

# **FREEDOM OF EXPRESSION AND DEMOCRACY IN THE REPUBLIC OF TURKEY IN THE DIGITAL AGE**

## **Ministerial session II**

### **I. Foreword**

The entry of the term “freedom of expression” into legal texts in democratic systems took place as a result of long-lasting struggles. The very first document in which freedom of expression was used as a term is the Declaration of Rights adopted by the British Parliament in 1689. But, here, the term of freedom of expression was much far from its today’s meaning which we comprehend as applying to everyone since it was limited only to the parliamentarians and their opinions expressed in debates under the roof of parliament house. However, this can be regarded as significant in terms of registering the freedom of expression as a term since it was the first time in written literature.

Later on, the Virginia Declaration of Rights in 1776 gave an explicit and remarkable place to freedom of press. Even though it had no mention about the freedom to expose and express a thought, it can be regarded as a milestone which gave a place to the Press Freedom for the very first time. In fact, once the annexes brought by the Declaration of Rights in 1791 are perused, a compact regulation which is considered to have combined in it the freedoms such as the freedom of religion, free exercise of religion, freedom of expression and freedom of press is seen to have been added into the Constitution of the USA adopted, after eleven years, in 1787.

Two issues regarding Articles 10 and 11 of the Declaration of Human and Civic Rights following the French revolution in 1789 are noteworthy: The first is that communication of the thoughts is amongst the most esteemed rights and the second is that the way of wording of the Articles in terms of their style and form is very similar to Article 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which is one of today’s modern documents.

Later in the 19th century, freedom of expression was explicitly guaranteed in the Constitutions of Belgium and Prussia so called today as ‘the early constitutions’.

The constitutionalism movements spreading from the West to the East were, in fact, the movements similar to each other with their exceptions of minor differences since they were the consecutive ones and had an enormous influence on each other. Therefore, if their stylistic differences are not taken into consideration, the freedoms such as freedom of religion, freedom of conscience, and freedom of expression and freedom of press found their places more or less in all texts of constitutions. These movements lasted from the end of 18<sup>th</sup> century until the first decades of the 20<sup>th</sup> century. In the first half of 20<sup>th</sup> century, the world lived through the two consecutive World Wars and the termination of empires. Thus, this period is unfortunately remembered today as ‘the modern times during which human rights were suspended’.

Following the two consecutive World Wars, intensive efforts on freedom of expression took a restart. The UN Declaration of Universal Human Rights and the International Covenant on Civil and Political Rights are the first by-products of these efforts. Convention on the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (CoE), EU Charter of Fundamental Rights and Freedoms, OSCE Helsinki Final Act, American Declaration of the Rights and Duties of Man and the Inter-American Convention on Human Rights have all been the sound international regulations that protect and develop the freedom of expression.

All of these national and international regulations have denoted that freedom of expression is one of the essential elements of democratic societies. It is a *Sine Qua Non* within the framework of fundamental rights and freedoms. It is an indispensable, complementary part of the freedom of thought. The freedom of thought is defined in general terms as the immunity of an individual's right to think freely, not to be condemned due to his/her thoughts and convictions, and to deliver and disseminate them. The freedom of thought and, in relation to this, the freedom of expression is the source of a lot of fundamental rights and freedoms. Therefore, the freedom of expression contains freedoms of communications, thinking and, delivering and disseminating what is thought.

Guaranteeing the freedom of expression ensures the self-development of individuals and social advancements and contributes to the entry of new and various opinions into debate platforms. For this reason, today, the freedom of thought and the freedom to express what is thought have been guaranteed with a particular significance as a right that is sensitively handled by contemporary democracies. It has been the fundamental precondition for participatory democracies to ensure the freedom of expression in all platforms to be used not only by the elected ones, but also by the electors. By this way, citizens can make their contribution to the system in their countries.

According to the case laws of the European Court of Human Rights, the scope of the usage of freedom of expression for the deliverance of an opinion has been held as very far reaching. Any means, methods or platforms used for delivering a thought have been taken under the protection of Article 10 of the European Convention of Human Rights regulating the freedom of expression and information. And as for the limitations imposed on the use of freedom of expression, they have been stated in the second paragraph of the same article.

## **II. International treaties which the Republic of Turkey is party to on the issue of freedom of expression.**

### **A. United Nations (UN)**

In the texts of UN of which the Republic of Turkey is the member, articles relating to the freedom of expression are binding in character, and therefore have all been transposed into Turkish domestic law. The fundamental documents that the Republic of Turkey has so far ratified are; the UN Declaration of Universal Human Rights (DUHR) adopted on 10<sup>th</sup> of December, 1948 and the International Covenant on Civil and Political Rights (ICCPR).

The first 21 articles of DUHR which consists of 30 articles in total are namely “the classic rights” which have been prevailing since 18<sup>th</sup> century and declaring the rights of a person relating to his/her personality and political freedom.

Article 19 of DUHR in relation to the freedoms of thought and expression is as below:

**Article 19: Everyone has the right to freedom of thought and expression; this right includes freedom to hold opinions without interference and to seek, receive and disseminate information and ideas through any media and regardless of frontiers.**

International Covenant on Civil and Political Rights was adopted on 16<sup>th</sup> of December, 1966 and put into implementation on 23<sup>rd</sup> March, 1976. The Republic of Turkey became party to this Covenant on 21<sup>st</sup> July, 2003.

Article 19 of the Covenant which regulates the freedom of expression is as below:

**Article 19:**

**Everyone shall have the right to hold opinions without interference.**

**Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**

**The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**

- **For respect of the rights or reputations of others;**
- **For the protection of national security or of public order (ordre public), or of public health or morals.**

## **B. Council of Europe (CoE)**

The Republic of Turkey as the Member of the Council of Europe since 9th of August, 1949 was amongst the first 15 countries being party to the European Convention on Human Rights. This Convention, signed on 4<sup>th</sup> of November, 1950 and put into implementation on 3<sup>rd</sup> of September, 1953 was ratified by the Republic of Turkey on 10<sup>th</sup> of March, 1954.

Article 10 of the Convention which regulates the freedom of expression by creating a legal area in line with pan-Europe perspective and aiming at guaranteeing the fundamental rights and freedoms in Europe is as below:

**“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.**

**The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by**

**law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.“**

At this point, all issues in relation to the limitations imposed by the second paragraph should be examined. If these issues are examined article by article:

- It has been stressed that limitations could only be placed by passing a law;
- To decree a limitation is possible only if the stated cases occur and through drawing out the framework of it.
- Limitations could be enforced in a democratic society only if they are obligatory.

The second paragraph lists 10 reasons for limitations. These reasons can be divided into to three different groups as below:

- First Group: national security, territorial integrity, public security, prevention of an unrest or a crime;
- Second Group: Protection of health or morality and others' fame and rights;
- Third Group: Prevention of the dissemination of confidential information.

The freedom of thought and expression defined in Article 10 has become in course of time a set of pioneering principles for the member states through the enrichment of case-laws of the European Court of Human Rights on the freedoms such as; the freedom to access news, information and opinions and to learn, freedom of press, freedom of audio-visual media, freedom of political speech not beyond criticism, freedom of artistic, professional and commercial expression and freedom of expression by public officials. These case-laws formulated in line with the necessities of time allow a capability to interpret Article 10 in a much wider way by comprising all technological developments.

### **C. European Union (EU)**

Today, all of the member States of the European Union with which Republic of Turkey is continuing its negotiations for the process of full membership are also the members of the Council of Europe. For this reason, EU States had never felt any necessity in themselves for a long time to prepare a common binding document for fundamental freedoms. But, when EU had diagnosed such a necessity during its process of transformation from being an economic union to a political one, the EU Charter of Fundamental Rights and Freedoms prepared by EU Member States in its Nice Summit, as one of the significant milestones of the EU's enlargement process, was signed on 7<sup>th</sup> December, 2000 and took effect following its publication in the EU Official Gazette on 18<sup>th</sup> December, 2000. The article of the Charter related to the freedom of expression is as below:

## **Article 11. Freedom of expression and information**

**Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.**

**The freedom and pluralism of the media shall be respected.**

If the EU Charter of Fundamental Rights and Freedoms is compared to CoE Convention on Human Rights, it is notable that the Charter is closer to the UN Declaration of Universal Human Rights in terms of both its form and content and there are no limitations in the Charter as there are in the CoE Convention on Human Rights.

## **III. Brief Historical Account of Freedom of Expression in the Republic of Turkey**

While dealing with the democratisation and freedom of expression in the Republic of Turkey, it is useful to examine the last Century of the Ottoman Empire and its westernisation movements. When the basic documents that belong to the period starting from the *Sened-i İttifak* of 1808 (*The Charter of Alliance - a kind of alliance similar to Magna Carta*) which is accepted as the beginning of constitutionalism movements that lasted until the collapse of the Empire, such as *Tanzimat Fermanı* (*meaning the edict of the reorganization of the Ottoman Empire, was a period of reformation that began in 1839 and ended with the First Constitutional Era in 1876*), *Islahat Fermanı* (*Rescript of reform - 18 February 1856*) and *Kanun-i Esasi* (*the Basic Law – Ottoman Constitution of 1876*) are examined, it is seen that there was no mention of the freedom of expression except for only one statement - **“Press is free within the framework of the Law”** in Article 12 of the Basic Law. Although this statement was not directly aiming at the freedom of thought it can be accepted as a beginning in terms of the regulations made in the following years. A short while later the declaration of the Second Constitutional Era, an amendment bringing the provision that press would never be censored was made in Article 12 of the Basic Law in 1909. But this provision could not be implemented because of the consecutive outbreaks of Balkan War and the 1<sup>st</sup> World War in a very short time.

The Constitution of 1921 adopted during the Turkish War of Independence and the fall of Ottoman Empire is a short constitution that reflects only the conditions of that period but includes no fundamental rights and freedoms. Article 70 of the Constitution of 1924 adopted three years after this constitution admitted the right of thought denoting that “Inviolability of person; freedom of conscience, of thought, of speech, of press; freedom of travel and of contract; freedom of labour; freedom of private property, of assembly, of association; freedom of incorporation, are among the natural rights of Turks.” As it is seen, the freedom of thought here was mentioned as not alone but together with many other rights inside of only one article. Some of these rights are social and some of them are commercial rights. As seen these rights are only for Turks and adopted as natural rights.

Article 20 of the Constitution of 1961 entitled as “the Freedom of Thought” is as follows:

**Article 20: Every individual is entitled to have his own opinions and to think freely. He is free to express his thoughts and opinions singly or collectively through word of mouth, in writings through pictures or through other media.**

**No individual shall be coerced to disclose his thoughts and opinions.**

As seen, the statements in Article 20 resemble to those of EU Charter of Fundamental Rights and Freedoms adopted in 1960. The article is brief, however no restrictions have been included and it presents a broad scope. In both of the documents, this right has been accepted as a right usable both individually and collectively.

As far as the Constitution of 1982 is concerned, the article regulating freedom of expression is very far-reaching. The most spectacular difference here is that the regulation regarding freedom of expression was stated in two separate articles. While freedom of thought and conscience was regulated in article 25 the freedom to express and disseminate thought was regulated in Article 26. The Article 26 was amended by the Law No.4709 on 3<sup>rd</sup> of October,2001 that abrogated the paragraph related to the banned language and added a paragraph as a last text that brought a provision that the principles and procedures of the use of this right would be regulated by Law.

**ARTICLE 26. Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licencing.**

**(Amendment: 3/10/2001-4709/9 Article.)** The exercise of these freedoms may be restricted for the purposes of preventing crime, punishing offenders, withholding information duly classified as a State secret, protecting the reputation and rights and the private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

**(Abolished: 3/10/2001-4709/9 Article)** *No language prohibited by law shall be used in the expression and dissemination of thought. Any written or printed documents, phonograph records, magnetic or video tapes, and other means of expression used in contravention of this provision shall be seized by a duly issued decision of a judge or, in cases where delay is deemed prejudicial, by the competent authority designated by law. The authority issuing the seizure order shall notify the competent judge of its decision within twenty-four hours. The judge shall decide on the matter within three days.*

**Provisions regulating the use of the means of disseminating information and ideas shall not be interpreted as a restriction of freedom of expression and dissemination unless they prevent the dissemination of information and thought.**

**(Added paragraph:3/10/2001-4709/9 Article)** The forms, principles and procedures to be used in using the freedom to express and disseminate thoughts shall be regulated by the Law.

As seen, Article 26 has brought many limitations and has provisioned that they cannot be deemed as limitations. But, the freedom of thought in Article 15 has been

classified as among the fundamental rights and freedoms whose usage is by no means prevented.

The statement of “no protection shall be afforded to thoughts or opinions” in paragraph 5 of the Preamble of the Constitution of 1982 was amended as “no protection shall be afforded to any activity”. By this amendment, one of the barriers standing before the freedom of thought was abolished.

#### **IV. The Freedom of Expression in Turkish National Legislation**

In the framework of the Republic of Turkey’s democratisation movements and its harmonisation with the *Acquis Communautaire*, the Republic of Turkey has made a series of law amendments since the beginning of the year 2000 and is still continuing to do so. In this process, some of the regulations, relating to freedom of expression in the framework of harmonisation with EU, that were made either through the preparation of judgement packages declared in various times or independently from these packages have been as follows:

##### **A. Constitution**

The Article 26 of the Constitution of 1982 that is still in effect and regulates the freedom of expression was already given in the previous part. This article has been amended in a way to extend the boundaries of the freedom of expression. Apart from this, a provision was added to Article 90 of the Constitution in 2004 stating that only the provisions of international treaties would be valid and taken into consideration in case of possible disputes emerging from the different provisions imposed by both national laws and international treaties on the same issues, that were put into implementation relating to the fundamental rights and freedoms.

In addition to all these, efforts on preparation of a new and more libertarian constitution are presently being made by a parliamentary commission composed of the representatives equal in number of each political party represented in the Grand National Assembly of the Republic of Turkey. Until now, there are sixty articles over which all party representatives participating in the commission have approached to a point of consensus. Amongst the issues of improvements regarding the freedom of expression and information directly or indirectly is: Data Protection and Privacy of Personal Information; Right of Reply and Correction; Right to Freedom of Assembly and Association; Right to apply and get information, Right of Access to Information and Freedom of Information.

##### **B. Turkish Criminal Law (TCK)**

Turkish Criminal Law of 1926 was replaced by the new Turkish Criminal Law No. 5237 adopted on 26<sup>th</sup> of August, 2004. This was a new regulation that took the developments of that time into consideration on such an issue that often received much negative comments. The articles directly or indirectly related with the freedom of expression in the new law are as follows: Article 125- Defamation; Article 220- Forming organised groups with the intention of committing a crime; Article 215 – Praising the Offence or the Offender; Article 299 – Insulting Turkishness, the

Republic, the organs and institutions of the State; Article 318 – Discouraging people from enlisting in armed forces. These articles are as follows:

### **Defamation**

**Article 125. – (1)** Any person who acts with the intention to harm the honour, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine. In order to punish the offence committed in absentia of the victim, the act should be committed in presence of at least three persons.

**(2)** The offender is subject to above stipulated punishment in case of commission of offence in writing or by use of audio or visual means directed to the aggrieved party.

**(3)** In case of commission of offence with defamatory intent;

a) Against a public officer,

b) Due to disclosure, change or attempt to spread religious, social, philosophical belief, opinion and convictions and to obey the orders and restriction of the one's religion.

c) By mentioning sacred values in view of the religion with which a person is connected,

the minimum limit of punishment may not be less than one year.

**(4)** The punishment is increased by one sixth in case of performance of defamation act openly; if the offence is committed through press and use of any one of publication organs, then the punishment is increased up to one third.

**(5)** In case of defamation of public officers working as a committee to perform a duty, the offence is considered to have committed against the members forming the committee.

### **Forming organised groups with the intention of committing a crime**

**ARTICLE 220-(1)** Those who form or manage organized groups to executes acts which are defined as offense by the laws, is punished with imprisonment from two years to six years unless this organized group is observed to be qualified to commit offense in view of its structure, quantity of members, tools and equipment hold for this purpose. However, at least three members are required for existence of an organized group.

**(2)** Those become a member of an organized group with the intention of committing crime, is punished with imprisonment from one year to three years.

**(3)** In case the organized criminal group is equipped with arms, the punishment to be imposed according to the above subsections is increased from one fourth to one half.

**(4)** In case of commission of a crime within the frame of activities of a organized group, the offender is additionally punished for this crime.

**(5)** The directors of the organized criminal group are additionally punished for all the offenses committed within the frame of activities of the organized group.

**(6)** Any person who commits an offense on behalf of an organized criminal group without being a member of that group is additionally punished for being a member of the organized group.

**(7)** Any person who knowingly and willingly helps an organized criminal group although not takes place within the hierarchic structure of the group, is punished as if he is a member of the organized group.

**(8)** Any person who makes propaganda by praising the organized criminal group and its object is punished with imprisonment from one year to three years. The punishment to be imposed is increased by one half in case of commission of this offense through press and broadcast organs.

### **Praising the offense or the offender**

**ARTICLE 215-(1)** Any person who openly praises an offense or the person committing the offenses is punished with imprisonment up to two years.



**Insulting Turkishness, the Republic, the organs and institutions of the State  
Article 299. –**

1. Any person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of the Republic of Turkey shall be sentenced to 6 months to 3 years of imprisonment.
2. Any person who publicly denigrates the Government of Republic of Turkey, the judicial institutions of the State, the military or security organizations shall be sentenced to 6 months to 2 years imprisonment.
3. Where denigration of Turkishness is committed by a Turkish citizen in another country, the sentence shall be increased by one third.
4. Expression of thoughts intended to criticize shall not constitute a crime.

**Discouraging people from enlisting in armed forces**

**Article 316-**

- (1) Those who try to persuade or instigate people not to enlist armed forces or making propaganda with this intention, are punished with imprisonment from six months to two years.
- (2) The punishment to be imposed is increased by one half in case of commission of this offense through press and broadcast organs.

Although the above articles of the new Turkish Criminal law has brought much more liberty in the enjoyment of freedom of expression compared to the former Criminal law, the Republic of Turkey is still facing negative comments occasionally due to some problems occurring in the implementation.

**C. The Press Law**

When the Press Law No. 5187 was adopted on 9<sup>th</sup> of June, 2004, the Press Law No. 5680 dated 15<sup>th</sup> July, 1950 was abrogated. The new Press Law that had been prepared by considering the *Acquis Communautaire* received affirmative reactions on the day that it took effect. The article 3 of the Press Law that is related to the freedom of expression is as follows:

**Freedom of the Press**

**Article 3 – The press is free. This freedom includes the right to acquire and disseminate information, and to criticize, interpret and create works.**

The exercise of this freedom may be restricted in accordance with the requirements of a democratic society to protect the reputation and rights of others as well as public health and public morality, national security, and public order and public safety; to safeguard the Indivisible integrity of its territory; to prevent crime; to withhold information duly classified as state secrets; and to ensure the authority and impartial functioning of the judiciary.

**D. Radio and Television Broadcasting Law**

There is a large and active broadcasting sector in the Republic of Turkey where the digital terrestrial test broadcasts are still continuing. Although the tender for digital terrestrial broadcasters ended in April and May 2013 the transition to digital terrestrial broadcasting is still awaiting a court decision owing to some issues that were filed to judiciary in relation to the tender process. The following table shows the number of radio and television channels of the country:

**Table 1: The number of broadcasters in the Republic of Turkey**

	Television			Radio		
	National	Regional	Local	National	Regional	Local
Terrestrial Analog	25	16	205	38	99	923
Cable	134	-	-	1	-	-
Satellite	264	-	-	85	-	-

*Source: Radio and Television Supreme Council (RTÜK), September 2013*

The new Law (Law No 6112) which took effect in 3rd of March 2011 abolished Law No 3984, adopted in 1994. The new Law that was prepared by taking the Audiovisual Media Services Directive of EU into consideration has included new media services as well as the improvements on the issue of freedom of expression. The improvements and the new amendments of the new law are as below:

#### **Purpose**

**ARTICLE 1- (1)** The purpose of this Law is to regulate and supervise radio and television broadcasting services and on-demand media services; to ensure the freedom of expression and information; to determine the procedures and principles in relation to the administrative, financial and technical structures and obligations of media service providers and the establishment, organization, duties, competences and responsibilities of the Radio and Television Supreme Council.

#### **Retransmission**

**ARTICLE 4- (1)** The reception and retransmission of media services shall be free. Retransmission can only be restricted in accordance with the relevant provisions of the international treaties to which Republic of Turkey is party.

#### **The independence and liability of the media service provider**

**ARTICLE 6 – (1)** The content and transmission of the media services shall not be subject to a priori interference and the content of the media services shall not be supervised in advance.

(2) The provisions of this Law and other laws and international legislation which the Republic of Turkey is party to and regulatory actions issued by the Supreme Council in relation to the implementation of these provisions shall not be deemed as interference.

## **V. New Media and Freedom of Expression**

Analogue radio and television in the Republic of Turkey, similar to the rest of the world making their broadcasts traditionally, free and linear, are now living through a transformation process in parallel with the innovations lived in the digital world. While broadcasts have become more and more receivable today by different devices such as smart phones and portable computers via Internet and mobile networks, broadcasters on the other hand, have started to use the technologies that can provide interactivity, independence from time and space, and conditionally accessible, non-linear, on-demand and customised services.

Digitalisation has also given birth to communication facilities previously unknown and largely based on Web 2.0 by transforming traditional media services via new technologies. Today, practising freedom of expression and information in a coherent way makes the access which allows the allocation and circulation of user-generated content obligatory to the web based applications built on the architectural

design and technology of Web 2.0.

For enabling freedom of expression and information to be guaranteed in all of these communication environments as revealed and transformed by the digital technology, formulation of new regulations have become necessary. That's to say, while new media services that have not been covered and foreseen by previous laws have emerged on one side, a need to regulate them within the context of freedom expression and information have arisen on the other.

Enacted laws for this purpose are as follows:

#### **A. New Technologies and Freedom of Expression in the Context of the Law No 6112 on the Establishment of Radio and Television Establishment and Their Media Services**

With the Law No 6112 adopted on 3 March 2011, technological developments arisen in the field of audio-visual media services were intended to be comprised into the scope of the law. The main indicator which the concerning law was prepared in this direction is that it contains new definitions about digital broadcasting and on-demand services such as on-demand broadcasting services, media service providers and platform operators.

As seen when examined, the Law No 6112 compared with the previous Law No 3984 is a regulation which is more liberal and closer to the EU legislation.

#### **B. New Technologies and Freedom of Expression within the Context of Law No 5651 on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed Through Internet Broadcasting**

In the Republic of Turkey, the use of Internet and, in particular, the use of social media has increased very rapidly in recent years. The fast pace of development can be easily observed when the use of social media sites such as Facebook and Twitter is examined. The figures relating to Internet and mobile networks and the statistics on the use of social media are as follows:

**Table 2: The Republic of Turkey Overall – Statistics on Electronic Communications Sector**

	2007	2008	2009	2010	2011	2012
<b>Total Population</b>	<b>70,586,256</b>	<b>71,517,100</b>	<b>72,561,312</b>	<b>73,722,988</b>	<b>74,724,269</b>	<b>75,627,384</b>
<b>Mobile Phone Subscribers</b>	<b>61,975,807</b>	<b>65,287,049</b>	<b>62,779,556</b>	<b>61,769,635</b>	<b>65,321,745</b>	<b>67,680,547</b>
<b>Broadband Internet Subscribers</b>	<b>4,609,085</b>	<b>5,986,101</b>	<b>6,782,657</b>	<b>8,561,632</b>	<b>14,004,459</b>	<b>20,005,204</b>
<b>Mobile Broadband Internet Subscribers</b>	<b>n/a</b>	<b>n/a</b>	<b>396,363</b>	<b>1,448,020</b>	<b>6,454,801</b>	<b>12,161,900</b>
<b>Internet via Mobile Computer</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>1,547,421</b>	<b>1,909,530</b>
<b>Internet via Mobile Phone</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>n/a</b>	<b>4,907,380</b>	<b>10,252,370</b>

**Source: Annual Statistics Bulletin on the Bases of Provinces of the Republic of Turkey on Electronic Communications Sector, Information and Communication Technologies Authority (ICTA), 2013**

As seen in Table 2, there is a marked increase in broadband Internet subscription and mobile broadband Internet subscription in particular in 2011 and 2012. In the same period, significant increase can be seen in connectivity to Internet via mobile computer and mobile phones.

**Table 3: Use of Facebook in the World (end of 2012)**

Country	Population	Internet Users (number)	Facebook Users (number)	Internet Users (%)	Facebook Users (%)	The Ratio of Facebook Users to Internet Users (%)
USA	313,847,465	245,203,319	166,029,240	78.13	52.90	67.71
India	1,205,073,612	137,000,000	62,713,680	11.37	5.20	45.78
Brazil	193,946,886	88,494,756	58,565,700	45.63	30.20	66.18
Indonesia	248,645,008	55,000,000	51,096,860	22.12	20.55	92.90
Mexico	114,975,406	42,000,000	38,463,860	36.53	33.45	91.58
United Kingdom	63,047,162	52,731,209	32,950,400	83.64	52.26	62.49
Turkey	75,627,384	36,455,000	32,131,260	48.20	42.48	88.14

**Source:** [http://en.wikipedia.org/wiki/Facebook\\_statistics](http://en.wikipedia.org/wiki/Facebook_statistics)

Table 3 demonstrates that the Republic of Turkey is ranked 7th in the world and 2nd in Europe (following the UK) in terms of the number of Facebook users.

**Table 4: Use of Twitter in the Republic of Turkey**

	March 2012	February 2013
Number of Total Users	7,200,000	9,600,000
Number of Active Users	5,300,000	6,200,000
Share in per day (Pcs)	1,700,000	8,000,000
Share in per second (Pcs)	20	92
Twitter Using Hours Intensively	21:00-22:00	22:00-23:00
Twitter Using Day Intensively	Friday	Wednesday
The Most Sharing City	İstanbul	İstanbul
Number of Average Followers	151	320
Gender of Users (%)	53 Male, 47 Female	53 Female, 47 Male
Number of Character (Average)	64	70
Connection (%)	59 Mobil, 41 web	61 Mobil, 39 web

**Source: Presentations by Monitera Research Company for Webrazzi 2012 and 2013**

Table 4 shows the changes in the use of Twitter in the Republic of Turkey. In parallel with the increase in the number of users, both the time spent in this environment and the sizes of messages have increased. Apart from this, some changes have also been observed regarding the connection points and the hours of

usage and during this observation period, it is seen that the number of female users have increased more rapidly than male users.

Freedom of expression, as a right recognised and protected by the constitution and, at the international level, human rights conventions which the Republic of Turkey is party to, is composed of three parts: freedom of opinion, freedom of research and access to information and ideas and freedom of dissemination of ideas.

Even though public's right to information provided by mass media is a widely accepted phenomenon at the international level, the aforementioned parts of freedom of expression gain a different significance when the concerned environment is the Internet. Today's internet environment by allowing the possibility of interactive communication through its Web 2.0 technology and by enabling the user's participation ensures sharing of and access to the varied information and thoughts on a much larger scale than any mass medium has ever provided until now on.

On the other hand, freedom of expression can be limited within the conditions set by the Constitution and international conventions. The limits to freedom of expression and information stipulated in Constitution, related laws and international conventions, especially European Convention on Human Rights, which the Republic of Turkey is Party to is however applicable for Internet environment. Title 3 "Content –related Offences" of Cybercrime Convention and its Additional Protocol with 51 signatory States including the Republic of Turkey is exclusively related to restrictions on freedom of expression and information in the Internet environment. As it is known, in the Convention and its Additional Protocol concerned; trivialization, approving or justification of child pornography, racism, xenophobia and denial of genocide or crimes against humanity, are considered unacceptable in the context of freedom of expression and information.

In the Republic of Turkey, there is no special law which limits freedom of expression and information in the Internet environment other than Law No 5651 prepared parallel to section 3 entitled as 'Crimes on Content' of Cybercrime Convention.

Catalogue crimes stipulated in Article 8 of the Law No 5651 on Regulating Broadcasting in the Internet and Fighting against Crimes Committed through Internet Broadcasting are as follows:

**ARTICLE 8 – (1) It should be decided to block access in relation to the content where there is a sufficient reason to suspect that below mentioned crimes occur:**

**a) Below mentioned crimes stipulated in the Turkish Penal Code with Law No 5237 dated 26/9/2004;**

- 1) Encouraging suicide (article 84),**
- 2) Sexual exploitation and abuse of children (article 103, first para),**
- 3) Facilitation of use of drugs and addictive substance (article 190),**
- 4) Provision of dangerous substances for health (article 194),**
- 5) Obscenity (article 226),**
- 6) Prostitution (article 227),**
- 7) Providing place and possibility for gambling (article 228), suçları.**

**b) Crimes stipulated in the Law No 5816 dated 25/7/1951 on Crimes Committed against Atatürk.**

## **VI. Conclusion**

As a member State of the Council of Europe for over 60 years the Republic of Turkey has made significant progresses in the direction of improving its democracy standards and has been carrying out efforts on this issue. In this context, the necessary steps have been taken for the purpose of transposing Council of Europe legislation into Turkish domestic law. Resolutions, declarations and recommendations prepared by the Council have been considered as guidelines in the studies carried out.

The Governments of the Republic of Turkey beginning from the full membership negotiations with the European Union following the Helsinki Summit in 1999 until today have ratified regulations in all legislation primarily in the Constitution relating to freedom of expression. Within the framework of these regulations, some of the laws have been completely renewed and some of them have been amended. In all the regulations concerned, the boundaries of freedom of expression have been expanded, if they contained limits. In this context, the principles of 'in accordance with law', 'formation of conditions' and 'necessity in a democratic society' covered by European legislation have been taken into consideration.

Regarding the technological developments and new media trends, a principle was adopted for applying the same regulations that had been made to the traditional media, relating to rights and freedoms with even fewer limitations and sanctions for new media.

These regulations were made within the various judicial packages prepared at different times in their adoption process and within a program. Preparations of the concerned judicial packages are still continuing. In the 4<sup>th</sup> judicial package amongst the others that have been adopted until today, some issues that had been regarded as crime in relation to the freedom of expression in terms of the act on the fight against terrorism were harmonised with the standards of European Court of Human Rights. In the concerned package, in inflicting a penalty to any person who has committed the crime of making the propaganda of a terrorist organisation, a provision has been made embracing a precondition that to qualify such a crime like this must be committed in a way of legalising, or praising, or advocating the application of the methods of coercion, violence and threat.

Correspondingly, a study for the preparation of a new constitution is presently being carried out by Turkish Grand National Assembly and a more democratic and contemporary constitution has been targeted. In this study, expanding the limits of the rights and freedoms of individuals, in particular the freedom expression and information and achieving a more participatory democracy are sought.

The aforementioned studies consist of the preparation studies on laws and regulations, in other words, the theoretical work has been done. However, the process of putting these laws into practice presents challenges. In order to overcome these challenges, training courses in the framework of a protocol signed between the Ministry of Justice of the Republic of Turkey and the Council of Europe are being

made available to the court authorities and the related law-enforcement officers as the authorised actors in the application of the laws and regulations. For this purpose, names of the many judges and prosecutors who would participate in these training courses in Strasbourg were determined and they are now participating in these courses. Following the training programme, the problems met in the applications of the laws and regulations are expected to decrease at the first stage and be fully eliminated a short while later.

The Republic of Turkey makes necessary regulations with an awareness of freedom of expression, freedom of information, the right to privacy and the right to assembly in the digital age. The Republic of Turkey maintains decisively to make regulations in order to improve its citizens' quality of life and to raise the standards of its democracy.