THE HISTORY AND FUNCTIONING OF TURKISH PRESS COUNCIL AND CURRENT CHALLENGES

DR. R. MURAT ÖNOK



Dr. R. Murat ÖNOK (Vice-President Turkish Press Council)

Dr. Murat ÖNOK is currently teaching at Koç University Law School in Istanbul. His fields of research are criminal law, human rights law and international criminal law. He has also taught public international law.

Dr. Önok has been serving as Vice-President of Turkish Press Council since 2013. He served as board member of the Transparency International Turkey, and Turkish Penal Law Association. He is an instructor for the Turkish Union of Bar Associations (TBB), training lawyers in the fields of human rights law and criminal procedure law, and a member of the Union's Human Rights Center Scientific Advisory Board.

He has authored or co-authored various books and book chapters, as well as academic articles, published in Turkey and abroad.

History

The first attempt at self-regulation in Turkey was the "Press Honor Council," established on July 24, 1960. On this date, various stakeholders of the press pledged to abide by the organ's decisions. The occupational principles guide, na-

med the "Law on Press Morals," was prepared at the same time. However, the Honor Council was in effect dissolved in 1967 and had only analyzed 148 cases. Perhaps the most important reason for its failure was that it started sanctioning newspapers that violate press principles by cutting off their advertising when it saw that an "exposure" sanction was ineffective. As a result, it turned into an institution that only punishes, thus losing the support of the media sector. Moreover, after the Council of State started annulling the decisions concerning the cutting off of advertisements, this sanctions became ineffective. In fact, already in the 1960s it was stated that an institution which only meted punishment "would not win the love" of the press, and that a self-regulation organ would have had to assist the press in various ways.

Due to lack of time I shall skip the historical developments shortly; for the same reason, I shall not explain the process which led to the establishment of the Press Council after 1967. Extensive information on these topics is available on the website of the Press Council[2]. However, at this point, I would like to mention the chief writer of *Hürriyet* newspaper Oktay Ekşi, who is arguably the person with the most effective role during the preparatory works leading to the establishment of the Press Council. *Ekşi* prepared three different drafts in total, and in May 1986 he brought up the latest draft for debate. A working group also established in 1986 took the various criticisms and suggestions into account, and brought the final draft to the attention of 294 media members, thus formulating the "Press Professional Principles" and the "Press Council Contract".

In sum, as a result of the efforts which lasted for one-and-a-half year of the working group, the Press Council was effectively established on 6 February 1988.

The Legal Status of the Council

The Press Council does not have legal personality and it has not been established in the form of an association in the legal sense, it is based on a contract (ie, on reciprocal agreement). The goal here was to protect the council from legal pressure that could be exercised on a legal person. It must be said that the structure of the Council, which rests upon a contract and lacks legal entity status, is

2 Further, one may refer to my following work for extensive detail: "Press Councils as Organ of Self-Regulation: Turkish Example in Light of Comparative Applications", *Media-Self Regulation in Turkey: Challenges, Opportunities, Suggestions* (ed. Y. Çongar/ F. Demirelli/ S. Epik), P24 Media Library English Publication No. 1, İstanbul, 2018, pp. 74-119 (Note: This is the translation into English of an article prepared by myself in Turkish. The translation is not my own).

similar to Western examples.

During the time of the Press Honor Council, the need to operate on a voluntary basis was recommended, stressing the dangers facing compulsory institutions based on statutory law. *Abdi İpekçi* stated that giving the self-regulation organ a legal format would serve the government in putting pressure on the press, and that the problem at hand is one of "professional discipline." International literature also notes the need to refrain from establishing press councils based on statutory law.

On the other hand, the Press Council Solidarity Association – which is a "sub-institution" of the Council – was a legal entity which was able to present to the state's regulators its income, expenditures, and expenses for inspection. In future years this association was converted into a foundation (the Press Council and Solidarity Foundation), again possessing legal personality. This foundation has a separate executive board from that of the Press Council.

Basic Texts Regulating the Operation of the Council

The operation of the Press Council is based on three fundamental legal texts.

a. Press Council Contract: This is the primary text that regulates the structure and boards of the council, and their composition as well as their election, duties, and authorities.

The organs of the Press Council are the following:

1- Press Council Board of Members (BKÜK),
2- Press Council High Council (BKYK).

The BKÜK consists of all members of the Press Council and its ordinary meeting takes place once a year. The composition of the BKYK is regulated under Article 7, you may find the distribution of the membership on our website

Until relatively recently, the Press Council included almost all of the leading media outlets, including the official state channel TRT and the official state news agency Anadolu Ajansı. However, media outlets known for being close to the government withdrew from membership in the second half of the 2000s. Furthermore, some other outlets also withdrew from the Council for various other reasons. On the other hand, a group of outlets known for their affiliation with

Fethullah Gülen group, and which had withdrawn decided to become members again; these were shut down by the state following the July 15, 2016 attempted *coup*. Furthermore, a number of new media outlets have become members of the council in recent years.

The most important amongst the duties of the BKYK is to handle complaints, and where necessary examine *ex officio*, possible breaches of journalistic principles.

Unlike many examples in Europe, the council does not have an independent organ to examine claims of professional violations. It can be said that all of the duties and authorities within the mandate of the council have been given to the High Council. The composition (membership) of the BKYK does not only comprise journalists; in fact, it was though that a self-regulation organ only comprising journalists would not be able to represent the whole society, as confirmed by the experience of some European countries.

b. Press Professional Principles: This texts serves to delineate the framework of complaints made against publications. The principles were updated very recently (in 2019).

In the event that a friendly settlement is not reached between the complainant and the party being complained about[3], a "complaint unfounded," "warning" or "condemnation" decision may be made concerning members of the press and/or press organs. In this regard, the Press Council's decisions only carry the weight of exposure. The understanding of the Press Council since its inception is that the most appropriate sanction is "moral" in nature. It is stated in academic writings that the Press Council is structured as recommended in academic studies, and that it set out its aim correctly.

c. Press Council Operational Rules and Application Assessment Procedures : This document is a kind of internal "regulation" which lays down the details of the decision-making process concerning complaints within the Press Council's

3 However, see Contract Article 17 (2), (3): "*The Secretary-General helping the sides reach an agreement does not prevent the BKTK from taking up the matter. / The BKYK's views and decisions concerning matters that have ended in agreement may, like other decisions it makes, be announced to the public.*"

mandate.

The council accepts complaints concerning both media outlets that are members and those that are not. It should be noted that approximately two-thirds of the European press councils are able to examine application involving members only; however, in these countries, the majority (sometimes, the vast majority) of the media outlets are members of the council.

No differentiation is made between media outlets engaged in written or audio-visual broadcasting. Internet broadcasts are also within this scope.

More than half of the European press councils do not accept complaints stemming from material shared on social media platforms such as Facebook and Twitter. Of course, most of the councils do investigate complaints if the media outlet's official page/account is in question.

Activities of the Press Council

These activities can be categorized under two sub-headings:

3. Examinations Concerning Professinal Ethical Breaches

4. "External" Activity Aiming at Protecting Press Freedom and Teaching Ethical Values

Since the primary task of the Press Council is to self-regulate the press, perhaps the main activity of the council is to examine violations of journalistic principles in media publications. When compared with Europe, the number of applications is low. The fact that the press is extensively regulated by the state and that many violations of journalistic principles falling under various laws causes many applications to be made directly before courts.

The Press Council has in the last few years worked hard to raise its voice on freedom of the press as a principle and on the need to protect the fundamental rights and freedoms of journalists on the individual level. In fact, one of the duties of a modern press council is to protect members of the press when needed and to represent the media as a whole against governments. When the Press Council was being established, one of its goals was set to be "to investigate attacks on newspapers and journalists, and to expose those who carry them out."

You may refer to our annual reports for our various activities on these issues.

Difficulties and Obstacles Encountered by the Press Council

1. Problems Related ith the Political Conjoncture

The fact that media outlets known to be close to the government are no longer members of the council eliminates the possibility to represent the media as a whole.

At the same time, there is no continuous and sustained dialogue channel present with the government. This reduces the possibility of handling issues through dialogue.

The political situation in Turkey has reduced the number of applications to the council since 2016.

2. Financial Problems

Financial problems faced by press councils are a general problem experienced worldwide. Looking at financial sources, most of the councils in Europe - albeit to varying degrees - receive public funds. Many councils are financed by a mixture of public-private funds. In Turkey, financing comes almost exclusively from member organs.

The lack of guaranteed future income makes it extremely difficult to engage in long-term strategic planning.

It has been said since the 1960s that a self-regulation body lacking secure funds cannot adequately carry out its duties. There are serious issues with regard to the financing of the Press Council in Turkey. In connection with this, the employment of personnel constitutes a serious problem. The publication and distribution of works has become very difficult. Again because of personnel shortcomings, it is not possible to translate these works into foreign languages, and to distribute them internationally. The limitations in the revenue sources decrease the chance of the Press Council to promote itself across the country.

3. Problems Concerning the Effect/Impact of Decisions

One topic discussed at international meetings is the effectiveness and reputability of decisions made by press councils. The common view is that it is not possible to measure exactly how seriously the decisions are taken. Moreover, the authority of voluntary self-regulation mechanisms and effectiveness of sanctions may not be great – this is an expected defect.

However, at least, it is important whether the decisions are published or not. According to our Contract, member outlets have to publish decisions concerning themselves, but in practice tihs is not done. On the other hand, Turkish Press Council publishes all of its decisions in full on its own website.

4. Organs Regularly Violationg Media Ethics

A particulary notable problem is how to approach media outlets that deliberately and systematically violate journalistic principles.

If such an outlet is a member of the Press Council, then its membership (or that of the members in question) could be terminated. However, this would not constitute a solution: pushed the outlet or individuals in question outside of the system does not provide any benefit as regards providing their compliance with professional ethics.

On the other hand, it is an exercise in futility to try to ensure the compliance of certain media organs with press professional principles. There is no point in debating over media ethics with outlets that exist to spread disinformation, that are financed to that end, and that maintain public support insofar as they ignore journalistic principles!

One topic discussed at professional meetings is local media outlets, especially in Anatolia, whose sole goal is to put pressure on local authorities in order to draw personal benefit. It is not possible to apply the idea of self-regulation to this kind of structure.

5. Internet and Social Media

One current issue discussed by Press Councils in Europe is what role should press councils play in regulating social media, which has steadily been growing and taking a larger share of the role of traditional media.

Due to shortage of time I cannot go into the details but some of the problems

are as follows:

- Is the regulation of social media from the viewpoint of ethics possible?
- If it is possible, is there a role in this regard for press councils? If there ise, should special rules be adopted for social media or are existing general principles sufficient?
- What types of material shared on social media are within the mandyate of press councils, and when shared by whom?
- Is it possible to envisage practices such as accrediting social media platforms?
- How to deal with the moderation of readers' comments and the responsibility of media outlets with regard to such content

Leaving aside these issues, an important mission for our Press Council is to incorporate into its system internet portals. In the face the problems encountered by conventional media in Turkey, the method resorted most often by the public opinion in order to obtain information is to make recourse to platforms acting through the internet. Our Council is trying to find ways to effectively reach such organs.

6. The Adaptation of the Press Professional Principles to New Developments

In order to keep it short, I shall only mention some of the problematic issues we are confronted with.

- Many internet portals share on their website, in whole or in large portions, content which is produced by others. This act of duplication is unacceptable. If the consent of the relevant source is not obtained (with regard to sharing the content), simply citing the original source is also insufficient.
- Health news are presented in an exaggerated and sensational fashion in order to attract more attention. This causes unfounded hope or fear in patients.
- Especially on the internet, graphics that are entirely unrelated to the content of the news but only serve to draw in curious readers are used; more in general, pictures of the human body are used to simply increase circulation numbers, ratings, or views.

- False, exaggerated, or sensational headlines that do not reflect the content of the news and only serve to rouse reader curiosity are utilized (especially on social media). The only goal of this practice known as "clickbait" is to entice readers through dishonest means and direct them to specific content with commercial concerns in mind.
- The way news concerning sexual crimes is presented is sometimes sexist, and sometimes puts the blame on the victim. Furthermore, to present the commission of sexual crimes in an "erotic-like" tone and style is unacceptable. It is a huge mistake to shift the focus from the perpetrator to the victim by narrating the crime through the identity of the victim or his/her private life or behaviour.
- News which turn out to be incorrect are not corrected *ex officio* by the relevant media organ. News on the social media which turns out to be incorrect or even false is simply removed without any explanation or correction, in fact sometimes it is left as it is.
- The way legal news are presented is problematic. Especially in cases which are politically sensitive, some media organs convey information in an intentionally biased way so as to sway public opinion in a certain direction

Conclusion and Assessment

Where there is the press, there will be those within it who seek to misuse it. If the press cannot regulate these abuses on its own, then the state authority will take it upon itself to do so. This will pave the way to corrupt attempts the real purpose of which is to restrict freedom of the press. In this respect, it is today accepted in the West that the most effective system for assessing professional ethical breaches is self-regulation. If the media cannot protect its own professional ethics, it will lose its freedom and reputation.

The Press Council has been the target of various criticism since its establishment. There have been suggestions in the line of "restructure the Press Council from scratch." In my opinion it is clear that in current Turkish politics where press freedom is under threat, removing an institution of self-regulation that everyone accepts to be independent of the government will not contribute anything positive to the press.

Likewise, attempts to create alternative self-regulation organs have been made in the past, and they failed. The existence of various dispersed organs carrying out the same duty will most likely reduce the power of each and every one of them; in similar vein, conflicts arising in case law will weaken the authority of each one. Maybe, having a "plurality of organizations" in the field of self-regulation will signify the "lack" of any significant organization.

The Press Council in Turkey remains subject to criticisms that are no longer valid and that stem from earlier periods, such as that it is under the control of a specific media group). Furthermore, there are hurt feelings from possible past mistakes. Every institution undoubtedly has an "emotional baggage" originating from its past.

However, the current structure and operation of an institution should be assessed based on its current work. Certainly, it is up to the Press Council to better explain and advertize itself. In return, it is the duty of others to follow and assess the work of the Press Council and to voice their criticism accordingly.

Today, certain segments criticize the Press Council for being an "opponent" to the government. As one columnist noted, the success and effectiveness of these types of institutions rests on their critical stance against all kinds power. Since the most important threats directed at press freedom are caused by the three fundamental powes of the state (legislative-executive-judicial), there can be nothing more natural and necessary than the Press Council being in a continuous state of struggle with these.

It is always possible to change the Press Council's structure, organs, their composition and election of members, working principles, and the like in light of criticism and suggestions coming from media stakeholders. But what is important is that all of these stakeholders come together and carry out this effort together.

Finally, a truth has to be underlined: self-regulation of the media can only work in a society which is attached to democratic values, including freedom of expression and of the press. In this regard, I may end my speech with this confession: as long as the governments and public opinion in Turkey do not fully internalize these principles, any attempts at self-regulation will always face great difficulties.