



Strasbourg, 30 September 2022

CDL-REF(2022)038

Opinion No.1102 / 2022

Engl.only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TÜRKIYE

**GENERAL JUSTIFICATION
OF THE LEGISLATIVE PROPOSAL ON AMENDMENT TO THE PRESS
LAW AND SOME OTHER LAWS***

(*) unofficial translation

GENERAL JUSTIFICATION

The Internet, being one of the most important outcomes of technology, is leaving other mass media behind and easy access and communication methods developed over the internet have placed the concept of "social media" to the centre of social life. As the internet facilitates and speeds up access to news and information, the use of social media also increases. This increase leads to the creation of new and different themed social media platforms and people spending most of their time on these platforms. In fact, the experts state that, in association with the digitalization environment, new social problems, personality disorders, or psychological illnesses are being discussed. On the other hand, the fact that the digital world is highly influential in human life and the diversification of social media platforms has led to sociological and legal problems for people or violations of their personal rights. However, social network providers or other actors who are operating in the background of the digital world, do not develop the preventive and protective mechanisms needed for the protection of persons' rights, or resist the rightful demands of users and states, despite the billions of dollars of private information they obtain by utilizing large-scale user numbers and user data.

It is a known fact that the transnational nature of the internet, as it enables fast access and wide sharing ease and due to the disorganized, multivariate, and dynamic global network structure, allows malignant users to perform illegal business and actions by concealing their identities. Therefore, in cases where the internet is used to create and share illegal content under false names and accounts, to swear, slander, defame or insult individuals of different political thought, religion, nation or who are considered as rivals and to create a ground for hate and discrimination, reveals itself as a mechanism that needs to be regulated. In this case, individuals whose constitutional rights have been violated have expectations from the state for the protection of their constitutional rights. The state's obligation in this respect is to take a regulatory role in which fundamental rights and freedoms are protected while also securing freedom of expression. As a result, the states need to protect their citizens' fundamental rights and freedoms from both other users and social media platforms. As a matter of fact, both European countries (Germany, France, England) and the United States are making new regulations in this area, as digital transformation becomes more evident on a global scale and in all parts of society. The European Union takes the necessary steps as a pioneer regulator, as it did with the "Digital Services Act " and the 'General Data Protection Regulation'. Our country also aims to take the necessary steps, considering the regulations of other countries and international organisations, in order to solve the problems faced by its citizens in the digital world. These steps are based on the provisions stipulated in the first and second paragraphs of Article 10 of the European Convention on Human Rights, especially for the issues concerning freedom of expression. Our country aims to protect the fundamental rights and freedoms recognised and protected by the relevant provisions of the Constitution in the digital world as well as in the real world. It is important to note that, honour, dignity and reputation of people, their personal rights, the immunity of their private lives, and their personal data must be protected in the digital world as well.

In this context, it is clear that the act of deliberately producing and spreading false news (disinformation), is a serious threat jeopardising the will of individuals and society and prevent citizens to access real information. This threat is also aimed at preventing the use of fundamental rights and freedoms, particularly freedom of expression by exploiting various freedoms. Along with the advances in technology, the level of disinformation reached made it necessary to fight this threat to protect fundamental rights and freedoms. In this framework, further regulations must be made to adjust the current regulations in our legislation to the new situation.

The ease of access to information at the touch of a button has placed the internet ahead of other means of communication, but the websites and employees, making news so accessible, were unable to benefit from the rights recognised to newspapers and journalists. To solve this problem, Internet news sites have been covered by Press Law No. 5187 and by Law No. 5953, concerning the Regulation of Relations between Press Workers and Employers, and their employees obtained the same conditions as press members working in printed media. With the amendment made to Law No 5953; employees performing fee-based intellectual or artistic works are also included in the definition of journalists. This aims to strengthen freedom of expression and the right to access to accurate information.

With the amendment proposal, news websites defined as periodical publication and regulations concerning submitting declarations, which are like periodical publications, criminal and legal liability, right to controvert and rebut, trial of procedure for concerned parties and the authority where the declarations are to be submitted are made in order to address problems that may arise. Due to the nature of the internet and its dynamic structure, it was made obligatory to specify the date when the content was first published on internet, in a way that it will not change every time the content was accessed, therefore making it possible to determine the date of publication in case of a problem regarding the content. It is therefore intended to ensure the swift and efficient notification of press announcements and broadcast bans issued by the judicial bodies.

Furthermore, with an amendment to be made to Law No 195 on the Establishment of Press Advertisement Institution to cover internet news websites, it is envisaged that official announcements and advertisements which are published in printed media, shall also be published in news websites by ensuring that they are in line with certain rules. The official announcements, which are required to be published in newspapers in accordance with the provisions stipulated in special laws, are also allowed to be published on the news websites to ensure more effective and efficient access for users, transparency, and competition, therefore these sites are designated as a platform for the publications of official announcements.

On the other hand, with the amendments made in the Law No 5651 on Regulation of Publication on the Internet and Combatting Crimes Committed by means of these Publications it is foreseen to resolve problems arising from the implementation, to eliminate uncertainties concerning the responsible authority for content removal/access ban and to identify duties and responsibilities of the Access Providers Union. Additional tasks are entrusted to the Union to inform children, young people and families about the illegal contents and safe use of internet. The judicial review procedure to be followed in appeals made to the Union regarding the protection of personality rights shall be regulated.

With the advances technology, an domestic-international separation is no longer practiced in catalogue crimes, for which content removal and/or access ban decision can be issued, due to problems encountered in determining content or host of the crime committed on the internet.

Regarding the obligations and responsibilities of social network providers regulated by Law No 7253; further arrangements have been made by taking into account the regulations in the European Union, such as strengthening the relationship between interlocutors, extending the scope of reporting obligations, providing a separate service for applications concerning children, timely and directly responding to information requests of the judicial authorities, protection of user rights, taking effective measures by elaborating a crisis plan in extraordinary cases affecting public security and public health.

Furthermore, with the amendments envisioned in Law No 5809 on Electronic Communications; Over The Top (OTT) services are defined. These services, provided without being stipulated in any legislation in Turkey, are authorised by the Information and Communication Technologies Authority (ICTA) and as this situation causes an unfair competition for operators who provide similar services, ICTA is authorised to make the necessary regulations and take relevant measures regarding these services. Thus, it is intended to ensure that operators authorised by the ICTA be subject to certain obligations such as consumer rights, personal data protection, service quality, reporting, financial obligations, to ensure that public service is properly provided within the framework of the relevant legislation.

Taking into account the increasing number of fabricated news and its impact, on one hand, with the proposed amendments the administrative measures are reinforced to combat disinformation and on the other hand, 'publicly disseminating information misleading the public' is defined as a separate offense under 'Offenses against Public Peace', chapter five of the Law no 523. Thus, publicly disseminating false information about the country's domestic and foreign security, public order and general health with the intention of causing fear and panic among the public constitutes a crime. Therefore, the perpetrator needs to have a specific intent, false information needs to have a specific quality and act needs to be feasible.