presidency (TIB) has the power to ask for content to be taken down or to block it, based normally on court decisions. Recent changes include the creation of an Association of Internet Providers, to act as a counterpart for discussions with the regulators concerning notice and takedown of unsuitable internet content.

The most famous instances of cases on internet content concern bans on access to Twitter and YouTube. After the Constitutional Court ruled against the Twitter ban, there has been some progress with the regulatory authorities entering into a dialogue with the providers and looking at more limited measures. It is not in line with freedom of expression to block such important channels for debate and information and these measures were disproportionate.

The role of regulatory agencies like TIB, the Radio and Television Supreme Council RTÜK and the Information and Communication Technologies Authority BTK is important as such agencies have an increasingly important role due to convergence, liberalisation, new media, etc. Regulators must operate with maximum transparency, applying principles such as proportionality and necessity. Turkey has modern regulatory agencies but there is room for improvement as far as the independence from the Government and transparency is concerned.

The media ownership situation is highly problematic and there are no ongoing reforms. Owners - large conglomerates, subject to political pressure through dependence on public contracts in other areas of the economy – interfere in editorial freedom. Editors and journalists fear this and exercise self-censorship. There is an absence of specific legislation on media ownership and thus no effective tools to deal with this. The problems are exacerbated by a lack of transparency on media ownership and lack of mechanisms to identify real (including indirect) ownership. The digitalisation process, handled by RTÜK, is under way but has been delayed by legal challenges to tenders, instigated by existing powerful media owners. The entire process may need to be redone, either a new tender process or a new method of licensing.

A different area of concern is working conditions for journalists, with lack of job security, difficulty to get the press card which is issued by a government body and no proper application of labour legislation. In such a situation there is a high level of self-censorship. There is no system of press (media) self-regulation and codes of ethics are not applied in any
consistent fashion. The polarisation of the media (as of society) means that there is no realistic outlook for a self-regulatory system.

Introduction

The main issues of interest for the study identified and reflected in the Terms of Reference included:

1. The Penal Code (and other relevant legislation) concerning defamation, obscenity, offences against public order or state security, support for criminal organisations, influencing trials, breaches of confidentiality, matters related to disclosure of information
2. Article 301 of the Penal Code on insult of the Turkish nation - subject of many complaints in the European Court of Human Rights - and the Law on crimes against Atatürk
3. The Anti-terror Law and cases under this law against journalists
4. The Internet Law and possible restrictions to internet through this law
5. The activities of the judiciary, its independence and quality including its willingness and ability to apply principles of the European Convention on Human Rights (proportionality, necessity in a democratic society of any restrictions to freedom of expression)
6. The functioning of regulatory agencies, including their independence and efficiency and whether they support or hinder media freedoms (including on the internet)
7. Imprisonment of journalists for defamation, terror offences or for other reasons as well as suspended sentences and the potential chilling effect this has on freedom of expression
8. Poor working conditions and absence of job security of journalists having a negative effect on freedom of the media
9. Ownership issues, especially the concentration of media ownership in large corporations with widespread business interest and the influence owners have on media content
10. Self-regulation and media ethics

The mission confirmed that these points are indeed of interest. It is essential to look at implementation of the law, as the recent legislative changes – which are positive – must also be reflected in practice. Principles expressed by the European Court on Human Rights (ECtHR) such as proportionality, necessity in a democratic society and legal basis for any limitations of freedom of expression must be applied not just by courts but also by regulatory authorities and any other organs that apply laws and regulations. In addition to this, the mission confirmed that many of the problems of the Turkish situation for freedom of expression and more particularly freedom of the media are due to the polarisation and politicisation of society as well as of media; mistrust between government and opposition and the media of the different fractions; lack of independence or at least of the perception of
independence of regulatory agencies; and other such factors that are difficult to pinpoint exactly or to quantify.

As additional issues of interest that were not explicitly set out in the Terms of Reference, legislation on state secrets as well as legislation on data protection turned out to be of interest, as it appeared such legislation in some instances is used to limit freedom of expression – or could potentially be used in that manner. Freedom of expression includes the right to impart as well as to obtain information. At the same time, privacy is protected under the European Convention of Human Rights (ECHR) as well as under the European Union (EU) Charter on Fundamental Rights, which also contains an explicit clause on data protection. Thus, the need for a careful and proportionate balancing of rights is essential.

On the positive side it can be mentioned that a number of taboos in Turkish media have (almost) been lifted recently. This includes the use of Kurdish language in media and the discussion on Kurdish issues as well as matters related to the Armenian question. All interlocutors agreed that it is now possible to discuss these issues in a more open fashion than only recently, although we also experienced that certain things like the use of the word “genocide” in relation to the Armenian issue is still sensitive.

It was pointed out by many commentators that there is a high number of newspapers as well as of influential columnists in Turkey that are in opposition to the Government. Although this may be over-interpreted as a sign of plurality and diversity, it is true that it shows a media landscape that allows some freedoms.

**The Penal Code**

There have been a number of recent amendments to the Penal Code (and other relevant legislation), which should support freedom of expression. However, the implementation of the provisions remains to be seen. Some interlocutors said that the judiciary in general is not supportive of freedom of expression and would tend to interpret provisions in a restrictive manner. This was contradicted by representatives of the judicial sector who instead pointed to efforts to incorporate principles of the ECHR.

Turkey has been the subject of many complaints in the ECtHR and has been found in violation of the Convention on numerous occasions. Cases have been in relation to convictions under the Penal Code for offences insulting Turkishness but also regarding convictions under the Anti-Terror Law. Recent legislative amendments go in the direction of lessening the situations where people can be convicted in violation of the ECHR but whether these changes will be sufficient will primarily be shown through practice. There are various attempts to ensure that the judiciary and others concerned are familiar with ECtHR case law and take the principles expressed in it into account.

Regarding defamation, there are constantly many cases brought by politicians, including the Prime Minister. This indicates that public figures have not accepted the principles of the
ECtHR about politicians and others in the public eye having to accept more scrutiny and criticism by media.¹ The prosecutors as well as judges we met pointed out that many such complaints are not pursued, including complaints by the Prime Minister. They insisted that they operate independently and are able to dismiss complaints from the highest political level, based on an independent evaluation of facts. If there is defamation of the person rather than of political decisions it can be a case worth pursuing – not if it is part of a political debate. There is no reason to distrust these statements per se and it does appear that there are fewer cases on defamation by politicians, but the number is still higher than what should be the case in a democratic society with freedom of expression. Politicians, public officials and other public figures should refrain from making complaints and the courts should signal this by being very restrictive regarding what complaints to pursue. The special press prosecutors underlined that they have never brought charges based on their own monitoring of publications (which covers publications printed in the respective jurisdictions of the prosecutors) but just on complaints, but nevertheless having special prosecutors with a mandate to monitor printed publications can send a signal that publications must be cautious with what they print, which may lead to self-censorship.

There is a four month statute of limitation for defamation, which means that investigations are started more or less immediately if there is a complaint without time for a preliminary investigation. The Press Judges suggested this fact could be behind allegations of many cases against journalists; they confuse the opening of an investigation with an indictment. The judges were eager to stress the high proportion of investigations that have as their conclusion that no indictment is made.

As a relatively new risk it was mentioned that there has been an increase in blasphemy cases. We did not manage to get much information about such cases and it appears that there may not be so many, but those that have been brought have been against well-known persons and thus have attracted attention.

**Article 301 of the Penal Code: Insulting “Turkishness”**

Article 301 of the Penal Code is proposed to be amended but this has not been done yet. It is an open question if it will be amended or abolished. The legislation is still used quite frequently and means a restriction on freedom of expression that may be difficult to properly predict, thus lessening legal certainty and having a chilling effect.

**Anti-Terror Legislation**

The amendments to the Anti-Terror Law should make it more difficult to use this against journalists by stipulating that propaganda will not be punishable if it does not include encouragement to violence. It is too early to say if this improvement will be seen in practice as the terms used are open to interpretation. Some commentators pointed to risks that such

¹ As famously elaborated in the Lingens case for example.
legislation would instead be used more, as it still permits wide interpretations of the crimes it includes. The link to the National Intelligence Services Law and the opportunities to use this Law to hinder publication of certain information was brought up in this context. Generally, commentators from media and civil society were sceptical about the changes and pointed to the possibility of indictment for terrorism offences still hanging over journalists as a threat and as something that induces to self-censor sensitive topics.

**Imprisonment of journalists**

One of the positive recent developments is that there are fewer journalists imprisoned, none on defamation and fewer on terror offences or for other reasons. The assessment of this varies widely between different interlocutors, which is due both to issues of definition of who is a journalist and of what crimes are seen as linked to journalistic activities. In any event, an improvement can be seen but there remain possibilities to imprison journalists on spurious grounds, if the judiciary does not fully respect freedom of expression.

Turkey has a special prosecutor for Press Crimes. Such crimes include various matters related to publications in the media like revealing the identity of victims of sexual offences or of underage persons as victims or perpetrators of crimes. Relatively few cases concern matters under the Penal Code such as insult, slander, attempting to Influence a fair trial or violation of confidentiality. Only a small proportion (about 15%) of matters investigated are pursued. This was presented as evidence of the freedom of the media. Although it is positive that there are no excessive investigations of offences committed by the media, it is difficult to draw too many conclusions from these figures as it is a complicated web of factors that affect how free media is: how much editorial freedom there is, do journalists exercise self-censorship, is the structure of media really diverse and so on.

**State Secrets and Data Protection**

Data protection legislation is one way to express principles of protection of privacy – a reason to restrict freedom of expression. Provided the restrictions are set out in law and are applied in a proportional manner to the extent that is necessary in a democratic society the ensuing limitation to freedom of expression is in line with best European practice. The independent monitoring of data protection by independent organs is a feature of the European data protection landscape. Turkey lacks data protection legislation, although a constitutional principle was introduced in 2010, but a draft law is in the process. The independence of the proposed agency was questioned by commentators as supposedly it is to be created by Government. This was giving rise to fears that data protection may be used to unduly restrict freedom of expression.

Fears were expressed that legislation on state secrets would be abused to silence journalists. Some commentators even mentioned that this may be used to cancel out positive changes to the Penal Code and Anti-Terror legislation, by finding leaking of classified information a terror crime. It was mentioned by journalists that in cases of leaked classified information,
legal action is often taken against journalists and media outlets, including bans on broadcasting, rather than against the officials that leak the information. The intelligence service MIT is a powerful actor that can act without a court order and without any transparency to requisition information from journalists or others, to monitor data and so on. Access to information legislation exists, with strict deadlines for when information must be made available. It appears as if the legislation mainly works, although if some material would be deemed extra sensitive, including on political grounds, it may be isolated from the effect of the law through the state secrets law, without due regard to necessity and proportionality.

**Application of principles of the European Convention on Human Rights**

Turkey has been subject to a number of convictions in the ECtHR for various offences, including defamation cases where the Court has found disproportional reaction including in the form of suspension of licences by the regulatory authority RTÜK. Courts as well as other concerned authorities are aware of the European case law and take measures to include it in their decision-making just as also recent legislative changes go in the direction of incorporating the findings of the Court. However, the effect of this will be shown by implementation and there remains work to be done. It is difficult to get the impression of how genuine the desire is to implement the ECHR way of thinking. Some authorities and persons appear genuinely willing to change practice so that the principles are incorporated whereas others may be claiming to respect the verdicts without a genuine understanding or willingness to adhere to the principles expressed through them. Given the number of cases against Turkey and the number of convictions, it is clear that quite a lot of work must be done to turn around this unfortunate situation.

The independence of the judiciary and its willingness and ability to apply principles of the ECHR is a key issue. Many of the legislative changes that are positive may not have any effect if the judiciary applies them in a restrictive manner. There have been some positive changes in recent years, most notably the introduction of the possibility for individual complaints to the Constitutional Court (since September 2012). The high number of complaints and convictions in the ECtHR was an important incentive to introducing this complaint procedure and it has proven to be very much used – for relevant complaints as well as (inevitably) various less appropriate complaints, especially before the procedure has become very well known.

During our mission we were told of several cases in Turkish courts where ECtHR case law was explicitly referred to and used to support freedom of expression, for example in the context of what criticism and scrutiny of public officials that should be allowed without bringing convictions for defamation.

**Internet legislation and cases regarding Internet**

Internet is primarily regulated by Law 5651 from 2007. This Law was amended in February 2014. An Association of Internet Providers was created at the same time (operational in May
2014), which will be the counterpart for discussions with the Telecommunications Agency (TIB) and the Information and Communication Technologies Authority BTK.

TIB has the power to block internet content and ask for it to be taken down, in the manner which is common in the EU and many other parts of the world. It is in addition possible for the victim of e.g. defamation on the internet to sue the content provider, if the requisites for the crime are at hand – irrespective of the notice and take-down procedure of TIB. TIB does not monitor internet content but acts based primarily on court decisions that have found content in contravention of laws or in some cases by itself based on complaints. There are eight different offenses in Law 5651 regarding which TIB can react. Internet users are not obliged to first contact the content or service provider to ask for a take-down, as it may be hard for individuals to identify the proper party. However, for the agency asking for take-down is always the first step if it decides to act on a complaint. If that does not work, individual web-site URL-s will be blocked if possible. TIB publishes why sites have been blocked or content taken down, rather than just the regular “Error 404” message, so with this they are more transparent than many similar agencies in other European countries.

Pending amendments to the Press Law would allow a possibility for certain websites to be seen as mass media in the legal sense with benefits (availability of press cards for contributors/journalists, eligibility for official advertisements) but also responsibilities under press legislation. Such or similar actions are seen also in EU, as part of an attempt to clarify definitions of various types of media, where existing definitions do not fit in the internet age.

The cases to ban access to Twitter and YouTube are worthy of criticism, as these bans were disproportionate and are more worrying then the legal provisions. After the Constitutional Court finding against the Twitter ban, there has been some progress with the responsible regulatory agencies entering into a dialogue with the providers and looking at more limited measures. Whether their approach in the future will be more proportional remains to be seen. This is a question of implementation rather than legislative change.

The agencies stressed the creation of the Association of Internet Service Providers as a positive step, as this gives a counterpart with which to discuss. TIB and BTK claimed that in the Twitter case they had made several attempts to contact Twitter to make them take down unsuitable content but Twitter had not responded. It is not possible technically to block selected content on a site such as Twitter, which does not use URL but SSL, so the agencies claimed there was no other possibility than blocking the entire site. Only after this was done, did it become possible to communicate with Twitter and since then it has been possible to take targeted measures. TIB and BTK did not criticise the Constitutional Court decision that overturned their ban, but indicated that they had not been happy to take such restrictive measures but they had no alternative. It is not possible to ascertain with any certainty to what extent it is correct that there were serious but failed communication attempts. Also, it is not the aim of this report to go into details of specific cases. It is quite clear that to ban the entire Twitter or You Tube networks is disproportional. If there are difficulties to get serious response from the relevant companies, more attempt must be made. It is not in line with
freedom of expression to stop such an important channel for debate and information as Twitter (or You Tube). In weighing pros and cons of having some unsuitable content available because of difficulties to get it taken down or closing an essential communications channel, the decision must fall on the side of permitting the content – even if it legitimately should be taken down if possible.

The question of how to react to unsuitable internet content is one that is discussed all over the world, given that this medium does not fit well into traditional and established media regulatory systems and it developed so fast that regulation did not keep pace. There is now an ongoing discussion about how to avoid that internet becomes a lawless space while at the same time maintaining its freedom. However, even if the question on how to deal with internet content may to some extent be open, it is clear that any restrictions to freedom of expression need to be proportionate, necessary in a democratic society and based on law, just like any limitations of human rights. In Turkey, the issue of proportionality of the bans on internet content has not been well handled. Social media is very important in Turkey with many users of Twitter for example. In the important Gezi Park events in 2013 social media played a key role in helping to organise events and keep people informed about developments. Several commentators hinted that this important role of social media such as Twitter was a key reason for the harsh reaction to it – much more than the supposed reasons of defamatory or otherwise unsuitable content. When traditional media becomes less independent and more (self-)censored, it is social media that fills the need for a truly free debate – as is seen in Turkey in recent years.

**The Regulatory Agencies**

Regulatory agencies for communications everywhere have an increasingly important role with convergence, liberalisation, the growing importance of social media and other trends. This means that it is important that these agencies operate with maximum transparency, applying principles such as proportionality and necessity just as courts do. Although Turkey has modern regulatory agencies, based on European and international practices, there is room for improvement, mainly as far as the independence and transparency of the agencies is concerned. There are three main bodies for communications (plus a competition authority): the Radio and Television Supreme Council RTÜK; the Information and Communication Technologies Authority BTK; and the Telecommunications Presidency (TIB).

RTÜK is a regulatory agency, modelled on the European model of such agencies. It has just celebrated 20 years of its existence and its creation more or less coincided with the introduction of private broadcasting in Turkey. RTÜK is a member of the European Platform of Regulatory Agencies (EPRA) and participate actively in this network. The Agency has modern premises and is well equipped. As one of few regulators in Europe (including France and Serbia) it aims to monitor all programmes, although in reality the monitoring is not quite

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2 Recently, in May 2014, the Council of Europe published a Guide to how freedoms apply in cyberspace.
3 In the Yıldırım case in the ECtHR the Turkish ban on Google sites was found disproportional and not necessary.
100%. RTÜK also handles complaints. It is moving somewhat more toward a complaints-driven process but still sees the ex officio monitoring as essential. Sanctions start with warnings after which fines may be imposed, suspension or cancellation of licence is rare. RTÜK is set up under Law 6112 on Media Services, which incorporates the Audiovisual Media Services Directive to a large extent. This Law was adopted in 2011 and replaced the 1994 Law that created the agency.

Some commentators criticised RTÜK for bringing an excessive number of cases based on obscenity, having an unduly restrictive view on what is obscene or otherwise unsuitable. However, this is most probably rather an expression of the polarisation of society also when it comes to values than a deficiency in the work of the agency or direct political pressure. There are large divisions in Turkish society on cultural and social values. RTÜK admitted that they try to act based on what are the real concerns of people but that this is difficult, not least because of the mentioned divisions. Moving from more ex officio cases to mainly reacting to complaints should better reflect real concerns, but in a polarised society the concerns of some will not be accepted by others. Decisions of RTÜK can be appealed to the Administrative Court. If some decision is overturned, this is used as an indicator to not make similar ones in the future and in the same way, the court’s approval of a decision helps to make it part of the benchmarks that RTÜK makes for broadcasters.

The work of RTÜK is quite transparent even if there is always room for improvement on how to make decisions and processes easily accessible to the public. However, for the BTK and TIB there appears to be a need to operate under greater transparency as their working methods are not easily accessible to observers. They do publish decisions and have policies on transparency but several commentators claimed that it is not easy to follow and understand their work. As they deal with notice and takedown of internet content and as there is bound to be different views on whether to block certain content and to what extent, with as much transparency as possible of the working methods, the deliberations held, etc., speculation is minimised and it also makes it easier on appeal to know what arguments to bring. The need to motivate any decision explicitly is also useful for the authority as it concentrates the minds and can help to keep decisions proportionate.

BTK and TIB stressed that they do not monitor internet content and only act on complaints, often following court decisions finding content in contravention with laws. The agencies maintain a hotline for complaints and normally engage in a dialogue with the content or service provider to get content taken down. TIB, the responsible agency has legal as well as technical experts on its staff: the first assess the complaints and see if there is reason to ask for content take-down – the technical experts find out the owner/operator of the site (via open sources) and assess possibilities to take down and/or block content in case the relevant party does not remove it voluntarily. The agency was eager to stress that they do consider proportionality in all instances and that the high-profile cases like the Twitter ban or the reaction against Google in the Yildrim case were due to the relevant parties not reacting to take-down requests.
In addition to emphasising transparency, it is important for the regulatory authorities to increase their independence from the Government and strengthen also the perception of independence. The Supreme Board of RTÜK for example is appointed by Members of Parliament with a certain number of members that can be appointed by the majority and a (smaller) number by the parliamentary minority. Although the qualifications set out in law for the members are similar to those in many countries and the idea is that they should be professional and act independently, at least the perception is one of politicisation – with members having to please “their” Members of Parliament. With a more independent method of appointing the board it would be easier for them to explain their work and avoid the suspicion that they are acting on political orders from any one side. The same is true for the telecommunications organs.

In addition to the sector-specific agencies there is a Competition Authority in Turkey. It appears to work well and in line with European standards, the law creating it (in 1997) is based on EU standards. Competition law is an area of law, which is very similar all over the world and especially between European countries.

It is currently under discussion in Turkey whether the Competition Authority shall also deal with sector-specific issues. The Authority has appealed a decision that they should do so. This discussion does not directly affect the main topic for this report and there are different solutions in different European countries, so it is not possible to prescribe one solution as best European practice. On the one hand, modern technological developments such as convergence, digitalisation and others mean that competition authorities are getting more competence also over e.g. media related issues. On the other hand, media still entails a need to consider special issues such as media content, impartiality and plurality and so on. It has been expressed that in competition law, people are customers – in media law they are also audience, and the concerns and need of protection for one group are different than that for the other. Currently the Competition Authority deals with quite a lot of cases that involve media but are restricted to how they can act on these, for the above stated reasons.

**Media ownership**

The ownership situation is problematic with no outlook for improvement in any near future. Most interlocutors agreed that this is a major problem and an area where international recommendations have not been followed. The problem is that powerful conglomerates own all sorts of businesses, including media, and there are more or less direct links between different areas of economic activity. The Government reportedly puts pressure on companies to buy media outlets in exchange for other positive treatment like winning contracts for construction or similar - it being understood that they will use the media outlets in a fashion that is to the liking of the Government. In this way, the Government can ensure favourable media treatment while still keeping the media outlets nominally at arm’s length. For example,

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4 Currently they give opinions to RTÜK and discuss cases quite frequently, but leave sector specific issues to the sector specific agencies.
in order to get important public works contracts the owners of groups containing construction companies as well as media do not want the media outlets to upset politicians or public officials, for fear of this affecting totally different business prospects. The underlying problem here is the lack of respect for editorial freedom. Pressure is exerted and even if it is not, there is a real risk of self-censorship for fear of such pressure.

Legally there are currently no effective tools to deal with media ownership. The broadcasting legislation contains some rules on media ownership but only concerning terrestrial broadcasting, which leaves out many important channels in the modern media market, and even these rules are rather permissive in that up to four media outlets may be owned for the same territory. Only incorporated legal entities can own broadcasters and with no more than 50% of foreign ownership, however just relating to direct ownership. Although there is no reason to doubt the professionalism of the Competition Authority its area of competence is limited. It cannot normally act on cross-sectoral concentrations as this mainly does not fall under competition law (in any country). Especially for evaluating and dealing with abuse of dominant position, but also linked to agreements between undertakings, the definition of the relevant market is essential. Dominance across different markets does not fall under competition law. The work of the Competition Authority may have an indirect effect in that media outlets avoid becoming so big that they are dominant in the sense of competition law, which can be achieved by big groups owning many things designing suitable solutions.

There would be a need for specific legislation or other rules to prevent the kind of powerful media groups that dominate the media landscape in Turkey. This would be quite a complicated legislative task and currently there appears to be no initiatives. Quite the opposite: we were told by several interlocutors that the Government and forces closed to it have used leverage they have through various holdings and assets to actively interfere in media ownership (including the most important news agency, Anatol). At the local level, it has happened that mayors have forced closure of newspapers on spurious grounds like lack of proper licences, in the same manner as for local restaurants or shops.

Our interlocutors confirmed that there are also media outlets in Turkey that are more independent. It is not theoretically impossible to operate without being part of some important group. However, such media outlets are of lesser importance and do not include any of the outlets with the biggest reach. Instead, they have a “dissident” image and according to some are allowed to operate without much interference to illustrate a falsely positive image of media freedom in the country. Minority media (like for example Greek newspapers) are among the few publications that are owned by journalists. They are often small with a limited reach, but do enjoy editorial freedom and independence. Having been banned from receiving support from the various public funds that exist, this has changed in

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5 Among media related decisions of the Competition Authority can be mentioned fines on newspapers for anti-competitive agreements related to newspaper distribution, involving the main media groups. The system of media planning agencies that deal with advertising distribution to (printed) media has also been challenged under rules on abuse of dominant position, as it proved almost impossible for a new entrant to enter the newspaper market (in 2008).
recent years so the situation for minority media has improved, even if the financial situation is often difficult because of the limited market of the media. Even if funding possibilities in theory do exist, there is still discrimination against minority media and some minority representatives also mentioned that they resent that their greater freedoms and possibilities are presented as if it is a gift to be grateful for, rather than a right.

Recognising that the problem of the ownership structure of media in Turkey is a major issue and one which does not have an easy and quick solution is not a reason to avoid dealing with it. Legal tools must be provided by special legislation, suitably sector-specific legislation. There are precedents from different countries on legislation setting out special rules for media ownership. In such legislation any appropriate bans or prescriptions can be made. It should be carefully considered what issues need to be dealt with and the appropriate legislation should be suggested.

The problems are exacerbated by a lack of transparency regarding media ownership. This means that the reasons some issues may or may not be reported are not known, which leads to speculation, lack of credibility of media and a difficult working situation for journalists who may not know what is off limits and why. Officials in regions, towns and at other levels as well as linked to central Government and in addition public officials and not just politicians may be “protected”. Furthermore, business people with links to one or other owner may be able to affect media content, for example making it impossible to investigate allegations of corruption, lacks in safety standards, poor working conditions and so on.

Ownership rules must be able to deal with the real ownership and thus go beyond only the surface, to include also constructions made to hide real ownership. There are many examples from different countries, usually containing rules on how many percentage of ownership of a legal person is to be regarded as ownership, if ownership by close relatives is to be considered as well, etc. – designed to make special constructions to camouflage ownership as difficult as possible. Also, the maximum transparency and accessibility to documents is important to deal with the tangled web of ownership. If it is easily seen who is the owner of a media outlet, it is possible to determine risks of undue influence and similar. Currently there are almost no rules in media legislation, including the broadcasting law that give authority to regulators to monitor media ownership. Even if regulatory decisions are published they are sometimes incomplete, with reference to business secrets of the concerned parties.

In addition to the tangled web of ownership, there are allegations that tax legislation is applied selectively as a tool for punishment of “uncomfortable” media – or as a reward, through “tax forgiveness”. The lack of transparency on application of tax law enables this. The threat of action based on tax law or something similar is there is the background, should the media outlet become too influential. It was clear from our discussions that even if exact allegations of risks and threats are by nature hard to evaluate, there is a climate of mistrust and suspicion. Allegations voiced also include hidden influences on supposedly independent media from those attempting to create or support the “parallel state”, especially the supporters of the nemesis of the Prime Minister, Fetullah Gülen.
In this context a brief comment can also be made on digitalisation, which is handled by RTÜK. The process of digital switchover is ongoing in Turkey but has suffered delays as all four tenders for national digital platforms (and one of seven for regional ones) were cancelled by the Administrative Court. Until now three of these decisions have been upheld by the Council of State and one is pending. The Competition Authority is also conducting a formal market inquiry that should be completed at the end of 2014. These factors may mean that the entire process may need to be redone, with either a new tender process or perhaps a new method of licensing. RTÜK is currently analysing the Court decisions. Speculation on why there have been these obstacles to the process include that existing broadcasters are worried about digitalisation and do not like it, as it disturbs there existing situation including their existing dominance. They are not interested to make the big investments needed and at the same time do not want others to come into the market in important positions in the changed landscape of digital broadcasting. In any event, Turkey is aware of the necessity to deal with the issue and to do it soon, so if it is not possible to do it via a tender, allocation through law may be used to get the process started. There is a transition plan and although the date of 17 June 2015 that is set for the switchover may not be realistic, the delay should be as small as possible. As a remark on this issue, it can be said that the process of digitalisation is complex and delayed in many countries around the world. How exactly the launch is handled varies even among EU members. It appears as if Turkey by and large is in line with the various processes used in other countries, where there are various examples of ad hoc procedures and involvement of different organs and processes than in other licensing matters. Maximum transparency can be underlined also in this context.

**Working conditions of journalists**

It was agreed by most interlocutors that the working conditions for journalists in Turkey are generally poor. The competitive environment and problems for traditional media with it being out-competed by social media with many journalists losing their jobs, means that media owners are not interested in improving the situation as they will have no problem to find replacements for any journalists who leave (including because they are pushed out if they are too “difficult”). Journalists who are fired often do not find new positions because of an informal “blacklisting” and as many publications prefer untrained journalists, less likely to cause trouble. Only about 1% of journalists are unionised so unions are uninfluential. There is a lot of difference between the role and job security of different categories. Some very influential columnists have very secure positions and can influence politicians, while a large majority of journalists have insecure labour conditions and worry about not just political pressure but also pressure from their owners.

There are two legal possibilities to organise working conditions for journalists: either under special conditions for journalists or under general labour law. In the latter case, there is no concession for special conditions of journalist and there are less privileges for them – the conditions are more at par with other professions while the working conditions specific for journalists offer various more beneficial conditions. It appears as if owners can decide which
law to apply with their being no guarantee that the law for journalists shall apply even to individuals who clearly are within the category of journalists.

In such a working situation it is not surprising that many commentators pointed to a high level of self-censorship. Journalists fear for their jobs and the threat may be political or linked to media owners or just to a fear of displeasing editors. To underline the precarious situation for journalists, the important Press Card is issued by a government body, which is not in line with best international practice. It is hard to obtain and presents a potential means of government influence over who is regarded as a journalist. Even if there is a Commission consisting of representatives of journalists associations and similar that deals with the cards, the fact that it is under the auspices of the Prime Minister’s office – the Directorate on Press and Information – means there is no perception of independence.

The question of working conditions for journalists is complex to the extent that such conditions partly are to be set by the media owners as part of their freedom to conduct business. However, this does not mean that there are no considerations of a legal and human rights nature linked to the conditions. Partly, this follows from accepted social and economic rights that affect the organisation of the labour market. Perhaps even more importantly in the particular case of media in Turkey, the conditions are negatively affected by some legal provisions as well as by the ownership structure of the media market. There is a lack of proper editorial freedom due to pressures of a mixed political-economic nature that means that media owners operate based on other considerations than those linked to the media content. Journalists risk losing their positions if they act outside of strict confines set for them and the structure of the media market means that it may be nearly impossible to get new employment.

In the modern society and media environment, accreditation of journalists has lost a lot of its reason for existing. Access to information should be a general access for all citizens, regardless of purpose, so journalists have no special rights in this respect. Also when it comes to access to debates and events, with so many important events being supported by on-line material accessible for everyone, the accreditation also here is less relevant. With groups such as bloggers, citizens journalists, social networking commentators and similar often having a big audience and being an important source of information and news for many people, the distinction between these groups and professional journalists becomes increasingly blurred. In such a situation it is not suitable to exaggerate the importance of accreditation and the special status of certain journalists over others. In Turkey the situation is especially unfortunate, as it is very hard to get the Press Card and with it the most coveted status as accredited journalist. It takes twenty years to get a permanent Press Card and any such card (also the temporary ones) presupposes an employment contract with a media house. This means that young journalists, free-lance journalists and other persons who may fit into the new categories of media persons mentioned above are excluded from a document to which

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6 The Commission has 13 members from the largest journalists’ associations, trade union, professionals in the media field and also 3 members from the Prime Ministers Directorate General for Press and Information.
too much importance is attached. There is thus a double problem in what has been said here: the Press Card is given undue prominence and obtaining it is too difficult.

However, the main problem in this respect is how the Press Card is issued. Namely, this is done by the Government, more specifically the Prime Minister’s media department. This opens up for at least a possibility for the Government to exert pressure by withholding or providing the important Card according to political preferences. In any event, there is a perception that this is the case and this alone can serve as a reason for self-censorship, not least given the difficult labour conditions for journalists. We were told that it has got easier to get the Press Card, but the restrictive rules still exist and can thus have a chilling effect even if perhaps practice has got a bit more lenient on the demands made.

**Media (Press) Self-Regulation**

There is no system of press (media) self-regulation. Journalists’ associations have made codes of ethics, but these are not applied in any consistent fashion although some newspapers have their own ombudsmen, even if few and not too powerful (and growing less powerful). The polarisation of the media (as of society) means that there is no realistic outlook for a self-regulatory system as different publications are not able to work together. Various elements of real or potential political pressure on media mean that there is a high instance of self-censorship of media. Journalists we discussed with told that it is possible to e.g. criticise the government but only in a general and demagogic manner, not on specific issues. Such rules and limitations are not necessarily set out anywhere but journalists and editors are well aware of the limits within which they should operate.

Very many of our interlocutors, especially from media and civil society, stressed the problem of polarisation of the Turkish society. As it was expressed, government media or government supporters can see nothing good at all with opposition arguments and vice versa. In such a climate, it is very difficult to get any agreement on voluntary rules or solutions of any kind. There is mistrust so that also legitimate decisions may be immediately mistrusted and it is very difficult to have a dialogue. It is quite clear that there will not be any self-regulation or functioning codes of ethics in such a polarised situation as “one side” would mistrust any rules set up or implemented by or with the participation of the “other side”.

Journalists’ own attitude was mentioned as a contributing factor to the difficulty to implement international best practices for journalism. Many journalists see themselves rather as “ideological agents” than objective news reporters. They may have clear agendas, especially the important columnists, and the interplay of pressure and influence between politicians and media (including media owners) is not always straight-forward. This has been a characteristic of Turkish society for a while and if any trend is seen recently it is toward more Government pressure and less of media being the more powerful player. At the same time, the growing importance of social media means that such trends do not have the kind of important influence that they would have had earlier.
As a small compensation for not having any self-regulatory system as such, some major newspapers have their own ombudsmen, employed by the paper with the role to keep a critical eye on the content of the paper. There are few such ombudsmen, fewer than some years ago, and most of them are older, which was stated by one of them as an indication that the idea is losing its attraction perhaps in a general sharpening of media content. The motivation to have such ombudsmen whose main task is to criticise the very publication they work for is to show a sense of responsibility and indicate the prestige of the paper in question.

**Concluding Remarks**

As concluding remarks, it may be said that a number of improvements have been made in recent years in the sphere of freedom of expression in Turkey as far as legislative changes are concerned. The Constitutional Court ruling that overturned the ban on Twitter is a positive sign (as is the introduction of individual complaints to the Constitutional Court), giving hope that at least in some instances the independence of judiciary is respected. The fact that previously taboo subjects like the Armenian genocide and the Kurdish issue can be discussed is also a positive sign. Fewer journalists are imprisoned, with many having been released recently. Journalists confirmed that it is possible to criticise the government or individual ministers, so there is no censorship as such, but such critical remarks can only be made in a general, demagogical fashion and not on specific issues: self-censorship and interference in the editorial freedom will set up such limits.

Thus, the general picture is not positive. The media scene – as well as society in general – is increasingly polarised. This means that cooperation between media actors is not possible, ethical principles are not generally applied. The courts and other institutions often do not appear to respect principles of proportionality and necessity in a democratic society and the way laws are applied have a chilling effect on the freedom of expression. The government uses various means to put pressure on the media and does not respect the independence of the judiciary, nor principles of editorial freedom of media. The ownership structure of media is such that there are various ways in which pressure can be exerted and there are no signs that this tangled web will be untangled in any near future or that politicians will refrain from trying to influence media through different means. Given the increasing importance of social media there are signs that such media will be targeted in the near future, as politicians do not accept a society with less control over media content.

Working conditions for journalists are poor, which (together with the complex ownership situation) leads to self-censorship. Collaborative mechanisms such as self-regulation are however almost non-existent as the society and media are so polarised that such initiatives are not possible.
Recommendations

No journalists should be imprisoned for their journalistic activity: it is essential that courts interpret the changed Penal Code and Anti-Terror legislation in a strict manner to avoid punishment for legitimate expressions of freedom of expression. Defamation cases should not be initiated by politicians or public officials other than in very extreme circumstances.

Specific legislation (and/or where possible, secondary legislation) on ownership issues in the media area, with restrictions on cross-ownership, more comprehensive rules on detecting real ownership and increased transparency should be introduced. Ownership legislation should target real (including indirect) ownership and complement general competition law. Initiatives for legal regulation of media ownership should be taken without delay.

The application of tax legislation should be transparent so that it is avoided that it is used to target media outlets.

Legislation on regulatory agencies for communications should ensure maximum transparency of any procedures and decisions.

Appointment processes for regulatory agencies should be structured so as to minimise political influence over appointments.

Media should examine any initiatives for self-regulation, to overcome to current polarised media climate if at all possible.

Although there are limited possibilities to affect working conditions in private companies concrete measure that can be taken to improve the working conditions of journalists is to ensure that the labour laws are properly followed and social guarantees extended to journalists.

It should be considered if the system of the Press Card could eventually be abolished and journalists be judged as such based on the substance of their work. This would support a more vigorous labour market. What should be done without delay is to change the criteria for obtaining the Press Card, making it a real possibility for all professional journalists, and ensure that it is issued by an independent body without direct links to the Government.