

Chapter Eight: Walking on a Knife's Edge: Freedom of Press in Turkey

Yusuf Kanli

Freedom of thought and freedom of expression are not just luxury concepts of Western democracies. Free press is not a right just for newspapers, TV and radio stations or newsmen, it is at the same time a requirement of the public's right to be informed. Freedom of opinion and the right to information as well as a free press are fundamental rights in the absence of which there cannot be democracy. I couldn't agree more with what Wilhelm Staudacher, the secretary-general of the Konrad Adenauer Foundation, underlined in the preface of a "Media and democracy" book published in 2005:

The relationship between media and democracy is one of interdependence, with the free media leading to informed decisions and to qualified political participation. Conversely, a democracy as a free expression of political convictions of a people rests on the firm foundation of a free media.

Are we first journalists reporting developments as we see and observe them? Or should we first be patriotic servants of our states' august interests? Where is the line between the two?

The contentious Article 301 of the Turkish Penal Code (*TCK*), the anti-terror law, the taboos, written and unwritten restrictions on freedom of expression, political pressures, interests of the media bosses and the shackles on the Turkish public's right to be informed...

Shall we allow people "curse at Turkey and get away with it" rhetoric of the conservatives against demands to amend Penal Code Article 301 and remove the shackles on freedom of thought, or shall we stand by the international perception of "There cannot be a crime undefined in the laws" and thus defend that in modern societies there can be no crime such as insulting the Turkishness?

Are the beatings of women by police on International Women's Day at an Istanbul square and European Union Trio meeting in Ankara next day coincidental, or do they reflect some sort of an organized reaction of the establishment against EU imposed reforms? What about police tearing down posters of a Kurdish film from the walls in Diyarbakır just a day before a Turkey-EU Association Council meets in Brussels?

Catering to national taboos and sensitivities, respecting the norms of the profession, abiding with the "right of people to be informed" and not violating the vaguely described crimes in laws of the country... Growing monopolization of media ownership, increasing pressures and intermingled relations between the political administration and media bosses and journalists and writers trying not to give up free expression and free speech...

This is like walking on the knife's edge.

A society is not “free and democratic” just because there are free elections in that country. Free elections are vital, but not sufficient. The supremacy of law, equality of all in front of the law and the separation of powers and human rights and liberties are all hallmarks of any democratic order. Civil rights and liberties must be safeguarded. They cannot be traded for something else.

While discussing freedom of expression at conferences from Copenhagen to Bali, it became all the more clear that irrespective of ideology, nationality, ethnic background and to a certain extent geography, there are two different perceptions of the issue.

One of these two perceptions is based on “individualism”, while the other is more related to the degree of communal awareness a person possesses. The first could also be described as “neo-liberalism” -- an ideological stance that could care less what other people may think on any issue but is rather apprehensive about the no-limits liberal approach of the individual on issues of concern to his/her own self.

What other people think on an issue, how strongly they feel on any subject, and religious or communal values and norms bother the neo-liberal not at all. What is important is what and how he/she perceives that subject. Although individual freedoms are being defended with lofty words, in reality what's important are the freedoms of one's own self, people sharing the same position and compatriots -- a term that has a wider connotation than its classical meaning and which indeed could mean a nation, as was seen in the Danish cartoons controversy.

This is an understanding that could best be described as “egocentric,” a approach that could not care less what others may feel or think on an issue or how severe the damage that could be inflicted on their sentiments if, for the sake of “testing the limits,” some adventures are undertaken by an irresponsible editor.

The other perception is built on the concepts of “communal responsibility” and “communal awareness.” Even though there should be no limit to freedoms on a conceptual basis, in real life there is indeed a limit to all freedoms. That limit is erected by communal realities.

In a land that has suffered so much in its recent history from xenophobia, rejectionism, discrimination and hate speech, it is impossible to accept defamation of any religion, the ridiculing of prophet of a religion as a terrorist, and the portrayal of a religion as the root cause of backwardness of the societies practising that religion. Closing off streets, forcing a group of people have a certain emblem on their lapels to vividly demonstrate their “difference” and such developments might be tolerated as “individual unpleasant developments,” but it's with such small steps that a calamity starts to build up.

It is a fundamental duty for any government to take measures and provide security for its citizens. There should be no letup in the fight against terrorism. But, the moment we start to sacrifice democratic norms and civil liberties, particularly from the freedom of press hallmark, then that means we have started to lose this fight irrespective of how seriously we might have crushed the terrorist elements. That is because a prime target of terrorism is to kill society's freedoms.

Censorship and harassment of the media cannot be reconciled with the notion of free and democratic society and governance. “They are criticizing the government because we have stood against their interests” and other such remarks by government members must be either substantiated with facts, or this harassment must be stopped. Similarly, it is impossible to reconcile with any norm of democratic understanding a remark by a prime minister calling a senior columnist to relinquish his Turkish citizenship and leave the country just because he said he would not recognize his president if an Islamist was elected as the new president of the country. Such a “Love it or leave it” fascist understanding has unfortunately made that columnist a target of Islamist activists and the increased number of death threats he started to receive since then is testifying to that. To better understand how serious such threats might be, I would like to recall the recent murder of my friend and colleague Hrant Dink after he was sentenced under the contentious Penal Code Article 301 on grounds that he insulted “Turkishness” and thus was made a target, or just send a glance to the long list of journalists murdered in Turkey since the 1900s.

In the aftermath of the 1980 coup in Turkey, Bülent Ulusu, a retired admiral, was named prime minister. Assuming that one of the duties of a reporter was to ask questions and thus help bring clarification to issues, at the first press conference of the retired admiral premier I asked a question. I cannot recall what the question was, but I remember today as an example of political pressure on journalism what my boss told me upon returning paper that day. The premier had called him and asked for my expulsion from the paper because I had asked an “inappropriate question.” I was not expelled, but for some time, I was confined to my desk.

In mid-August 2007, the Turkish media was shocked with a statement from the biggest media group of the country. Emin Çölaşan, a daily columnist with the daily *Hürriyet* for the past 22 years and an arch-opponent of political Islam in Turkey, was sacked. Çölaşan will definitely soon find a platform and continue expressing his views, but the message is clear: If a senior writer as popular as Çölaşan could be sacked, all journalists who would not want to risk their jobs should better mind what they report and how they analyze developments in the country.

Unfortunately, neither the “request” of the 1980 coup premier to my boss, the sacking of Çölaşan, nor Prime Minister of the country Recep Tayyip Erdoğan asking a senior writer “love our presidential choice or leave the country” are exceptional cases in the Turkish media.

The growing trend of monopolization in the Turkish media; media bosses getting engaged in many fields of economy and thus developing some sort of a “happiness ring” state of relations with the political administration; growing authoritarian style in the governance of the country; last but definitely not the least, the widening Islamist-secularist polarization in the country on the one hand and increasing separatist threat on the other hand all indicate that pressures on the Turkish media and free speech in Turkey are likely to increase in the period ahead.

Ever since the new penal code entered into force in Turkey, we have been complaining about some of the articles of this basic legal framework that were written with

a rather primitive and obsessive mentality. Irrespective of whether this country will continue its European Union accession process or not, widening our democracy and enhancing liberties must be the goal. Turkey's EU process is helping accelerate reforms, for sure. However, these reforms are required for a better governed, democratic and prosperous Turkey, where all citizens enjoy equal rights and are afforded equal opportunities to reflect their cultural heritage and where people are not placed behind bars because they have views that are not compatible with those of the administration, the establishment or the majority.

Not only do we rarely have a day when the Turkish prime minister is not harassing the media for criticizing the government with some ulterior motives, instead of expanding reforms we unfortunately notice an iron fist tightening around our neck. While we are expecting the government to abide with the pledges it made during debates before the new penal code and to eradicate Article 301 and such paragraphs of that basic law that reflect a rather ill mentality, we see further restrictions being imposed on the freedom of expression and freedom of press through a law amending anti-terror legislation.

No one can dispute that in a democratic society there ought to be no taboos. Discussion on any issue must be possible, and people must be mature enough to accept that there might be differing opinions, perceptions and even people's affinity to certain matters. This is, more or less, what we keep on stressing: "freedom of thought" or "freedom of expression."

Governments of semi-democratic or totalitarian countries may have trouble understanding it, but in true democracies it is none of their business to make editorial decisions on behalf of newspeople and journalists. Governments may not want to see it happen, but in democracies the media may report on issues that might be considered "taboo" by some establishment or group of people or that may damage "national interests", according to some. In democratic countries, governments, rather than acting with political considerations and thinking of clamping down on such reporting, generally take such issues to court and let them be resolved through the judicial process, as do the establishments, interest groups and individuals who feel their rights were infringed upon or their interests hurt by such reporting.

In the absence of a court decision to the contrary, publishing articles, commentaries, photographs, cartoons or sketches cannot be restricted in a democracy, and people who might feel their rights were infringed upon or interests unjustly damaged through the publication of such material have the right to go to court and demand legal action against those responsible, seeking an apology or compensation, or both.

Thus, to what extent can avoidance of graphic content that could offend the public or the censoring of a news article or some graphics because of national security concerns, or as a voluntary contribution by the media to the fight against terrorism, conform with the "freedom of the press" concept? And particularly in view of the fact that such an act would not limit the liberties of the journalist alone but at the same time would restrict individual access to information.

The problem at hand is – at a time when the international community has been unable to define what terrorism is – how to strike a balance between “responsibility,” a fundamental right, and journalism’s principle of objectivity.

Even in the most difficult times, the Turkish media has always found a way of evading the toughest judicial obstacles to free press and free expression, and we are confident that it will succeed in that task today as well. Will it help Turkey’s progress or image to put scores of journalists and intellectuals behind bars? Will it help in the fight against terrorism to put intellectuals in prison? Criticism is a right and cannot be curtailed with obscure descriptions of crimes in the criminal laws.

We have to be clear and must say it loud: There is no room for undefined crimes in a democracy.

The current furore of prosecutions and convictions for insults under Article 301 of the Turkish Penal Code (*TCK*) comes from a conflict between an old way of thinking and a new one. It is the difference between life under the rule of autocratic sultans and life under democracy. In earlier centuries under Ottoman rule, the sultan – who was also the caliph – the state and its apparatus were paramount. The individual, relatively, was nothing. Under the democracy of today, the individual has a heightened, more important significance while the state and its apparatus have become secondary.

Turkey’s current law on insulting the state needs to be brought up to date to reflect this emphasis on the individual in a democracy. Insults to abstractions need to be eliminated and the focus changed to insults to individuals. Further, the idea of insult itself needs to be eliminated and replaced with clearer ideas of what constitutes harm. In fact, Article 301 should be completely eliminated and replaced with a new law.

Until a complete change is made, Article 301 as it is or as it might be amended will continue to be used to prosecute intellectuals, writers, and activists – to threaten them with jail, put them in jail and choke free thought and expression.

Here is how it presently works:

First, Article 301 deals in terms of the idea of “insult,” but there is no definition of the term. This allows a court to see an insult any way it wants to. If a person is found guilty, he can receive a suspended or actual jail sentence of from six months to three years, depending on the circumstances.

Second, under Article 301 a person can publicly insult “Turkishness,” the Parliament of Turkey, the government of the Republic of Turkey, the judicial institutions of the state, the military and security organizations.

Thus, the current law makes it possible to bring charges for alleged insults to abstract ideas or to entities, while the modern concept of law makes it possible to criminalize insults only to individuals. For example, “Turkishness” is an abstract idea. You cannot find it in a field like a tree. Judicial and government bodies are vague terminologies. Under modern law, it is not possible to consider criticism as an insult to the “judiciary” or any of the other things listed in the contentious Penal Code Article 301.

And painful though it is for some to accept, it would no longer be legally possible to insult “Turkishness.” A Turk’s blood may still boil when hears Turkey or something Turkish maligned, but under modern law it is not an insult. Nonetheless, it would still

be possible to insult individual people – but to do so, new laws that are clearer than the vague general idea of insult will be needed. In the case of American law, the two major types of law are slander and libel. Both terms apply only to an individual, not to an abstraction.

Slander is saying something false and damaging. More particularly, it is the act of saying something false and malicious that damages somebody's reputation. Slander pertains only to a person and to something that is said. To be guilty of slander a court or jury must find that there has been a lie, that there has been a desire or intention to harm, and that harm or damage has been done to a person's reputation.

If you are an engineer and I say you are incompetent, for that to be slander it must:

1. be false; that is, if you have designed bridges that collapse, calling you incompetent is not slander;
2. it must be malicious; that is, there must be a desire or intention to inflict harm or suffering; and
3. it must damage your reputation.

Roughly, libel is slander that is published rather than spoken. It is a false and malicious published statement that damages somebody's reputation. Libel may also involve defamation, which is a personal attack, an attack on somebody's good name, character or reputation. The engineer in the example above would have been libeled if what was said against him had been published.

Note that with both slander and libel, there must be actual harm or damage to the reputation of an individual person. That harm or damage must be proven in court with facts. Mere feelings of damage on the part of the individual are not sufficient. If you are accused of slander or libel, truth is the best defense. If what you said was true, then the legal case against you falls. It is too bad if another person is harmed by the truth. The fact that you made a fair comment, even if it turned out to be false, is also a defense.

Public figures can be subject to a wider range of comment before possible slander or libel occurs. That is because they have chosen to be in the public eye and to be perceived and misperceived, and commented upon. In addition, they are often members of the government, and as such serve the individual in a democracy. And here we return to the change from an old style of government in which the individual served the state to the modern democratic form of government in which the state serves the individual.

In a democratic state, there is no room for an undefined crime of insult, and there is no room for crimes against abstractions. There can, however, be crimes of slander or libel against an individual, so there is still justice whenever an injury has been sustained. Thus expression in Turkey can be freed from an old yoke, leaving people free to think more, create more and accomplish more.

These ought to be the hardcore issues of discussion between Europe and Turkey today, not the Cyprus issue and its byproducts, such as the failure of Turkey to keep its pledge to open its ports and airports to the Greek Cypriot state, a state that due to the unfortunate political shortsightedness – or shameless hypocrisy – of Europe to-

wards the Turkish Cypriot people, is enjoying EU membership as the sole representative of the east Mediterranean island.

Annex I – List of murdered journalists since 1909

As reported by the Turkish Journalists' Society
(<http://www.tgc.org.tr/oldurulengazeteciler.html>)

Murdered Turkish journalists	
Journalist / Organization	Place and date of assassination
1. Hasan Fehmi Bey / Serbesti	Istanbul 6 April 1909
2. Ahmet Samim / Sada-yı Millet	Istanbul 19 July 1910
3. Zeki Bey / Şehrah	Istanbul 10 July 1911
4. Şair Hüseyin Kami / Alemdar	Konya 1912 or 1914
5. Hasan Tahsin / Hukuk-u Beşer	İzmir 27 July 1919
6. Silahçı Tahsin / Silah ve Bomba	Istanbul 27 July 1914
7. İştirakçi Hilmi / İştirak, Medeniyet	Istanbul 1922
8. Ali Kemal / Peyam-ı Sabah	İzmit 1922
9. Hikmet Şevket	1930
10. Sabahattin Ali / Marko Paşa	Edirne 1948
11. Adem Yavuz / Anka Ajansı	Kıbrıs 27 August 1974
12. Ali İhsan Özgür / Politika	Istanbul 21 November 1978
13. Cengiz Polatkan / Hafta Sonu	Ankara 1 December 1978
14. Abdi İpekçi / Milliyet	Istanbul 1 February 1979
15. İlhan Darendelioğlu / Ortadoğu	Istanbul 19 November 1979
16. İsmail Gerçekşöz / Ortadoğu	Istanbul 4 April 1980
17. Ümit Kaftancıoğlu / TRT	Istanbul 11 April 1980
18. Muzaffer Fevziyoğlu / Hizmet	Trabzon 15 April 1980
19. Recai Ünal / Demokrat	Istanbul 22 July 1980
20. Mevlüt Işık / Türkiye	Ankara 1 June 1988
21. Seracettin Müftüoğlu / Hürriyet	Nusaybin 29 June 1989
22. Sami Başaran / Gazete	Istanbul 7 November 1989
23. Kamil Başaran / Gazete	Istanbul 7 November 1989
24. Çetin Emeç / Hürriyet	Istanbul 7 March 1990
25. Turan Dursun / İkibine Doğru and Yüzyıl news magazines	Istanbul 4 September 1990
26. Gündüz Etil	1991
27. Mehmet Sait Erten / Azadi	Denk Diyarbakır 1992
28. Halit Güngen / İkibine Doğru	Diyarbakır 18 February 1992
29. Cengiz Altun / Yeni Ülke	Batman 25 February 1992

Murdered Turkish journalists	
Journalist / Organization	Place and date of assassination
30. İzzet Kezer / Sabah	Cizre 23 March 1992
31. Bülent Ülkü / Körfeze Bakış	Bursa 1 April 1992
32. Mecit Akgün / Yeni Ülke	Nusaybin 2 June 1992
33. Hafız Akdemir / Özgür Gündem	Diyarbakır 8 June 1992
34. Çetin Ababay / Özgür Halk	Batman 29 July 1992
35. Yahya Orhan / Özgür Gündem	Ceylanpınar 9 August 1992
36. Hüseyin Deniz / Özgür Gündem	Ceylanpınar 9 August 1992
37. Musa Anter / Özgür Gündem	Diyarbakır 20 September 1992
38. Yaşar Aktay / Serbest	Hani 9 November 1992
39. Hatip Kapçak / Serbest	Mazıdağı 18 November 1992
40. Namık Tarancı / Gerçek	Diyarbakır 20 November 1992
41. Uğur Mumcu / Cumhuriyet	Ankara 24 January 1993
42. Kemal Kılıç / Yeni Ülke	Şanlıurfa 18 February 1993
43. Mehmet İhsan Karakuş	Silvan 13 March 1993
44. Ercan Güre / HHA	20 May 1993
45. İhsan Uygur / Sabah	Istanbul 6 July 1993
46. Rıza Güneşer / Halkın Gücü	14 July 1993
47. Ferhat Tepe / Özgür Gündem	Bitlis 28 July 1993
48. Muzaffer Akkuş / Milliyet	20 September 1993
49. Nazım Babaoğlu / Gündem	12 March 1994
50. Erol Akgün / Devrimci Çözüm	1994
51. Seyfettin Tepe / Yeni politika	28 August 1995
52. Metin Göktepe / Evrensel	Istanbul 8 January 1996
53. Kutlu Adalı / Yeni Düzen	Kıbrıs 8 July 1996
54. Selahattin Turgay Daloğlu	Istanbul 9 September 1996
55. Reşat Aydın / AA, TRT	20 June 1997
56. Ayşe Sağlam Derince	3 September 1997
57. Abdullah Doğan / Candan Fm	Konya 13 July 1997
58. Ünal Mesutoğlu / TRT Manisa	8 November 1997
59. Mehmet Topaloğlu / Kurtuluş	Adana 1998
60. Ahmet Taner Kışlalı / Cumhuriyet	Ankara 21 October 1999
61. Hrant Dink /Agos	Istanbul 19 January 2007

References

Turkish Journalists' Society <http://www.tgc.org.tr/oldurulengazeteciler.html> (accessed October 20, 2009)