Freedom of Expression, Science and Social Development

Introduction

Freedom of expression, by definition, materializes when individuals can put to words what they think, without experiencing fear, oppression or threats. Whether the ideas are expressed in compliance with social decorum, that is, the rules of politeness, decency, courtesy, civility etc., or not cannot be by itself reason for limitation or tolerance. It is very humane for the opinions and sentiments of individuals who feel anger, suffering, sorrow or belittlement to reflect the mood that they are in. Furthermore, the ideas being expressed may be of an unacceptable, unpleasant, extraordinary, unconventional, odd or disturbing nature for society as a whole. In a democracy, the expression of ideas cannot be banned on the grounds that these are anti-establishment ideas which criticize the interests of the powers that be, or the policies of the state and government.

Democracies thrive in societies whose cultural atmosphere is pluralistic in nature. Such a pluralistic cultural atmosphere can be established only if being dissident and airing dissident opinions is considered to be an inviolable, almost sacred value.[1] This means that even if there is only one person whose opinion is totally different from or even diametrically opposite to everyone else's, that person should be able to express her or his opinion without experiencing fear, threats or deterrence.[2] Civil society can prosper only in such societies; there, mutual consent among individuals gives birth to a wide range of organizations such as partnerships and companies, clubs and associations, and political parties. This same pluralistic cultural atmosphere nurtures different ideas and innovations, which, after a process of criticism and debate, are accepted and put into practice. Societies which choose to adapt to the ever-changing conditions of the world through such a pluralistic atmosphere are more successful and

1 G. Sartori, Political Parties and Party Systems, 1978

2 Ibid.

rapid in achieving innovation and creativity. Such an atmosphere is conducive to the generation of new ideas, new technologies, new products and services, and also to the expansion of economic welfare, which can thus reach a broader base and bring about economic development.

The pluralistic cultural atmosphere also creates and upholds a scientific research landscape that is open even to the most heterodox of ideas and arguments. The cultural atmosphere of a pluralistic society enables individuals to come up with the most unthinkable speculations, to question the most entrenched ideas, and to analyze and criticize these through logic, method, observation, data and other instruments. In such a climate of unfettered thought and expression, scientific findings are uncovered, debated, criticized, tested and finally refuted or approved through meticulous deliberations. During their education, individuals who will become the scientific researchers of the future are encouraged to rely on their imagination to conceive of what others before them could not conceive of, to uncover what was unknown until then, to look at facts from an angle never taken before, to solve problems that others failed to solve, and engage in similar ventures. Naturally, such a practice of thought runs counter to the approval of the entrenched, well-accepted ideas of society without questioning. Indeed, scientists being trained to become researchers are taught that they must question everything -continuing to question until they can convincingly prove through logical (mathematical) methods based on observation (facts or evidence) that their idea is not false. It is only natural for scientists to have and express dissident opinions and thoughts, even if these may be considered odd by the people in the street. If scientists had not possessed these habits and working principles, today we would not have been traveling by car or plane, using laptop or tablet PCs, or speaking over mobile phones. Scientific thought and expression not only breeds such inventions which accelerate and facilitate our life, enabling us to savor it fully; but also lead to the expression of different, dissident, striking, offensive and extraordinary views on the social and political aspects of our life. The problem here is

that, if we reject these attitudes and try to confine the thoughts and expressions of scientists within the boundaries drawn by the ruling elite, society, ideology etc., we will undoubtedly relinquish numerous potential innovations which could make our lives easier. Societies that lack freedom of thought cannot achieve creative thinking, and sooner or later, see their economic development come to a halt. Even as we live the same life with our parents, well-established democracies that place no boundaries on the freedom of expression (e.g. the USA, Finland, Italy, Chile, South Korea, Japan, the UK, Sweden and the like) continue to come up with new inventions. We may continue to watch their economic progress with envy, send abroad even more of our brightest minds through brain drain, and forfeit our national economic development.

Freedom of Science and Expression

Is it not possible to abuse freedom of expression, despite its importance? Could this not lead to various problems? It is possible to respond in the affirmative to both these questions. What is to be done then?

In the US practice, no limits are imposed on the freedom of expression even if it is heavily abused. However, this freedom does not include slandering or blackmailing individuals, or relying on perjury to veil the truth, since these are considered crimes. In fact, as is well known in Turkey also, the US President William Clinton was impeached in 1998 -1999 on charges of perjury despite taking the presidential oath, and of the obstruction of justice by the U. S. House of Representatives. There is an even more striking example. Following the Al Qaida attack on the Twin Towers housing the World Trade Center on 11 September 2001, Ward LeRoy Churchill, a social science professor at University of Colorado, gave several lectures criticizing the government's foreign policy in a very harsh, particularly provocative tone. He used the phrase "little Eichmanns" -in reference to the Nazi war criminal- to describe the finance professionals working at the World Trade Center, and depicted the US foreign policy

as "genocidal American imperialism." In 2005, University of Colorado began an investigation on the ethical content of Churchill's studies on native Americans, and later concluded that he had engaged in research misconduct. Consequently, Churchill was dismissed, and at the end of a lengthy appeal process, the courts declined his request for reinstatement at University of Colorado. However, Churchill was neither jailed nor prosecuted due to his harsh criticism of the American politics and establishment, nor accused of praising terror or insulting the US state.

In Europe, the boundaries of the freedom of expression are relatively more limited than those in the USA, in part due to the incidences of holocaust and genocides which took place in the course of the twentieth century. For instance, Holocaust denial is classified as a racist crime and racism is considered to be an offense falling outside the freedom of expression. Although the British historian David Irving, who denies that German Nazis carried out the Holocaust, currently lives freely in the UK, he was arrested and put on trial in 2005 in Austria and sentenced to three years for engaging National Socialist activities. In a separate trial, he was sentenced to a penalty of 2 million sterling pounds by British courts, and at other times, he was deported from Germany, Italy and Canada. In this case, it was revealed that Irving falsified the findings of his studies and utilized data in a selective fashion to support his arguments, thereby violating the principles of scientific ethics. As such, it was decided that Holocaust denial is not a scientific argument, but amounts to ideological and political propaganda serving National Socialism.

Using untruthful or falsified data or presenting someone else's scientific findings as one's own (plagiarism) are considered to be violations of academic ethics. Academics who engage in such practices see their ties with universities severed, and lose all their academic prestige. If these practices result in damages for other individuals, the latter may seek legal redress.

As such, in most countries it has been accepted that the freedom of expression has

limits such as refraining from racism or the violation of academic ethics. However, in consolidated democracies, the rules concerning these limits are put into practice only after being questioned thoroughly and properly in deeply-rooted ethical investigations of well-institutionalized universities. In such societies and their universities, no citizen or academic is indicted, prosecuted or jailed for criticizing or condemning the government, the state or a political party, or for rejecting, arguing against or refuting statements by government or state officials.

Science, “Disciplinary Measures” and Freedom of Expression in Turkey

In Turkey, the working principles of scientists and the disciplinary investigation and punishment they will face in case of a violation of these principles are regulated by the Law on Higher Education (Law no. 2547) dated 6 November 1981. Article 53, paragraphs (a), (b) and (c) of this law outlines the disciplinary and criminal measures for faculty members and other higher education personnel. Put simply, the infractions are divided into two. Some are categorized as infractions falling under administrative disciplinary rules related to the personnel's professional duties, and regulated by the paragraphs (a) and (b) of Article 53. The paragraph (c), on the other hand, defines the procedure of criminal investigation. Section 53/c-7 of this paragraph states that individuals suspected of crimes such as attempting to destroy, on ideological grounds, the basic rights and freedoms defined in the Constitution, the unity of the state, country and nation, or the Republic, will be prosecuted directly by public prosecutors.

Law no. 2547, Article 53, paragraph (a) identifies the disciplinary authorities and disciplinary committees in charge at institutions of higher education; whereas paragraph (b) states that the disciplinary procedures concerning faculty members, civil servants and other personnel and the powers of the disciplinary authorities shall be governed by a regulation to be drafted by the Council of Higher Education (YÖK) in line with the principles applied to civil servants in general. The said regulation came

into effect upon its publication in the Official Gazette on 21 June 1982.

Law no. 2547, Article 53, paragraph (b) was later amended by Article 7 of the Law no. 6528 dated 01 March 2014 in the following manner: "*Disciplinary sanctions which may be imposed upon faculty members, civil servants and other personnel include formal warning, reprimand, release from administrative duty, forfeiture of pay, freeze of promotion, ban from the profession of higher education and ban from public service. Council of Higher Education shall determine which disciplinary sanction applies to which infraction, as well as the disciplinary actions and disciplinary authorities concerning the persons listed in this paragraph, with due consideration of the principles governing the disciplinary procedures for civil servants in general.*" When the main opposition party appealed to the Constitutional Court to overturn this amendment, the Constitutional Court -in its resolution dated 14 January 2015 and numbered E. 2014/100, K. 2015/6- overruled the amendment stating that it was in breach of the Articles 38, 128, and 130 of the Constitution. In doing so, the Constitutional Court stated that the concerned law had to clearly define not only the disciplinary sanctions for faculty members, but also the specific actions constituting an infraction, and the principles governing disciplinary investigation. The Constitutional Court delayed the date of effect of its resolution by nine months, giving the National Assembly time to draft the required legislation.

However, since the National Assembly did not pass the law during this space of time, the Disciplinary Code for Governing Members, Faculty Members and Civil Servants in Institutions of Higher Education, which the government now wants to implement against various faculty members, does not have any legal basis nor does it conform with the Constitution. Likewise, the Council of State's Assembly of Administrative Law Chambers ruled on 29 April 2015 that, since the Constitutional Court had overruled the current disciplinary code for violating the Constitution, any disciplinary sanction based on this disciplinary code would be null and void.

The Council of Higher Education attempted to fill this lacuna with a communiqué dated 12 December 2015, amending the Law on Civil Servants (Law no. 657). As indicated by our colleagues from Ankara University, Faculty of Law in their article published in the daily newspaper Cumhuriyet, Law no. 657 cannot be applied in institutions of higher education as a disciplinary and penal code: “Faculty members at institutions of higher education ... are classified as ‘other public officials’, falling outside the category of ‘civil servants’. The stipulations of the Law no. 657 are not general rules which apply to all the public employees, and as indicated in Article 1, paragraph 1 of the same law it regulates only those employees defined as '*civil servants*'. Indeed, Article 1, paragraph 3 of the Law no. 657 explicitly mentions faculty members as public officials who fall outside the scope of Law no. 657 and are subject to separate legislation. It is against basic logic to argue that a law could outline the general principles applicable to a category of personnel, which the law explicitly leaves outside of its scope.”[3] Furthermore, in a recent ruling, the Constitutional Court overruled a disciplinary sanction imposed on a civil servant for breaching Law no. 657 by participating in a public demonstration organized by a political party, on the grounds that the civil servant's action is within the scope of the freedom of expression.[4]

Therefore it is evident that, due to the aforesaid articles of the Constitution and relevant laws, rulings of the Constitutional Court and Council of State, and the dominant opinion in law literature, there is as of yet no valid disciplinary code which can be applied to faculty members and other personnel of higher education.

From a perspective of administrative and constitutional laws, institutions of higher education lack the legal ground to take any action against the academics who signed

3 Cumhuriyet newspaper, Ankara Hukuk Hocalarından Uyarı Niteliğinde Makale: (http://www.cumhuriyet.com.tr/haber/turkiye/477695/Ankara_Hukuk_hocalarindan_uyari_niteliginde_makale_Akademisyenlere_sorusturma_acilamaz_.html).

4 Constitutional Court, resolution dated 26/2/2016 on the application numbered 2013/6152. Official Gazette, 1/4/2016. Especially the Articles 41-55 found under the chapter “Demokratik Toplum Düzeninde Gerekli Olma ve Ölçülülük” (Necessity and Measure in Democratic Social Order).

the petition entitled "Academics for Peace".

The relevant stipulations of the "Draft Law for the Amendment of the Law of Notification and Certain other Laws and Executive Decrees" presented by the Government to the Parliament on 21 March 2016 would require a separate criticism. However, even if this piece of legislation is approved by the Parliament, due to the principle of non-retroactivity of laws, it cannot be applied to actions which transpired before its coming into effect.

Freedom of Scientific Expression and Criminal Law

Scientists' research, studies and criticisms are an integral part, indeed the essence of their professional practice. When a scientist expresses an opinion or issues a publication in her or his field of expertise, or any other academic issue, this is defined as intramural discourse[5] and protected in the scientific landscape of any democratic society by specific laws and by the European Convention on Human Rights in Europe. Yet, scientists' discourses are not limited to their specific field of expertise. Scientists may occasionally share their views about political and social issues, and thus leave their main field of expertise to put forth ideas on broader political and social facts.[6] "Accordingly, a scientist should be free to express her or his opinion on political matters as a citizen and must not be subjected to any legal, administrative or penal sanction in return. Although the context of the discourse is important, it is not determinant in and of itself."[7] This second type of discourse is called extramural discourse. The main difference between these two types of discourse is that, the

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5 Pınar Dikmen, "Intramural –Extramural Söylem Çerçevesinde Akademik Özgürlük ve Güncel İHAM Kararları" Güncel Hukuk, Şubat 2016/2 – 146,s.2.

6 Eric Barendt, Academic Freedom and the Law: A Comparative Study, Oxford: Hard Publishing, 2010 – p. 272, and Eric Barendt and David Bentley, "Meeting Summary: Academic Freedom and the Law" Summary of the International Law Discussion Group Meeting Held at Chatham House on Wednesday, 8 December 2010, s.3. Both quoted in Pınar Dikmen, ibid. p.3.

7 Pınar Dikmen, ibid. p.3.

former constitutes qualified thinking, with potential benefits for the general public.[8] Although this potential may or may not materialize, the limitation of free academic expression can be said to damage the public welfare. A scientist's freedom of expression outside her or his field of expertise, on the other hand, means that she or he, just like any other citizen in a democratic society, should have the right to express a thought or opinion on political issues without any fear, and without concern that her or his professional career might be jeopardized.[9]

A natural result of the legal argument we develop here is that scientists should be able to freely express their opinions outside the university, without any concern. This liberty was in fact upheld by a court ruling. “For instance in its resolution in the case of Mustafa Erdoğan v Turkey, European Court of Human Rights (ECHR) stated, in the context of rather harsh criticisms towards the then members of the Constitutional Court, that academic freedom is not limited to academic and scientific studies and that academics have the right to freely express their views and ideas obtained in their field of research, expertise and competence, and especially to criticize public institutions. On its decision in the case of Taner Akçam, the ECHR stated that, although Akçam’s article on the Armenian question which prompted a criminal investigation was published in a non-academic newspaper, this investigation -despite resulting in a resolution of lack of grounds for legal action- could force him to restrain himself in his academic studies as a history professor, and therefore, investigations based on Article 301 of the Turkish Penal Code or constant threats thereof could deter individuals from exercising their freedom of expression."[10] In continuation of these developments, the Constitutional Court conceded that academic freedom is about “seeking the truth” and “observing and criticizing the developments in the country”, in an “environment

8 Ibid. p.3.

9 Ibid. p.3.

10 D. Çiğdem Sever and Berke Özenç, “Akademik Özgürlükler” Güncel Hukuk 13, (February 2016)

conducive to free thought and free study”.[11]

Turkey, unfortunately, has witnessed numerous attacks on and even assassinations of scientists with left- or rightist ideological inclinations, who simply unveiled their thoughts and opinions without engaging in slander or inciting violence. Since the 1960s, in face of dire developments and circumstances, scientists issued various petitions, and indeed a multitude of such petitions appeared at times. Some of these petitions prompted prosecutors to start criminal investigations towards academics. In response to a similar petition recently issued by various academics, another investigation has been started and some academics were dismissed by universities. Four of the academics who signed the petition were arrested and a criminal lawsuit was brought against them for violating Anti-Terror Law, Article 7/2. In an unprecedented grave development, the academics were jailed pending trial and indicted of engaging in terrorist propaganda.[12]

As in this case, even if the ideas expressed or conclusions reached may be considered disturbing or provocative, they fall within the scope of the freedom of expression, as long as they are not defamatory or incite to violence. If we do not get accustomed to responding to ideas with other ideas, violence will become the method of choice for reacting against ideas.[13]

Regrettably, this development comes sixteen years after the prominent Turkish criminal law scholar Prof. Dr. Uğur Alacakaptan's arguments on the meaning of Criminal Law in a democratic, constitutional state. In his publication in 2000, Alacakaptan stated “Criminal Law must be liberalized, so as to become an instrument for the effective and indiscriminate protection of the basic rights and freedoms against all attacks and interventions from public or private powers, rather than putting

11 Ibid. Quotation marks in the original, emphasis added.

12 Aysel Çelikel, “Düşünce Özgürlüğü ve Akademik Özgürlükler” Güncel Hukuk 12, (February 2016)

13 Aysel Çelikel, ibid. Excerpts from the Constitutional Court and ECHR rulings on the freedom of expression can be found in the Annex 2.

pressure on these rights and freedoms."[14] In continuation, he added that "For Criminal Law to turn into such an instrument, it must first and foremost be cleansed of all political sanctions which punish the diversity of opinion and run counter to democratic plurality, decriminalize all actions which are not clearly anti-social in character, and thus become a means for attaining the goal of a democratic, social, constitutional state, for setting in motion the process of social consensus, and for the expression of diverse social interests.[15] Alas, we witness that today's legal practice is diametrically opposite to the argument put forth by Alacakaptan on the practice of Criminal Law in a democracy! Alacakaptan suggests that Criminal Law should uphold the establishment and continuity of democracy by protecting the society and individual against the pressures and arbitrariness of political power. However, the Turkish practice seems to reduce Criminal Law to the conventional relation between crime and punishment, thereby continuing to erode democracy: Alacakaptan indicates that "today's Criminal Law can no longer criminalize and punish non-compliance with laws, or on a more general level, with top-down rules. As correctly indicated by Prof. Çetin Özek, 'According to conventional criminal law a perpetrator is punished for violating a norm. Thus, the interest of the political power which defines that norm turns into a legal interest under protection.' When the interest in question belongs to the political power, the latter gains the subjective right of defining a crime, determining its sanction, persecuting the perpetrator and imposing punishment. This approach goes against contemporary criminal law, which is based on human rights."[16] It does indeed go against the contemporary approach to criminal law, as law becomes an instrument in the hands of political power for blocking all freedoms, starting with the freedom of expression. Alacakaptan's argument is clear-cut: "Criminal law is not and should no longer remain the law of '**criminalization**'. It must turn into legal

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14 Uğur Alacakaptan. "Fikir ve Düşünce Özgürlüğü ve Tehlike Suçları, Çağdaş Batı Hukukunda Bu Konudaki Düşünce ve Uygulamalar, Türk Uygulaması Değerlendirilmesi" (12-16 January 2000, Ankara Bar Association's Law Conference 2000. 12-16 January, Ankara. Vol. 2, p. 6)

15 Ibid, p.6. Emphasis added.

16 Ibid s.7.

practice which **provides a safeguard to individuals** and defends their rights."[17]

Alacakaptan also issues a more general political warning: "Architects of World War II exercised their '*political power*' to shape, according to their viewpoint, what is '*illegal*' for criminal law and applicable legislation. For instance, both the Italian Penal Code of 1930 and the judicial order of the Führer were 'legal' in their own way. In the past, laws were passed according to the '**political'** preferences, nature, objectives, ideological background of the political power, and the constitutional order it has established. Fascism in Italy and Nazism in Germany established their dominance through legal regulations. Illegality in criminal law cannot be created '**solely by law.'**"[18] As such, it is possible to utilize Criminal Law to establish a democratic, constitutional state or an authoritarian political order. Twenty-first century Turkey seems to be at a crossroads as to which of these two courses will be chosen. Steps taken in this context will soon show which course Turkey is on. We hope that Alacakaptan's argument as regards the functions of Criminal Law in a democratic, constitutional state will be heeded before it is too late.[19]

Conclusion: Truth, Information, Power, Development and Free Democracy

The famous Turkish adage that "The lightning of truth appears amidst the clash of ideas" indicates that the expression of thoughts and opinions without any fear or worry is crucial for uncovering information based on truth. The continuation and advancement of scientific study, which consists of efforts for seeking the truth of nature and society, is possible in liberal democracies based on rule of law, which totally protect and respect the freedom of expression. In Turkey, which has underscored its will to become a free democracy with the various international conventions it has signed, any idea which does not incite to violence or is not defamatory should find

17 Ibid. Emphasis in the original.

18 Ibid.

19 A statement on the matter by Turkish Association for Criminal Law is available at http://www.tchd.org.tr.

expression, free of fear or worry, even if this idea is extraordinary, startling, critical, offensive, different from the viewpoint of the majority of the society, or even biased. The UN Universal Declaration of Human Rights, the European Convention on Human Rights, the European Court of Human Rights which pronounces its rulings based on the latter, and Turkey's Constitutional Court protect the freedom to express one's thoughts. Moreover, in 21st century liberal democracies built on the rule of law, Criminal Law is viewed as an instrument for protecting individuals and communities against the strong and powerful. In liberal democracies, Criminal Law cannot be utilized as a means to criminalize and punish every thought, expression or action which falls outside of or clashes with the opinions, interests and trends of the powerful. Practices contrary to such an approach belong to the era before World War II, and to undemocratic regimes. If Turkey is keen on meeting the Copenhagen Criteria and becoming a member of the EU, it should strive to become a liberal democracy upholding the rule of law. Challenging as it may be, the safeguard of the freedom of expression will result in the discovery of scientific findings and in government policies based on these findings. Such policies will not only boost our economic development, but also help Turkey grow stronger by flexing its soft power. Amartya Sen, winner of the Nobel prize in economics, suggests that freedoms are the single most reliable instrument for economic development, and proposes even that “economic development confines itself to freedoms”.[20]

That is the reason why, despite the presence of security threats, liberal democracies are especially sensitive to upholding rights and freedoms, specifically the freedom of expression. The petition signed or supported by around two thousand academics and popularly known as “Petition of the Academics” may be criticized with counterarguments verging on the offensive, as long as there is no resort to slander or incitement to violence. Such a reaction is legitimate and even natural in terms of

20 Amartya Sen, Development as Freedom, (Oxford, New York: Oxford University Press, 2001).

general democratic principles. However, pre-trial detention of individuals, who exercise their freedom of expression without incitement to violence, not only goes against the legal precedents set by ECHR and the Constitutional Court of Turkey but also hampers the benefits associated with freedom. Worryingly, such judiciary practices thwart the burgeoning of liberal democracy and damage public welfare by blocking economic development. It is especially worrisome for this to happen at a time when the rapprochement with the EU tops the political agenda. Neither can we fathom how the country and population could benefit from the spread of a discourse that discredits, diabolizes and stigmatizes scientists, turning the members of an already scarce intellectual pool of Turkey into scapegoats. We consider it a duty to share with the public our hope and wish that this policy course be reversed before more damage is done to Turkey's soft power.

Science Academy Commission on Human Rights and Ethics

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Annex 1

ANTI-TERROR LAW AND FREEDOM OF EXPRESSION

EXCERPT FROM RESOLUTION NUMBERED E. 2015/2742 K. 2015/2316 T. 17.7.2015. by HIGH COURT OF APPEAL, 16th CHAMBER OF CRIMINAL LAW

"Freedom of expression is among the basic rights limited to the highest extent within the scope of anti-terror efforts. The ban on propaganda defined in Anti-Terror Law no. 3713, Article 7/2 is a case in point; however, the legislative branch has occasionally expanded the freedom of expression through various amendments to the Article. To this end, the Law no. 6459 dated 11.04.2013, Article 8, was amended in an attempt to conform with the European Charter of Human Rights, so that **for the crime of propaganda for a terrorist organization to materialize, the action in question must "legitimize, praise or incite the organization's methods including force, violence and threat."** (...) The final paragraph of Article 90 of the Turkish Constitution reads "International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." (...)

The protocols on the basic rights and freedoms found in the annex of the European Charter of Human Rights were approved by Turkish Grand National Assembly. As per the stipulations of the Constitution, Article 10 of the European Convention on Human Rights has become a part of domestic legislation. (...)

Likewise the European Court of Human Rights underscores the need to strike a balance between individuals' rights and public interest, especially between the individual's basic right to expression and a democratic society's legitimate right to protect itself against the actions of terrorist groups. (*Zana v Turkey*) When states emphasize the challenges involved in anti-terrorism, it should be explored whether the intervention in question really arises from an urgent social necessity, whether its goal is in line with legitimate objectives, and whether the reasons put forth by state officials are relevant and satisfactory (*Yılmaz and Kılıç v Turkey*). (...)

Although it is accepted that anti-terror efforts come up against a number of challenges obliging the state to extend its leeway, anti-terrorism is still a part of the legal framework. **Anti-terrorism is not an area where the state could avoid its liabilities arising from international law."**

Annex 2

EXCERPTS FROM CONSTITUTIONAL COURT AND ECHR RULINGS ON FREEDOM OF EXPRESSION

The scope of the freedom of expression covers ideas which run counter to, or could be disturbing or offensive to a sector of the society or state, in accordance with the principles of pluralism, tolerance and open-mindedness which underpin a democratic society (Constitutional Court B. No: 2013/2602, 23.01.2014, paragraph 42,)

According to the ECHR, freedom of expression is a very important safeguard for opinions of public importance or of a political nature. The Court states that freedom of political debate is at the very core of the concept of a democratic society, (ECHR Lingens v Austria, no. 9815/82, 08.07.1986); that expressions on political issues must not be limited unless there are compelling reasons, and that the scope of such limitations must be kept narrow. (ECHR Feldek v Slovakia, B. No: 29032/95, 12.7.2001, para. 83, Sürek v Turkey (1) no. 26682/95, paragraph 61,)

In numerous rulings, ECHR has emphasized that European Charter of Human Rights, Article 10/2 does not allow for the restriction of the freedom of expression on political matters or other issues that concern the general public. (Dink v Turkey, no: 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, 14.09.2010, paragraph 133).