

The Content of Freedom of Mass Communication and Freedom of Expression

Freedom of mass communication is the freedom to freely receive and disseminate news and ideas through mass communication tools.

Freedom of the press, freedom of art and science, and internet freedom are all manifestations of the freedom of mass communication.

At the core of freedom of mass communication lie **freedom of thought** and **freedom of expression**. These two freedoms are interconnected but distinct.

Article 25 of the Turkish Constitution (Freedom of Thought and Opinion):

“Everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal their thoughts and opinions for any reason or purpose, nor shall they be condemned or accused because of them.”

Article 9 of the European Convention on Human Rights (ECHR):

“Everyone has the right to freedom of thought, conscience and religion.”

Similarly, **Article 19 of the Universal Declaration of Human Rights (UDHR)** states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 26 of the Turkish Constitution (Freedom of Expression and Dissemination of Thought):

“Everyone has the right to express and disseminate their thoughts and opinions by speech, in writing, in pictures, or through other means, individually or collectively. This freedom includes the liberty to receive or impart information or ideas without interference from official authorities.

This provision shall not preclude the imposition of a system of licensing for radio, television, cinema, or similar enterprises.”

Article 27/1 (Freedom of Science and the Arts):

“Everyone has the right to learn and teach freely, to express, disseminate, and conduct any kind of research in the fields of science and art.”

Article 28 (Freedom of the Press):

“The press is free, and censorship shall not be applied. Establishing a printing house shall not be subject to prior permission or the deposit of a financial guarantee.

The State shall take the necessary measures to ensure freedom of the press and information.”

Limitations on Freedom of Expression

The limitations of freedom of expression are regulated under **Article 26/2 of the Constitution**:

“The exercise of these freedoms may be restricted for the purposes of protecting national security, public order, public safety, the fundamental characteristics of the Republic, and the indivisible integrity of the State with its territory and nation; preventing crimes, punishing offenders, protecting information duly classified as state secrets, protecting the reputation or rights, private and family lives, or professional secrets as prescribed by law of others, or ensuring the proper functioning of the judiciary.”

(The same limitations are also found in **Article 10/2 of the ECHR**.)

However, even in cases of restriction, **Article 13 of the Constitution** sets the framework:

“Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution, without infringing upon their essence. Such restrictions shall not be contrary to the letter and spirit of the Constitution, the requirements of the democratic order of society and the secular Republic, and the principle of proportionality.”

Conditions for Lawful Restriction (According to ECtHR and Turkish Constitutional Court):

- 1. The restriction must be prescribed by law** (Article 13).
- 2. The restriction must pursue a legitimate aim** (as specified in Article 26/2 of the Constitution and Article 10/2 of the ECHR).
- 3. The restriction must be necessary in a democratic society** — the key question being:
Is there proportionality between the measure applied (such as conviction, restriction, or regulation) and the limitation of freedom of expression?

FREEDOM OF COMMUNICATION AND RIGHT TO INFORMATION

1. Fundamental International Legal Framework

The freedom of communication and the right to access information are universally recognized and form the cornerstone of democratic societies.

1.1 Universal Declaration of Human Rights (UDHR, 1948)

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

1.2 International Covenant on Civil and Political Rights (ICCPR, 1966) (Kişisel (Medeni) ve Siyasal Haklar Uluslararası Sözleşmesi (KSHUS, 1966))

- Article 19 (Core Provision): This is the legally binding foundation of the right in international law. It guarantees a threefold right:
 1. Freedom to hold opinions without interference.
 2. Freedom of expression.
 3. Freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers.

2. The Triple Right of Article 19(2)

ICCPR Article 19(2) defines freedom of expression not merely as the right to speak, but as a holistic right to communication involving three interconnected actions.

Component	Definition	Focus Point
To Seek	The right to proactively investigate information.	The individual's proactive search for information (e.g., investigative journalism, access to public records).
To Receive	The right to passively accept information coming from others.	Access to news, ideas, and opinions without state interference or censorship (the core of the 'Right to Information').

To Impart	The right to share information and ideas, covering both the source and the content creator.	The person's right to disseminate their own speech or the information they have received.
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2.1 The Right to Information

This component is essential for an informed citizenry and underpins the concept of democratic participation.

- Negative Obligation (State Must Not): The State must not impede, stop, or censor access to different sources of news and information, including foreign sources.
- Positive Obligation (State Must): The State may be obliged to take active measures to ensure media pluralism and diversity, which involves preventing concentration that could limit the public's access to varied information.

3. Permissible Restrictions and Limitations

The right to freedom of expression is not absolute. ICCPR Article 19(3) permits restrictions, but they must strictly meet a rigorous three-part test (commonly known as the 'Legality, Legitimate Aim, and Necessity' test).

The Three-Part Test (ICCPR Article 19(3))

A restriction on communication or information must *cumulatively* meet all three conditions:

1. Provided by Law (Legality): The restriction must be clearly and precisely stipulated in national law, accessible, and foreseeable to the public. Vague laws are unacceptable.
2. Serve a Legitimate Aim: The restriction must be imposed solely for the specific purposes listed in Article 19(3):
 - 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.
3. Necessary in a Democratic Society (Necessity and Proportionality): This is the strictest test.
 - The measure must be the least restrictive means of achieving the legitimate aim.
 - It must be proportionate to the interest being protected.

- The Human Rights Committee emphasizes that the restriction must not jeopardize the essence of the right itself.

4. Special Status of the Media and Journalists

Journalism holds a vital public watchdog role (the 'Fourth Estate') that supports the public's right to information.

- Protection of Sources: Journalists have the right and, in many jurisdictions, the ethical obligation to protect the confidentiality of their sources. This is critical for ensuring a free flow of information, particularly on matters of public interest.
- Safety of Journalists: States have a positive duty to protect journalists from harassment, violence, and intimidation, and to robustly investigate such acts. Failure to do so creates a 'chilling effect' on the right to information.
- Public Interest over Reputation: Where reporting touches on public officials or matters of public interest, the threshold for restricting expression to protect reputation is higher.

5. State's Positive Obligations: Ensuring Media Pluralism

The right to receive information (Art. 19(2)) implies a positive duty on the State to create and maintain an environment where diverse sources of information can exist. This is essential for a "marketplace of ideas" and for citizens to make informed choices.

5.1 Definition of Media Pluralism

Media pluralism ensures that the views and interests of different groups in society, including minorities, are reflected in the information ecosystem. It has two main dimensions:

- External Pluralism: Refers to the diversity in the ownership and control of media outlets. *Goal: To prevent media monopolies and concentration of ownership.*
- Internal Pluralism: Refers to the diversity of content and viewpoints *within* a single media organization (e.g., a public broadcaster must provide balanced political coverage).

5.2 Specific Positive Duties of States

States are expected to take concrete, active measures to protect media diversity:

1. Anti-Monopoly Regulation (External Pluralism):

- Duty: Enacting and enforcing anti-trust and competition laws that specifically target the media sector.
 - Aim: To prevent excessive concentration of media ownership (across print, audiovisual, and digital platforms) to ensure control over the dissemination of news remains fragmented.
2. Support for Public Service Media (PSM):
- Duty: Establishing and adequately funding independent Public Service Media (like the TRT model) that is structurally protected from political influence.
 - Aim: To guarantee a trustworthy source of information for the public, providing high-quality, diverse, and balanced content (especially news), prioritizing the public interest over commercial pressures.
3. Fair Licensing and Frequency Allocation:
- Duty: Managing broadcasting frequencies and telecommunications, and granting operating licenses in a fair, transparent, and non-discriminatory manner.
 - Aim: To ensure equitable access for community media, minority language media, and non-commercial broadcasters to foster a diversity of voices.
4. Promoting Access to Information (Right to Know):
- Duty: Enacting Freedom of Information Laws (FOILs) that grant citizens a legally enforceable right to access documents and data held by public bodies.
 - Aim: To empower journalists and the public to actively "seek" information and hold the government accountable.
5. Digital Inclusion and Accessibility:
- Duty: Promoting universal, equitable, and affordable access to the internet and communication technologies (ICTs) to combat the Digital Divide.
 - Aim: To ensure all citizens, including those with disabilities and in remote areas, have the means to receive and impart information in the modern digital public sphere.

FREEDOM OF COMMUNICATION AND EXPRESSION IN TURKISH LAW

Freedom of communication and media pluralism in the Republic of Turkey are primarily guaranteed by the Constitution and special legislation.

6. Fundamental Provisions in the Constitution of the Republic of Turkey (1982 Constitution)

The Constitution lists freedom of expression, the press, and communication among the fundamental rights:

Constitutional Article	Scope	Details and State Obligation
Article 22	Freedom of Communication	States that everyone has the right to freedom of communication, and the secrecy of communication is essential. Intervention in secrecy is possible only with a judge's decision on the grounds of national security, public order, prevention of crime, etc., or by the written order of an authority authorized by law in cases of urgency.
Article 26	Freedom of Expression and Dissemination of Thought	States that everyone has the right to express and disseminate their thoughts and opinions, individually or collectively, by speech, in writing, in pictures, or through other media. This freedom includes the liberty to receive and impart news or ideas.
Article 28	Freedom of the Press	It is essential that the press is free and cannot be censored. The State shall take the necessary measures to ensure the freedom of the press and the freedom of information (Positive Obligation). Restriction of press freedom is subject to the general restriction regime of the Constitution (Article 13).
Article 31	Right to Use Mass Media Other Than the Press Owned by Public Corporations	Individuals and political parties have the right to use non-press mass media and communication means owned by public corporations. This ensures that public

resources are used in line with the principle of pluralism.

7. Legal Regulations on Media Pluralism

The primary legislation governing the media sector and aiming to ensure pluralism includes Law No. 6112 on the Establishment of Radio and Television Enterprises and Media Services and Competition Law.

7.1 Traditional Media Regulations (The RTÜK Law)

This Law regulates and supervises audiovisual media services. Key provisions related to pluralism include:

- Prevention of Ownership Concentration (Law No. 6112, Art. 42): The Law contains provisions for limiting the share capital and the number of licenses of media service provider organizations. The main goal is to protect external pluralism (diversity of ownership) by preventing monopolization.
- Content Pluralism and Impartiality: Broadcasting principles require broadcasts to be carried out in accordance with the principles of impartiality, reality, and accuracy, within the understanding of public service responsibility (Internal Pluralism).
- Broadcasting in Different Languages and Dialects: The Law regulates the procedures and principles for broadcasting in different languages and dialects traditionally used by Turkish citizens in their daily lives (Cultural Pluralism).

7.2 Digital Environment and Social Media Regulations

These regulations define the state's powers in restricting or managing the freedom of expression and access to information in the digital sphere.

- Law No. 5651 on Regulating Publications on the Internet and Combating Crimes Committed by Means of Such Publication (2007):
 - Scope: Regulates internet broadcasting and the fight against crimes committed through such publications.
 - Key Authority: Grants the Information and Communication Technologies Authority (BTK) and courts the authority to block access and remove content.
 - Significance: It constitutes the primary legal basis for social media restrictions and the blocking of access to specific content today.

- Social Media Law (Provisions added to Law No. 5651 in 2020):
 - Scope: Targets social network providers.
 - Key Obligation: Imposes an obligation on foreign-sourced social network providers to appoint a representative in Turkey. The goal is for this representative to be subject to legal notifications and court decisions in Turkey.
 - Additional Obligations: Introduces obligations to respond to user complaints and report.
- Disinformation Law (Amendments to the Turkish Penal Code and Press Law in 2022):
 - Scope: Aims to combat the spread of false information.
 - Offence: Article 217/A of the Turkish Penal Code defines the crime of "Publicly disseminating misleading information." Accordingly, a person who "publicly disseminates information contrary to the truth regarding the country's internal and external security, public order, and general health, solely for the purpose of creating anxiety, fear, or panic among the public," shall be punished with imprisonment.
 - Criticism: This article is criticized due to the vagueness of the concept of "information contrary to the truth" and the broad scope of the law, according to international freedom of expression standards.

8. Regime of Limitation

The restriction of fundamental rights and freedoms in Turkey is subject to Article 13 of the Constitution. Accordingly:

- Restrictions must be made by law only.
- Restrictions must be based on the specific grounds for limitation stated in the relevant articles of the Constitution (national security, public order, public health, etc.).
- Restrictions cannot violate the requirements of the democratic societal order and the principle of proportionality.

THE PRESS LAW NO. 5187 AND THE INSTITUTION AND IMPORTANCE OF THE MANAGING EDITOR IN THE PRESS LAW

A. DUTIES AND RIGHTS OF THE PRESS

Informing the public (in this context, reporting news, criticism, etc.)

The Nature of the Press as the 4th Power (Branch): It is a protective force against excessive state power. It supervises and restrains the state mechanism.

B. FUNDAMENTAL CONCEPTS RELATED TO THE PRESS REGIME

Article 1: “The purpose of this Law is to regulate the freedom of the press and the use of this freedom. This Law covers the printing and publication of printed works.”

The Concept of a Printed Work

For a work to be covered by the Press Law, it must be a printed work + the work must be published.

“Printed work: Writings, pictures, and similar works printed by all kinds of printing means or reproduced by other means, and news agency publications, intended for publication.”

For a printed work (periodical or non-periodical): (i) Objective conditions: physical existence, intellectual content, reproducibility (ii) Subjective condition: the purpose of publication.

a) Objective Conditions

Physical Existence: An intellectual content, such as a writing, picture, or similar, must be concretely objectified. (e.g., picture, column article, etc.). The type of material is not important (it can be wood, glass, metal, etc. E.g., CDs, audio tapes).

Y 2. CD. 2012/3490 E., 2012/43666 K., 15.10.2012: “In the concrete event, it is understood that a public lawsuit was filed against the defendant due to a comment made with the pseudonym T. on the Internet site of the ... Newspaper, for which the defendant was responsible, regarding a news item published in the said newspaper. Since the provisions of the Press Law cannot be applied to publications made via the Internet, it is necessary to consider that a decision cannot be made to dismiss the public lawsuit filed against the defendant.”

Intellectual Content: The physical existence must have a content that conveys a thought. (The printed work must be a product of thought). It must be a meaningful whole (business cards, invitations, etc., are considered works depending on the situation).

Reproducibility: The necessity for the work to be of a type that is reproduced by all kinds of printing means or other means. (Actual reproduction is not required).

b) Subjective Condition The reproduction must be done (with the intent to publish). (Storing or giving to a few people is not counted).

2. The Concept of Publication (Yayım)

Press Law Art. 11: “The crime committed through printed works occurs at the moment of publication.” Merely printing a work with criminal content does not constitute a crime. Publication is essential for both legal and criminal liability.

Press Law Art. 2: “Publication (yayım) refers to ‘presenting the printed work to the public in any way’.”

If there is no intention to publish, publication does not occur. (e.g., theft).

Types of Publication: **Distribution:** Giving copies of the printed work to an indefinite number of people (it is sufficient for it to be introduced into the recipient's sphere of control). **Sale Offering for Sale** (attempted sale) **Posting** (posting on a wall, notice board)

C. PERIODICAL PUBLICATIONS

Press Law Art. 2 defines: “c) Periodical publication: Printed works such as newspapers, magazines published at regular intervals, and news agency publications.” In the same article, periodical publications are categorized according to the breadth of their publication area:

d) Widespread periodical publication: A periodical publication printed by a single press-publication organization under the same name and published in at least one province in each geographical region, covering at least seventy percent of the country, and news agencies. e) Regional periodical publication: A periodical publication printed by a single press-publication organization and published in at least three neighboring provinces or at least one geographical region. f) Local periodical publication: Periodical publications published in a single settlement, and widespread and regional publications published at intervals of one week or longer. h) Non-periodical publication: Printed works such as books, gifts, that are not published at regular intervals.

Conditions for Periodical Publication

a) Condition of Regularity Continuous publication (at specific intervals). Long and irregular intervals do not affect this feature. (Intention of continuity is important!)

b) Condition of Independence Each issue must be different from the others.

2. Publication Owner

Press Law Art. 6: “Real and legal persons, as well as public institutions and organizations, can be owners of periodical publications.”

3. Responsible Manager (Responsible Managing Editor)

The responsible manager is the person who undertakes the legal liability arising from the issuance of a periodical publication.

Press Law Art. 5: “Every periodical publication must have a responsible manager. If there is more than one responsible manager, the section for which each is responsible shall be specified. To be a responsible manager, one must: a) Be over eighteen years of age, b) Have a place of settlement and reside permanently in Turkey, c) Be a graduate of at least secondary education or an equivalent educational institution, d) Not be restricted or banned from public services, e) Not have been convicted of infamous crimes, f) For non-Turkish citizens, the condition of reciprocity must be sought.”

Managing Editor (Yazı İşleri Müdürü), Redactor: These are the people who collect, examine, organize, give form to, and, when necessary, modify the intellectual material to prepare the work for publication.

Duties of the Responsible Manager: (i) Control and filtering of content constituting a criminal element, (ii) Publishing correction and reply articles (Art. 14), (iii) Reporting changes in the declaration to the Public Prosecutor's Office (Art. 8/2).

They have criminal liability according to Press Law Art. 11.

They have the **right of veto**. Press Law Art. 11: “In cases where the author of the work in periodical publications is not known, or is not criminally competent at the time of publication, or cannot be tried in Turkey due to being abroad, or if the penalty to be imposed does not affect the penalty resulting from the author's final conviction for another crime, the responsible manager and the authorized person to whom the responsible manager is attached, such as the publication director, general publication director, editor, or press consultant, shall be responsible. However, if this work is published despite the objection of the responsible manager and the authorized person to whom the responsible manager is attached, the resulting liability shall belong to the person who had it published.”

E. OBLIGATIONS RELATED TO PRINTED WORKS

1. Obligation to File a Declaration

(Filing the Declaration) Article 7: “For the issuance of periodical publications, it is sufficient to file a declaration with the Chief Public Prosecutor's Office of the place

where the management is located, for registration. The records kept by the Chief Public Prosecutor's Office are public. The declaration, which is given for registration and signed by the publication owner, the representative if the owner is a minor or a legal entity, and the responsible manager, must indicate the name and nature of the publication, the intervals at which it will be published, the place of management, the names and addresses of the owner, their representative if any, the responsible manager, and the type of publication."

(Examination of the Declaration) Article 8: "If the declaration and its annexes do not contain the necessary or true information, or if the publication owner or their representative or the responsible manager does not meet the conditions written in Articles 5 and 6, the Chief Public Prosecutor's Office shall request the publication owner to remedy the deficiency or correct the untrue information within two weeks from the submission of the declaration. If this request is not fulfilled within two weeks from the date of its notification, the Chief Public Prosecutor's Office shall request the suspension of the publication from the Criminal Court of First Instance. The Court shall decide within a maximum of two weeks. An urgent objection may be filed against this decision. Any change occurring in the content of the declaration shall be reported to the same authority with a new declaration, along with the necessary documents, within two weeks."

(Continuing Publication of a Suspended Publication) Article 16: "If a publication suspended by a court decision according to Article 8 is continued without filing a proper declaration or reporting the changes, the publication owner, the responsible manager, and the authorized person to whom the responsible manager is attached shall be punished with a heavy fine ranging from one billion to fifteen billion Turkish Liras."

(Loss of Right of the Periodical Publication Owner) Art. 9: "If a periodical publication is not published within one year from the date the publication owner filed the declaration, or if it is suspended for three years after publication, the declaration shall become invalid and the right it provided shall cease to exist."

E. OBLIGATIONS RELATED TO PRINTED WORKS

2. Obligation to Deliver

(Obligation to Deliver) Article 10: "The printer is obliged to deliver two signed copies of every publication they print to the local Chief Public Prosecutor's Office on the day of distribution or publication. This obligation also applies to subsequent printings and facsimile printings of the printed work that include any change in content or form. The printer shall be given a receipt confirming that they have fulfilled this obligation."

(Failure to Comply with the Obligation to Deliver) Article 17: “A printer who fails to fulfill the delivery obligation according to Article 10 shall be punished with a heavy fine ranging from three hundred million to one billion Turkish Liras.”

3. Obligation to Display Mandatory Information

Article 4: “In every printed work, the place and date of printing, the names of the printer and the publisher, if any, their trade names and business addresses shall be indicated. This provision shall not apply to advertisements, tariffs, circulars, and similar items. In all periodical publications, excluding news agency publications, the place of management, the names of the owner, their representative if any, the responsible manager, and the type of publication shall also be indicated.”

(Failure to Display Mandatory Information) Article 15: “If the issues required to be shown in printed works according to Article 4 are not shown or are shown inaccurately, the responsible manager and the authorized person to whom the responsible manager is attached in periodical publications, and the publisher and the printer who do not show their name and address or show them incorrectly in non-periodical publications, shall be punished with a heavy fine ranging from five hundred million to twenty billion Turkish Liras. This penalty shall not be less than two billion Turkish Liras for regional periodical publications, and five billion Turkish Liras for widespread periodical publications.”

F. RIGHT OF REPLY AND CORRECTION

It is a defense mechanism for the individual against the power of the press (an element of balance).

There are 2 systems: (i) used only against events (ii) used against both events and opinions/comments.

It is regulated in the Turkish Constitution Art. 32, the Turkish Press Law (Art. 14), TRT Law Art. 27, and RTÜK Law Art. 18.

Turkish Constitution Art. 32: “The right of correction and reply shall be granted only in cases where the honor and dignity of individuals are violated or inaccurate publications are made concerning them, and shall be regulated by law. If the correction and reply are not published, the judge shall decide whether it should be published within a maximum of seven days from the date of the concerned party's application.”

Conditions for the Right to Arise

Press Law Art. 14: “(1) In cases where publications in periodical publications violate the honor and dignity of individuals or contain inaccurate information about individuals, the

responsible manager is obliged to publish the correction and reply article, which does not contain criminal elements and does not violate the legally protected interests of third parties, sent by the aggrieved person within two months from the date of publication, without any correction or addition, in daily periodicals within a maximum of three days from the date of receipt of the article, and in other periodicals in the first issue after three days from the date of receipt of the article, on the same page and column where the relevant publication was located, using the same font size and in the same manner. (2) The correction and reply must specify the work that caused it. The correction and reply cannot be longer than the relevant article. In cases where the work that caused the correction and reply is a writing, picture, or caricature of less than twenty lines, the correction and reply cannot exceed thirty lines. (3) If the periodical publication is printed in more than one place, the correction and reply article shall be published in all editions where the work that gave rise to the use of the right of correction and reply was published. (4) If the correction and reply is not published within the time limits specified in the first paragraph, the person requesting the reply and correction may, within fifteen days from the expiry of the period granted for publication, or if it is published in contravention of the provisions of the first paragraph, from the date of publication, request the Sulh Criminal Judge of their location to decide on the publication or on its publication in accordance with the provisions of this Law. The Sulh Criminal Judge shall decide on this request within three days, without holding a hearing...

(7) If the person who has the right of correction and reply dies, this right may be used by one of the heirs. In this case, one month shall be added to the two-month period for the right of correction and reply mentioned in the first paragraph.”

Conditions for the Right to Arise

For a person to have the right of reply and correction, there must be a publication that (i) violates the honor and dignity of individuals or (ii) contains inaccurate information.

What is the purpose?

It occurs in periodical publications. The form of the publication is not important (writing, photo, etc.).

The fact that the person or organization in the writing or picture is implicitly mentioned does not prevent the right of reply from arising.

The reply or correction text must contain the signature of the concerned party.

The obligation to ensure the publication of the right of reply and correction belongs to the responsible manager. Article 14: “(1)... the responsible manager is obliged to

publish the correction and reply article... without any correction or addition, in daily periodicals within a maximum of three days from the date of receipt of the article, and in other periodicals in the first issue after three days from the date of receipt of the article, on the same page and column where the relevant publication was located, using the same font size and in the same manner.” (They cannot make changes!)

An unlawful reply and correction article cannot be published. (Press Law Art. 14/1).

Sanction: Press Law Art. 18: “A responsible manager and the authorized person to whom the responsible manager is attached who fail to comply with the final court decisions regarding the publication of the correction and reply shall be punished with a heavy fine ranging from ten billion to one hundred and fifty billion Turkish Liras. The heavy fine shall not be less than twenty billion Turkish Liras for regional periodical publications, and fifty billion Turkish Liras for widespread periodical publications. The publication owner, the responsible manager, and the authorized person to whom the responsible manager is attached shall be jointly and severally liable for the payment of the heavy fine imposed on the responsible manager and the authorized person to whom the responsible manager is attached. In cases where the correction and reply article is not published or is published without complying with the conditions specified in the first paragraph of Article 14, the judge shall also decide on the publication of this article as an advertisement in two newspapers with a circulation of over one hundred thousand, with the costs borne by the publication owner.”

G. SELF-REGULATION OF PRESS AND PUBLICATION ACTIVITIES: THE PRESS COUNCIL (BASIN YAYIN FAALİYETLERİNİN ÖZDENETİM: BASIN KONSEYİ)

For the press to properly fulfill its duty of control and supervision as the 4th power, self-regulation is necessary.

The Press Council was established in 1988 with the Press Council Agreement and the Press Professional Principles.

Press Council Agreement Art. 1: “To defend the ‘public’s right to know the truth,’ which is a cornerstone of a liberal democratic system; and to assist the free and responsible press and press members in maintaining their professional practices at a level expected of a free and respected press, a Press Council is established by this agreement, signed by journalists who have regulated and adopted these aims as the Press Professional Principles.”

The Press Council consists of various organs: (i) the Board of Members of the Press Council (ii) the High Board of the Press Council (the executive body, which decides on complaints).

Article 18: “The Press Council High Board (PCHB) may issue decisions of ‘finding the complaint unwarranted,’ ‘warning,’ or ‘reprimand’ regarding press members and/or press organs due to applications made. The limitations above may be exceeded in the evaluation of issues taken up by the Press Council High Board without awaiting an application, and in applications made by journalists to defend their own professional practices.”

Article 19: “PCHB decisions are sent to all press organs and press organizations that are members of the Press Council. The publication of decisions concerning themselves by press organs is considered a requirement of their commitment to comply with the Press Professional Principles.”

Press Professional Principles:

We publicly declare that we consider compliance with the Press Professional Principles, which include the section above, a necessity of our fundamental beliefs mentioned. In publications, no one shall be condemned or humiliated because of their race, gender, age, health, physical disability, social status, or religious beliefs.

Publications that restrict freedom of thought, conscience, and expression, or that shake general morality, religious feelings, and the fundamental foundations of the family institution cannot be made.

Journalism, a public duty, cannot be used as a tool for immoral private purposes and interests. The journalist observes the public’s right to receive news and learn the truth.

Expressions that demean, humiliate, or are defamatory to individuals and organizations beyond the limits of criticism cannot be included.

The private life of individuals cannot be a subject of publication, except when required by public interest.

News that can be investigated with journalistic means cannot be published without investigation or without being sure of its accuracy.

Information given on condition of confidentiality cannot be published unless public interest requires it.

Before a press organ completes its distribution process, a product achieved by the special efforts of that press organ cannot be presented to the public by another press organ as its own product. Plagiarism cannot be resorted to in publications.

No one can be declared “guilty” unless determined by a court decision. Actions that are considered crimes by law cannot be attributed to anyone unless there are convincing reasonable grounds for them to be true. The journalist protects the confidentiality of their sources. Cases where the source aims to mislead the public for personal, political, economic, etc., reasons are outside this. The journalist refrains from performing their duty with methods and attitudes that may cast a shadow on the dignity of their title. The journalist cannot make publications that encourage violence, hatred, bullying, and discrimination, or that hurt human values. The nature of publications that are in the nature of an announcement or advertisement is specified in a way that leaves no room for doubt. The time constraint set for the publication date is respected. Press organs respect the right of reply and correction arising from inaccurate publications.

H. LIABILITY REGIME IN THE PRESS: LEGAL LIABILITY

If the boundary of press freedom is exceeded, that is, if there is an unlawful attack on personal rights, both the legal and criminal liability of the press arise.

Legal liability is essentially liability for compensation. In addition, protective lawsuit types independent of damage and fault are also provided in the Turkish Civil Code (TMK) Art. 25.

There are two types of protection in the TMK: (i) against attacks made by legal transactions in TMK Art. 23, (ii) against attacks made by tort in TMK Art. 24 and 25.

RTÜK LAW AND THE SMART SYMBOLS SYSTEM

It is regulated by the **Law No. 6112 of 2011 on the Establishment and Broadcasting Services of Radio and Television** (RTÜK Law).

Article 1 (Purpose):

“The purpose of this Law is to regulate and supervise radio, television, and on-demand broadcasting services; to ensure freedom of expression and the right to receive information; to determine the administrative, financial, and technical structures and obligations of media service providers; and to set forth the procedures and principles regarding the establishment, organization, duties, powers, and responsibilities of the Radio and Television Supreme Council (RTÜK).”

Broadcasting is subject to a **license and authorization system**.

(Although Article 133 of the Constitution guarantees broadcasting freedom, Article 26 allows it to be subject to licensing.)

→ According to Articles 26 and 27 of the RTÜK Law, media service providers must

obtain a **license from the Supreme Council** in order to broadcast. (This also applies to internet broadcasting.)

Broadcasts are subject to **central supervision** (by RTÜK).

Article 37/1:

“The Supreme Council is authorized to monitor and supervise the broadcasting services of media service providers established within the territory of the Republic of Turkey in terms of their compliance with the provisions of this Law and international treaties to which Turkey is a party.”

Additionally, Article 37/1(f):

“To monitor the compliance of broadcasting services of media service providers that are not established within the territory of the Republic of Turkey but fall under its jurisdiction with the provisions of this Law and international treaties to which Turkey is a party, and, when necessary, to cooperate with the competent authorities of other states.”

Requirement to be a Joint-Stock Company (JSC):

Article 19(a):

“Broadcasting licenses are granted exclusively to joint-stock companies established under the provisions of the Turkish Commercial Code for the sole purpose of providing radio, television, and on-demand broadcasting services.”

Logo and call sign requirement (Article 21):

“Provided that the relevant legislation is complied with and public order and general morality are not violated, any name and the block graphics depicting it may be used as a logo; sound announcements may be used as call signs. Registration of logos and call signs with the Supreme Council is mandatory. Media service providers may change their logos and call signs only with the permission of the Supreme Council.”

Obligation to appoint a responsible manager (Article 46/3):

“Private radio and television organizations shall appoint one or more responsible managers, taking into account the nature and importance of their broadcasting services. Responsible managers must:

- (a) be Turkish citizens,
- (b) have a higher education degree if they work for national or regional broadcasters,
- (c) reside in Turkey, and
- (d) not be banned from public service or legally incapacitated.”

2. Smart Symbols System

This is an informative classification system concerning broadcast content (**Principles and Rules for the Implementation of Smart Symbols**).

The system provides information on two aspects:

- the **potentially harmful content** of the program, and
- the **appropriate age group** for viewing.

Example:

Programs marked with the **18+ symbol** may be broadcast only between **00:00 and 05:00**.

Article 24 (Protective Symbol System):

“(1) Media service providers shall use the protective symbol system to inform viewers audibly or visually about the content of their programs.

(2) The procedures and principles related to the protective symbol system shall be determined by the Supreme Council.

(3) This article also applies to the Turkish Radio and Television Corporation (TRT).”

3. The Radio and Television Supreme Council (RTÜK)

According to the Constitution and **Article 34** of the Law, RTÜK is an **autonomous and impartial public legal entity** with administrative and financial autonomy, established to regulate and supervise the radio and television sector.

Establishment and structure (Article 35):

“The Supreme Council consists of nine members who are elected by the Grand National Assembly of Turkey (TBMM) among candidates who:

- have completed at least four years of higher education,
- have worked for at least ten years in public institutions or private organizations in fields related to their profession,
- possess sufficient professional knowledge and experience,
- meet the qualifications required for being a civil servant, and

- are at least thirty years old.

For the election, political party groups nominate twice the number of candidates corresponding to their proportional share of members in the Assembly, and the members of the Supreme Council are elected by the General Assembly of the Turkish Grand National Assembly based on these proportions.”

Duties and Powers (Article 37):

“The duties and powers of the Supreme Council are as follows:

(a) To take necessary measures to ensure freedom of expression and the right to receive information, diversity of opinions, and—without prejudice to the powers of the Competition Authority—competition and pluralism in the field of broadcasting, to prevent concentration, and to protect the public interest.

(c) To determine the administrative, financial, and technical requirements for media service providers applying for a broadcasting license, to grant such licenses to those who meet the requirements, to supervise them, and to revoke them when necessary.

(h) To impose necessary sanctions in cases where violations of this Law or other relevant legislation, or breaches of broadcasting license conditions, are detected in the services provided by media service providers, platforms, multiplex operators, infrastructure operators, or transmitter facility companies.”

RTÜK decisions are taken with a **5/9 majority**.

Judicial review of RTÜK decisions is available.

4. Broadcasting Principles and Prohibitions

As a rule, broadcasters have **editorial independence** regarding program content.

Article 6/1:

“(1) No prior interference with or censorship of broadcasting content or services shall be permitted.

(2) The provisions contained in this Law, other laws, and international instruments, as well as the regulatory actions enacted by the Supreme Council to implement these provisions, shall not be considered as interference.”

Broadcasting Principles

Article 8:

“(1) Media service providers shall present their broadcasting services with a sense of public responsibility and in compliance with the following principles:

(a) Broadcasting services shall not be contrary to the existence and independence of the Republic of Turkey, the indivisible integrity of the state with its territory and nation, or Atatürk's principles and reforms.

(b) They shall not incite hatred or enmity among the public based on race, language, religion, gender, class, region, or sect, nor create feelings of hatred in society.

(c) They shall not contradict the rule of law, justice, or impartiality.

(ç) They shall respect human dignity and privacy and shall not include expressions that humiliate, insult, or defame individuals or institutions beyond the limits of criticism.

(e) They shall not include or promote broadcasts that discriminate or demean individuals based on race, color, language, religion, nationality, gender, disability, political or philosophical opinion, sect, or similar reasons.

(f) They shall not violate national and moral values, general morality, or the principle of protecting the family.

(g) They shall not glorify crime, criminals, or criminal organizations, nor provide instruction on criminal techniques.

(ğ) They shall not contain exploitation or encouragement of violence against children, the vulnerable, or the disabled.

(h) They shall not promote the use of addictive substances such as alcohol, tobacco, or drugs, nor encourage gambling.

(i) No one shall be declared guilty or portrayed as guilty unless convicted by a final court decision; during judicial proceedings, broadcasts shall not affect the fairness or impartiality of the trial beyond their news value.

(n) They shall not be obscene.

(o) They shall respect the right of individuals and organizations to reply and correction.

(r) They shall not exploit individuals through fortune-telling or superstitious beliefs.

(s) They shall not include programs contrary to gender equality, that encourage oppression against women, or that exploit women.

(ş) They shall not encourage or normalize violence.”

Sanctions (Article 32):

- Warning
- Administrative fine
- Suspension of broadcasting
- Revocation of broadcasting license

Advertising Bans and Unlawful Marketing

Advertising Bans and Unlawful Marketing

Advertising bans and unlawful marketing practices cover not only misleading advertisements but also other practices that violate fair competition and ethical principles.

Primary Legal Regulations

- **Law No. 6502 on the Protection of Consumers (TKHK):** Specifically Article 61 titled Commercial Advertisements and Article 62 titled Unfair Commercial Practices.
- **Turkish Commercial Code No. 6102 (TTK):** Unfair Competition provisions (Art. 54 et seq.). Commercial advertisements that violate the rule of honesty constitute unfair competition.
- **Regulation on Commercial Advertisements and Unfair Commercial Practices:** Details the basic rules to be followed in advertisements and prohibited practices.
- **Special Laws:** Sectoral regulations such as advertising and promotional bans for Tobacco and Alcohol Products.

What is an Advertisement?

TKHK Art. 61/1: "Commercial advertisement refers to announcements of a marketing communication nature carried out by advertisers through written, visual, audio, or similar means in any medium, for the purpose of ensuring the sale or rental of a good or service, informing or persuading the target audience, in connection with trade, business, craft, or a profession."

Principles and Prohibitions Regarding Advertisements

TKHK Art. 61:

- **(2)** It is essential that commercial advertisements be consistent with the principles determined by the Advertising Board, general morality, public order, personal rights, and be truthful and honest.
- **(3) (Prohibition of Misleading/Deceptive Advertising):** Commercial advertisements that deceive consumers or exploit their lack of experience and knowledge, endanger life and property safety, encourage acts of violence and crime, impair public health, or exploit the sick, the elderly, children, and the disabled cannot be made.

- **(4) (Prohibition of Hidden Advertising):** Placing names, brands, logos, or other distinctive signs or expressions, commercial titles, or business names related to goods or services in articles, news, broadcasts, and programs for the purpose of advertising, without explicitly stating that it is an advertisement, and presenting them in a promotional manner, is considered hidden advertising. Hidden advertising in any communication medium, whether audio, written, or visual, is prohibited.
- **(5)** Comparative advertising of rival goods or services that meet the same needs or are aimed at the same purpose may be conducted.

Persons Responsible for Advertising: TKHK Art. 61/7: "Advertisers, advertising agencies, and media organizations are obliged to comply with the provisions of this Article."

Authority for Auditing and Sanctioning: The "**Advertising Board**" affiliated with the Ministry of Trade. (TKHK Art. 63)

Comparative Advertising

Comparative Advertising: Refers to advertisements in which the features of the advertised good or service are compared with the features of rival goods or services that meet the same purpose or the same need (Regulation on Commercial Advertisements and Unfair Commercial Practices Art. 4).

Regulation on Commercial Advertisements and Unfair Commercial Practices

Article 8 – (1) Comparative advertisements may only be made under the following conditions:

- a) The product name, brand, logo, trade name, business name, or other distinctive elements of competitors are not included.
- b) It is not deceptive and misleading.
- c) It does not cause unfair competition.
- ç) The compared goods or services meet the same needs or are aimed at the same purpose.
- d) The comparison is based on an issue that will benefit the consumer.
- e) One or more material, essential, verifiable, and typical features of the compared goods or services, including the price, are objectively compared.

- f) Claims based on objective, measurable, numerical data are proven with scientific tests, reports, or documents.
- g) It does not denigrate or discredit the goods, services, activities, or other features of competitors.
- ğ) In a comparison concerning a good or service whose origin is specified, the goods or services must be from the same geographical location.
- h) It does not lead to confusion between the advertiser and the competitor's brand, trade name, business name, or other distinctive sign, or their goods or services.
- ı) It does not violate the principles determined by the Advertising Board.

Comparative Advertising Example

Category	Permitted Comparative Advertising Example	Prohibited/Unlawful Comparative Advertising Example
Food and Beverage Industry	Permitted: An advertisement for a milk brand: "Brand X Milk contains 15% less added sugar than similar full-fat milk on the market. This rate is proven by independent laboratory tests."	Prohibited: "Brand X Milk is much tastier and healthier than ' Competitor Z ' Milk, which is a market leader."

Reasons for Permitted (Lawful) Comparison:

- **Objective and Verifiable Data:** The comparison is based on **objective, measurable, and numerical data** such as "\$15 less added sugar."
- **Burden of Proof:** The advertiser has stated that this claim is **proven with scientific test reports or documents**.
- **Typical Products:** The comparison is made between **typical products** that serve the same purpose, such as "similar full-fat milk."
- **Clear and Non-Misleading:** The information is clearly given and does not contain an element intended to deceive the consumer.

Reasons for Prohibited (Unlawful) Comparison:

- **Ban on Direct Use of Competitor's Name/Sign:** In Turkey, the direct use of the competitor's **brand, trade name, or distinctive sign** (e.g., "Competitor Z") is generally prohibited (with very few exceptions) in comparative advertising. This is to prevent confusion among competitors and unfair competition.
- **Subjective Statements:** Phrases like "much tastier" and "healthier" are **subjective** and are not based on objective, measurable data. The Advertising Board considers such subjective claims unprovable and therefore misleading.

Therefore, for a comparison made to highlight the advantage of a product to be lawful, it must **not denigrate the competitor** and must be based on **verifiable, objective, and accurate information**.

Guideline on Commercial Advertisements and Unfair Commercial Practices Made by Social Media Influencers

Basic Principles

ARTICLE 5 – (1) Advertisements made through a social media influencer must be expressed clearly and understandably and must be distinguishable. Hidden advertising is prohibited in all communication media, including social media, whether audio, written, or visual. **(2)** In shares where financial gain and/or benefits such as free or discounted goods or services are obtained from the advertiser, the social media influencer must clearly indicate this situation with at least one of the expressions in Articles 7, 8, 9, and 10 of this Guide, depending on the platform where the commercial advertising relationship takes place.

Sanctions and Auditing

- **Auditing Body:** The **Advertising Board** (under the Ministry of Trade) and the **Radio and Television Supreme Council (RTÜK)** (for radio and television broadcasts).
- **Advertising Board Sanctions (TKHK Art. 63):**

- **Cessation/Stopping Penalty:** Prohibition of the advertisement from running or being re-published.
- **Correction Penalty:** Publication of a corrective announcement using the same method.
- **Administrative Fine:** High administrative fines depending on the nature and repetition of the unlawfulness.
- **Unfair Competition Sanctions (TTK Art. 56):** Competitors may file a lawsuit for the determination, prevention (injunction), removal of the results (e.g., recalling the advertisement) of unfair competition, and for material/moral damages.

CINEMA AND VIDEO REGIME (SİNEMA VE VİDEO REJİMİ)

Following the observation of cinema's impact on the masses, censorship activities began worldwide starting around **1910 and subsequent years**.

In the context of cinema law, control and censorship are two distinct concepts that are often confused with each other. Understanding the difference between these two concepts is crucial for filmmakers, producers, and industry professionals.

Control vs. Censorship

Control and censorship are often used interchangeably, but they have distinct meanings in the context of film regulation.

- Censorship refers to the suppression or prohibition of certain content, such as language, images, or themes, deemed objectionable or indecent. Censorship is typically imposed by government agencies or regulatory bodies.
- Control, on the other hand, refers to the regulation of content through guidelines, ratings, or self-imposed standards. Control allows for a more nuanced approach, where content is not completely banned but rather, it's subject to certain restrictions or guidelines.

Censorship

Censorship refers to the act of suppressing or removing content from a film or other media that is deemed objectionable or contrary to societal norms. Censorship is typically carried out by government agencies, regulatory bodies, or other authorities that

have the power to enforce laws and regulations. The goal of censorship is to protect society from what is considered to be morally or socially unacceptable content.

Examples of censorship in cinema law include:

- Banning films that depict graphic violence, sex, or other mature themes
- Cutting or removing scenes from a film that are deemed objectionable
- Refusing to grant a film a rating or certification

Control

Control, on the other hand, refers to the process of regulating or managing the content of a film through voluntary means. Control is typically exercised by industry organizations, such as the Motion Picture Association of America (MPAA) or the British Board of Film Classification (BBFC), which establish guidelines and rating systems to ensure that films are suitable for different audiences.

There are **2 types of censorship systems**:

- **Unlimited censorship (Sınırsız sansür):** Institutions responsible for reviewing films and scripts are usually composed of State officials, and **State interests are prioritized** in the application of censorship (e.g., Argentina, Iraq, Israel, Mexico, etc.).
- **Limited censorship system (Sınırlı sansür sistemi):** Not all films undergo censorship; only films that minors may view are reviewed. Anyone can shoot and publish a cinema film without needing permission (e.g., Germany, UK, Italy).

The **Law No. 5224 on the Evaluation, Classification, and Support of Cinematographic Works**, dated 14.07.2004, is in effect.

The ministry primarily responsible for the Evaluation and Classification Board (Değerlendirme ve Sınıflandırma Kurulu) under Law No. 5224 is the **Ministry of Culture and Tourism (Kültür ve Turizm Bakanlığı)**.

Article 1 states: “The purpose of this Law is to ensure the development and strengthening of the cinema sector in the fields of education, investment, enterprise, production, distribution, and exhibition, as well as the evaluation and classification of cinematographic works, and to provide support for domestic and foreign investment and

enterprises in this area, in order to enable individuals and society to benefit productively from the products of cinema art and to create a contemporary and effective cultural communication environment by utilizing the opportunities offered by cinema art."

Article 3/b defines "Cinematographic work (Sinema filmi)" as: "films consisting of a series of related moving images, with or without a theme, long or short-length, in documentary, fiction, animation, and similar genres created with the unique language and methods of cinema art, which can be shown with electronic, mechanical, or similar means, with or without sound, regardless of the material on which they are recorded..."

Persons who will perform the **production and import** of works and their **wholesale distribution** must obtain an **Activity Certificate** from the Ministry.

Before the produced and imported works are commercially distributed and exhibited, they are subject to **registration and recording (kayıt ve tescil)** by the Ministry, and an **Operation Certificate (İşletme Belgesi)** is issued to the relevant party. In addition, the carrier materials (master copies and replicas) are **banderoles (bandrol)** → they then enter commercial circulation and exhibition.

Films are **evaluated and classified** to be granted registration and recording.

Article 7 mandates: "Cinematographic works produced or imported within the country are subject to evaluation and classification before being offered for commercial circulation or exhibition. Films that are deemed unsuitable as a result of the evaluation and classification **cannot be offered for commercial circulation and exhibition**. Cinematographic works that have not been evaluated and classified are only screened at festivals, special showings, and similar cultural and artistic events with the **18+ age rating**. Films that have been previously evaluated and classified by the Ministry are screened in the relevant events in accordance with the markings and statements they received. It is mandatory to use the required markings and statements for films to be screened at these events in all areas of promotion and exhibition."

Article 3/f defines "Evaluation and classification (Değerlendirme ve sınıflandırma)" as: "the inspection, evaluation, and classification of cinematographic works produced or imported within the country before they are offered for commercial circulation or exhibition, taking into account their exhibition and transmission methods, in line with the principles of **public order, general morality, the protection of the mental health of minors and young people, suitability for human dignity, and other principles stipulated in the Constitution**."

Classification based on criteria such as **sexuality, horror, and violence** is done after the evaluation (by the Evaluation and Classification Board).

Article 4 stipulates:

1. The evaluation and classification of cinematographic works are carried out by the **Evaluation and Classification Board (Değerlendirme ve Sınıflandırma Kurulu)** established within the Ministry.
2. The Board consists of a total of **nine members**: one member each from the Ministry, the Ministry of Interior, and the Ministry of National Education; three members selected by the Ministry from experts proposed by the relevant professional organizations; and one sociologist, one psychologist, and one child development specialist with a doctorate degree in their field, determined by the Ministry. The Board convenes with the participation of at least six members and takes decisions with the affirmative vote of five members.
3. The producer of the evaluated and classified film can attend the Board meeting as an **observer** if desired.
4. The Board may establish **sub-boards** to conduct preliminary evaluation and classification. The sub-board consists of three people: a Ministry representative, a sector representative chosen by the Ministry from those proposed by professional organizations, and a psychologist. The sub-board sends the film to the Evaluation and Classification Board for re-evaluation and final decision in cases where it is deemed necessary as a result of the preliminary evaluation and classification, or if the producer does not consent to the restrictive measure foreseen for the film.

The protection of the **copyrights of the creators** is subject to the **Law on Intellectual and Artistic Works (FSEK)**.

Authority of the Administration in Works without an Operation Certificate, Banderole, or with Criminal Content:

1. The **local administrative authorities (mülki idare amirleri)** shall stop the exhibition and distribution of the films.
2. Furthermore, an administrative fine of **ten thousand TL** is imposed on those who distribute or exhibit films that do not carry the required markings and statements despite being mandatory, and **50,000 TL** is imposed on film producers.