RESILIENCE:
For Media Free of Hate and Disinformation

NATIONAL REGULATORY AND SELF-REGULATORY FRAMEWORK AGAINST HATE SPEECH AND DISINFORMATION

FACTSHEET

Sinem Aydınlı

TURKEY

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1. INTRODUCTION

In Turkey, there is no specific prohibition regarding hate speech, which is the basis of the process that leads to hate crime. While hatred and incitement to hatred are prohibited under the Turkish Penal Code (TPC), as noted by the EU Commission Turkey 2020 report, "legislation on hate speech and its implementation need to be improved as it disregards hate speech against religions other than Islam" and "it does not cover hate offences based on sexual orientation or gender identity." The legislation "is not in line with the international standards."[1]

Although there are anti-discrimination provisions in the Constitution and in several laws, ethnic, gender-based discrimination or racism is not regarded as an offence in law. There are no extensive legal hate speech regulations implemented to prevent hate speech. Also, there is no regulation concerning spreading disinformation in Turkey.

This factsheet indicates the main characteristics of the national regulatory and self-regulatory framework against hate speech and disinformation and offers an insight into the adequacy of legal regulation in preventing hate speech and disinformation. Thus, the factsheet is complemented with the policy recommendations. This overview follows the detailed research of "Hate and Propaganda Media in Turkey" since the beginning of the Resilience project, aiming to serve and inform the national debate on countering hate speech and disinformation.

** We would like to extend our thanks to Özgür Sevgi Göral and Levent Pişkin for their comments on the factsheet.*

1 EU Commission Turkey 2020 https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/turkey_report_2020.pdf

2. HATE SPEECH REGULATION IN TURKEY

As Turkey is not a member of the European Union, EC Anti-Discrimination Directives have not been transposed or implemented in the country. Still, Article 122 of the TPC regulates "hate and discrimination" as an offence (in the provision of services available to the public), which must fulfil the obligation to ensure the principle of equality in the context of Article 10 of the Constitution; however, it contains neither hate speech acts nor defines any ethnic discrimination offences. Article 216 of the Criminal Law is an important provision to punish hate speech in the Turkish legal system. It has three paragraphs proscribing "provoking/inciting hatred or hostility between groups of the population." In order for the crimes in the first two paragraphs of this provision to be committed, "degrading" must be grounded on social origin, race, religion, sect, gender or regional differences."[2] Its last paragraph defines "degrading the religious values of a section" (recently used against those who advocate the rights of LGBTI+s).[3] Article 125 proscribes "insult," and Article 153 regulates the offence of "damaging places of worship and cemeteries." Not all the conditions that should have been listed among the bases of discrimination have been listed under these types of offence; therefore, all these articles embody insufficient provisions (İHD 2020). Also, it is very unlikely that a person who practices hate speech will be punished; they may be given short prison sentences or fines, or deferral of the announcement of the verdict.

In addition, Article 5 (1) of the Labour Law, Article 4 of the Basic Law on National Education, Article 68 of the Turkish Civil Code, Article 12 of the Law on Political Parties, Article 2(1) of the Law on the Execution of Penalties and Security Measures, and Article 7 of the Law on Civil Servants prohibit direct discrimination within their limited material scopes, but do not define direct discrimination (Karan 2020).[4]

The Law on the Human Rights and Equality Institution of Turkey (No. 6701), the anti-discrimination law adopted in 2016, prohibits direct, indirect and multiple discrimination as well as instruction to discriminate, discrimination by assumption, segregation, harassment and mobbing in the workplace. As cited in Karan (2020), sexual orientation is not enumerated in any of the laws, including Law No. 6701, or in the Constitution, despite the consistent efforts of human rights and LGBTI associations.[5]

However, Article 216 is used to prosecute opposing sections of society instead of punishing those who incite hate towards some parts of society

2 *Venice Commission. "Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey." 15 March 2016. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e*

3 *Hate Crimes and Racist Attack Report İHD 2020. Available at: https://ihd.org.tr/en/wp-content/uploads/2020/09/sr20200922_Hate-Crimes-and-Racist-Attacks-Report_Sept-2020.pdf*

4 *Karan, U. (2020) The Country Report on Non-discrimination Turkey 2020. Available at: https://www.equalitylaw.eu/downloads/5281-turkey-country-report-non-discrimination-2020-2-35-mb*

5 *See note above*

and it is not used to prosecute actual incitement to violence or discrimination against subordinate groups. Human rights defenders, labour and professional organizations' executives and politicians who defend the right to peace against war often face charges under Article 216 of the TPC and these individuals face convictions (İHD 2020). On the other hand, as Article 122 of the TPC does not define any ethnic discrimination or hate offence, those committing these crimes cannot be prosecuted and acquittal decisions are made by the courts (İHD 2020).

Turkey reported to the OSCE hate crime section for 2019 in connection with the crimes of Article 115 and Article153 of the Turkish Penal Code (offences constituting threats and "Damaging Places of Worship and Cemeteries"). However, Articles 122, 135 and 216 are not included in the report as they are not included in the OSCE definition of hate crime.[6]

Regarding the mediasphere, Turkey's media watchdog the Radio and Television Authority (RTÜK) has Law No. 6112 on the Establishment of Radio and Television Enterprises, including Article 8 regarding discrimination, stating that media services "shall not incite the society to hatred and hostility by making discrimination on the grounds of race, language, religion, sex, class, region and sect or shall not constitute feelings of hatred in the society."[7] However, this article imposes no legal obligation.

There are no specific self-regulatory provisions related to online media in Turkey. However, after being authorized to inspect online broadcasting, RTÜK has fined an online content platform for airing a show featuring a trans woman, indicating its transphobic practices. As noted in EU Turkey Report 2020, "the regulation [of RTÜK] lacks clarity in terms of its scope, definitions, licencing criteria and costs, and contains controversial provisions regarding jurisdiction and restricting access to online content."[8] Law No. 5651 on the Regulation of Publications on the Internet and Combating Crimes does not have an article on online hate speech.

6 https://hatecrime.osce.org/turkey

7 *Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services Available at:* https://www.rtuk.gov.tr/audiovisual-media-law-/4046/en

8 *See note 1 above*

3. IMPLEMENTATION OF HATE SPEECH REGULATION

IMPLEMENTATION BY PROSECUTORS AND COURTS

As of 2021, certain provisions of the Criminal Code have continued to be used to punish individuals expressing peaceful views and aspirations or democratic critics as members of minority groups within Turkey. For instance, during the Boğaziçi University student-led resistance against the appointment of a rector to Boğaziçi University, in which LGBTI+s actively participated, students were arrested over a picture of the Kaaba, a sacred site in Islam, with four LGBTI+ flags on its corners, for allegedly "degrading or inciting the public to enmity or hatred" (Article 216) with this picture in February 2021. However, the hate statements of those close to the Government that targeted them or the opposition and minority identities were exempted from this crime.

After the head of Turkey's official institution of religious authority had once again targeted LGBTI+s by calling them evil during a sermon in April 2020, both the Ankara Bar Association and Human Rights Association (İHD) filed a criminal complaint against the head of the Directorate of Religious Affairs, Ali Erbaş under Article 216/2.[9] However, the Chief Public Prosecutor's Office has decided not to prosecute on the grounds that there is no reason to launch an investigation. On the contrary, an investigation was launched into the Bar Association's statement criticizing Erbaş for his remarks as per Article 216/3, "degrading religious values adopted by a section of the society."[10] None of the judicial bodies has ever ruled in any case that discrimination or hate speech based on sexual orientation has occurred. Also, the religious authority is not accused of committing hate speech.

These were not the only instances indicating the arbitrariness of sanctions in the scope of hate speech and the impunity for the offence as per Article 216 when the rights of disadvantaged groups are at stake. It appears that the law is based on protecting those advantaged groups in favour of dominant ideology such as Islamic values, unity and integrity, Turkish family structure, etc. This provision is regulated under the "Offences under the Public Peace" and individual is not the starting point. As a result, Article 216 can be used as a tool for deterring hate speech.

One of the most important issues in this context is that the expression "ethnic origin" is not included in Article 122, regulating "hate and discrimination" offences. There are many incidents in which Kurdish citizens living in Turkey are subjected to hate speech and crimes because they speak Kurdish or

9 *'No Need to Investigate' Religious Affairs President's Remarks, Says Prosecutor's Office. Available at: https://bianet.org/english/lgbti/224293-no-need-to-investigate-religious-affairs-president-s-remarks-says-prosecutor-s-office*

10 *Ankara Bar Investigated After Criticizing Religious Affairs President over LGBTI+ Remarks. Available at: https://bianet.org/5/146/223509-ankara-bar-investigated-after-criticizing-religious-affairs-president-over-lgbti-remarks*

listen to Kurdish music.[11] Also, Alevis' places of worship, *cemevis,* have also been the target of attacks but Article 153 of the TPC is not enforced for such attacks as Alevism is not recognized as a sect and prosecutors do not initiate investigations due to this perspective (İHD 2020).

Assoc. Prof. Ulaş Karan explains the attitude of judges of Criminal Courts by stating that "the judicial bodies' approach to hate speech and hate crime is usually not in favour of protecting minority groups, but limiting statements in favour of protecting minority identities, therefore limiting freedom of speech."[12] Hate speech is being interpreted as an interference with freedom of speech arbitrarily by the courts. Freedom of expression decisions of the ECtHR are occasionally included in the decisions of the courts but these further say that "this is freedom of expression" when government-friendly people are accused of committing hate speech.

The criminal complaints from disadvantaged groups often result in non-prosecution. The Ministry of Justice has been publishing the data indicating the cases as per Article 216 but not the content of those cases.[13]

IMPLEMENTATION OF A MEDIA REGULATORY BODY

Acting as a government tool to silence the critical media in Turkey through its punishments,[14] in March 2021, RTÜK reportedly rejected 16 separate complaints filed by the opposition Peoples' Democratic Party (HDP) regarding remarks against the party, including "terrorism" accusations on television programmes. The council of RTÜK concluded that all the remarks against the party were free expression.[15]

In May 2020, in a programme on pro-government Ülke TV, a media figure, Sevda Noyan began to direct threats towards a section of society and said that her family would kill at least 50 people in the event of a new coup attempt against the Government. It was not until public reaction from both the opposition and some pro-government camps that RTÜK imposed a three-episode broadcast suspension on the programme as per RTÜK Law No. 6112. However, the prosecutor's office has concluded that there is a lack of grounds for legal action against Noyan whose "dead list" was ready.

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11 Barış Çakan Cinayeti ve Nefret Suçları. Available at: https://www.dw.com/tr/bar%C4%B1%C5%9F-%C3%A7akan-cinayeti-ve-nefret-su%C3%A7lar%C4%B1/a-53658889

12 See note 4 above

13 Ministry of Justice General Directorate of Judicial Record and Statistics, Judicial Statistics Archive Available at: https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1692021162433adalet_ist-2020.pdf

14 IPI condemns 5-day broadcast bans on Turkey's Halk TV, TELE1. Available at: https://freeturkeyjournalists.ipi.media/ipi-condemns-5-day-broadcast-bans-on-turkeys-halk-tv-tele1/

15 Media authority imposes no sanctions for 'terrorism' accusations against HDP. Available at: https://bianet.org/english/media/241280-media-authority-imposes-no-sanctions-for-terrorism-accusations-against-hdp%22

EQUALITY BODIES

The Human Rights and Equality Institution of Turkey [Türkiye İnsan Hakları ve Eşitlik Kurumu (TİHEK)] as "an anti-discrimination body" for the promotion of equal treatment regardless of racial or ethnic origin was established in 2016 and became operational in March 2017. The institution has the power to receive discrimination claims on grounds of race/ethnicity, religion/belief, age and disability from both natural and legal persons and initiate investigations. Sexual orientation has not been included in the mandate. However, it is not in accordance with Article 13 of the Racial Equality Directive. National and international NGOs as well as UN bodies have criticized the Institution's lack of independence and non-compliance with the Paris Principles (Karan 2020). In the process of establishing the equality institution and drafting the relevant legislation, the views of NGOs had not been included and it had excluded many grounds of discrimination specified in Turkey's international commitments.

On 30 September 2020, the then head of TİHEK, Süleyman Arslan, tweeted untrue statements from the institution's official Twitter account[16] about the Istanbul Convention and made proposals that would lead to forced child marriage. TİHEK targets the LGBTİ+ community and is also known for its rejections of LGBTI+ complaints.[17] Lastly, TİHEK rejected the complaint regarding the Chaldean couple Şimuni and Hormuz Diril, who were kidnapped in Şırnak.[18]

Turkey has also an Ombudsman Institution, established through Law No. 6238 in 2012. It receives complaints concerning general human rights but partially fulfils the requirements of the Racial Equality Directive. Still, the reports and recommendations of the Ombudsman Institution are not binding, and it is not possible to appeal its recommendations (Karan 2020).

16 *TİHEK became spokesperson of misogyny in Turkey. Available at: https://www.duvarenglish.com/columns/2020/10/07/tihek-became-spokesperson-of-misogyny-in-turkey*

17 *Kronoloji: Adında insan hakları ve eşitlik olan bir kurumun LGBTİ+ hakları karşıtlığı. Available at: https://kaosgl.org/haber/kronoloji-adinda-insan-haklari-ve-esitlik-olan-bir-kurumun-lgbti-haklari-karsitligi)*

18 *Türkiye İnsan Hakları ve Eşitlik Kurumu, Diril ailesinin başvurusunu reddetti. Available at: https://artigercek.com/haberler/tihek-diril-ailesinin-basvurusunu-reddetti*

4. REGULATION OF DISINFORMATION

In Turkey, there is no law that directly aims to counter disinformation. Also, as cited in the ECRI 2016 Report on Turkey, "there is not a system in place for systematically screening the web in order to detect and combat criminal online hate speech."[19] The investigations are mostly being launched in accordance Article 216 of the Turkish Penal Code against those who comment or report about rights of ethnic, religious groups, who are mostly opponents of the Government, on the grounds that they are disseminating false information.

However, it is possible to request the removal of internet content that contravenes the law. Penal Judgeships of Peace should take the decision on blocking access to content or removing it in case of the crimes listed under Articles 8 and 9 of Internet Law No. 5651. In those articles, there is no clear definition of disinformation.

Throughout 2020, Penal Judgeships of Peace imposed access blocks on at least 1,358 news on issues of corruption, irregularities, drug dealing, sexual abuse and caderization in Turkey. [20]

In August 2021, the Government was reportedly working to introduce prison sentences for the offences of "disinformation" and "misinformation" on social media and to establish a regulatory state body for social media platforms called the "Presidency of Social Media."[21] However, the new regulation raises concerns relating to the use of vague terms and criteria as well as the risk of abuse by state authorities, all of which can be used to criminalize dissenting voices.[22]

The first paragraph of Article 216 is being used to further suppress freedom of expression in Turkey due mostly to online and offline activity of journalists. As of September 2021, Media Monitoring Database of bianet has listed 33 entries, showing the journalists who were detained or stood trial as per Article 216/1 due to either their social media posts or journalistic activities.[23] In January 2018, many journalists were detained for their online criticism of the Turkish military's Operation Olive Branch as per the first paragraph of Article 216.

An investigation has been launched against a journalist, Özgür Boğatekin, on the grounds of his social media posts about the racist attack that claimed the

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19 ECRI Report on Turkey 2016. Available at: https://rm.coe.int/fifth-report-on-turkey/16808b5c81

20 bia Media Monitoring Report 2020 https://bianet.org/5/110/237966-our-jaw-has-dropped-in-the-face-of-this-press-freedom

21 Report: Turkey to establish regulatory body for social media. Available at: https://bianet.org/5/100/248915-report-turkey-to-establish-a-social-media-regulator-to-prevent-terror-of-lies

22 Turkey's planned legislation on fake news 'alarming,' says IPI. Available at: https://bianet.org/5/100/249239-turkey-s-planned-legislation-on-fake-news-alarming-says-ipi)

23 Media Monitoring Database. Available at: https://mediamonitoringdatabase.org/?fwp_e=judicial-interference&fwp_f=turkish-penal-code&fwp_f1=4d44f268cd2eb6d15a9d0176b86bd415

lives of seven members of a Kurdish family in Konya province in July 2021. Although the prosecutor's office decided not to prosecute, the journalist had been charged as per Article 216, which should be used on the grounds of "inciting hatred."[24]

The Government has attempted to control the online information space, claiming that misinformation is rampant and encouraging users to rely on government-issued information or use state-funded verification platforms (Freedom on Net Turkey, FNT 2020).[25] In February 2021, the Presidential Communications Directorate mentioned a state verification platform named "Is It Real?" that offers "correct versions" of news developments for national and international audiences.[26] However, as mentioned in the FNT 2020, "given the proliferation of pro-government content online, the platform will likely serve as a tool to further government-friendly narratives."

In March 2021, the President and Justice and Development Party (AKP) Chair Recep Tayyip Erdoğan unveiled a "human rights action plan" consisting of 11 principles.[27] "Increasing the Effectiveness of the Fight against Hate Speech and Discrimination" is also among the goals set under the Action Plan, promising a concrete step to introduce a new provision to the Turkish Penal Code in regard to discrimination and hate crimes. As of September 2021, nothing has been implemented in respect of "the plan".

24 *Criticizing the racist attack in Konya, journalist faces an investigation. Available at: https://bianet.org/english/law/248055-criticizing-the-racist-attack-in-konya-journalist-faces-an-investigation*

25 *Turkey: Freedom on the Net 2020 Country Report. https://freedomhouse.org/country/turkey/freedom-net/2020*

26 *Cumhurbaşkanlığı, 'Doğrulama' platformu kuruyor. Available at: https://www.gazeteduvar.com.tr/cumhurbaskanligi-dogrulama-platformu-kuruyor-haber-1513925*

27 *Erdoğan unveils 'human rights action plan'. Available at: https://bianet.org/english/politics/240208-erdogan-unveils-human-rights-action-plan#)*

5. SELF-REGULATION RELATED TO HATE SPEECH AND DISINFORMATION

Global communication platforms such as Twitter can use their own policies to intervene in removing or flagging or disclosing accounts propagandizing for the Government. Parallelly, on 11 June 2020, Twitter announced that it had globally disclosed the accounts to their archive of state-linked information operations. Some 7,340 accounts attributed to the youth wing of the ruling party AKP were in Turkey, pushing propaganda by criticizing the CHP and HDP opposition parties, and for spreading disinformation and targeting and discrediting critical accounts and individuals and movements. In July 2020, Twitter also suspended a pro-government social media network targeting independent media and those critical of the AKP.[28]

Moreover, the Minister of the Interior referred to LGBTI+ activists as "perverts" in a Twitter post during the above-mentioned Boğaziçi University protests, Twitter found that the Minister's posts violated its rules about hateful conduct and abusive behaviour.[29]

On 1 May 2020, the AKP issued a twelve-clause ethical guideline that includes the principles not to use hate language and to fight against "disinformation" in social media. They encouraged the use of a "green dot" emoji on Twitter profiles. After a wave of threats targeting female journalists and politicians and dissemination of sexist statements from these accounts with green dots on Twitter, the AKP announced that it was ending "the green dot" campaign.[30]

Initiated in 2018 to support independent and ethical journalism, the Coalition for Ethical Journalism Turkey has begun preparing a glossary of hate speech or discriminative language produced by journalists. Moreover, Press Council Turkey has Codes of Ethics and the Turkish Journalists Association has the declaration of Rights and Responsibilities of Journalists of Turkey having principles tackling hate speech but their warnings or punishments have no legal equivalent.

On the other hand, in order to counter the manipulated facts and bogus news, verification platforms,[31] like teyit.org as a non-partisan and independent fact-checking organization, scans, chooses and investigates suspicious information and delivers it to readers by turning it into analyses.

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28 Twitter'dan "Pelikan" avı: Üç sosyal medya hesabına kısıtlama getirildi. Available at: https://sendika.org/2020/07/twitterdan-pelikan-avi-uc-sosyal-medya-hesabina-kisitlama-getirildi-592386/

29 Twitter flags two more tweets by Minister Soylu about Boğaziçi protesters, LGBTI+s. Available at: https://bianet.org/5/94/238845-twitter-flags-two-more-tweets-by-minister-soylu-against-bogazici-protesters-lgbti-s

30 Ruling AKP ends green dots social media campaign 40 days after initiating it. Available at: https://www.duvarenglish.com/politics/2020/06/17/ruling-akp-ends-green-dot-social-media-campaign-40-days-after-initiating-it

31 Fact-Checkers and Fact-Checking in Turkey. Available at: https://edam.org.tr/wp-content/uploads/2020/06/FactCheckers-and-FactChecking-in-Turkey-H.-Ak%C4%B1n-%C3%9Cnver.pdf

6. POLICY RECOMMENDATIONS

• The current legislation should include a direct expression of hate speech and expand the scope of hate speech in terms of person and subject as much as possible.

• The anti-discrimination state bodies should focus on protecting the human rights of the most vulnerable groups, broadening legal protection and eliminating the hierarchy between discrimination grounds.

• The Government should adopt codes of conduct prohibiting hate speech and the authorities should encourage political parties to do likewise.

• The parliament should change the procedure in the laws regarding the participation of NGO monitoring and countering the hate speech and disinformation in media in the proceedings to support the victims of hate speech and disinformation as Turkish law does not recognise the standing of NGOs to bring claims in support of victims of discrimination.

• In order to distinguish which institutions or individuals benefit from impunity for hate speech, a monitoring mechanism should be established to render the judiciary's different interpretations of the boundaries between hate speech and freedom of expression visible.

• The judiciary bodies such as lawyers and/or judges can be trained in relation to the ways in which hate speech legislation is applied in compliance with the European Court of Human Rights.

• An autonomous non-governmental body should be established and developed by the NGOs which conduct media monitoring in order to render hate speech and disinformation in all media visible.

*** Sources used in this factsheet can be found in the footnotes. All were accessed on 28 September 2021*

About the author

Sinem Aydınlı (Ph.D.) completed her Ph.D in the Media and Creative Industries program at Loughborough University London in 2018. Her dissertation focuses on the process of the discursive formation of "political others" in the Turkish press and it evaluates the role played by media articulations in constructing meanings. She has been working with bianet/IPS Communication Foundation team since 2018 on various projects of the foundation. Aydınlı was the country researcher of the Media Ownership Monitor Turkey 2018 project. Her areas of research are media discourse, discrimination and cultural politics.

This publication is a part of the RESILIENCE project research and advocacy component. It includes a series of factsheets on NATIONAL REGULATORY AND SELF-REGULATORY FRAMEWORKS AGAINST HATE SPEECH AND DISINFORMATION in Albania, Bosnia and Hercegovina, Kosovo, Montenegro, North Macedonia, Serbia and Turkey. The series also includes a factsheet with examples of regulatory and self-regulatory mechanisms on the EU level and in the EU member states.

Nine media development organizations in the Western Balkans and Turkey have joined forces under an EU-funded project 'RESILIENCE: Civil society action to reaffirm media freedom and counter disinformation and hateful propaganda in the Western Balkans and Turkey'. The three-year project is coordinated by the South East European Network for Professionalization of Media (SEENPM), a network of media development organizations in Central and South East Europe, and implemented in partnership with: the Albanian Media Institute in Tirana, the Foundation Mediacentar Sarajevo, Kosovo 2.0 in Pristina, the Montenegro Media Institute in Podgorica, the Macedonian Institute for Media in Skopje, the Novi Sad School of Journalism in Novi Sad, the Peace Institute in Ljubljana, and bianet in Istanbul.

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