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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TÜRKIYE

**COMMENTS SUBMITTED BY
THE TURKISH AUTHORITIES ON 6 OCTOBER 2022**

**REGARDING THE DRAFT URGENT JOINT OPINION
OF THE VENICE COMMISSION AND THE DIRECTORATE GENERAL
OF HUMAN RIGHTS AND RULE OF LAW (DGI)
OF THE COUNCIL OF EUROPE**

**ON THE DRAFT AMENDMENTS
TO THE PENAL CODE REGARDING THE PROVISION
ON “FALSE OR MISLEADING INFORMATION”**



Ahmet ÖZDEMİR
Kahramanmaraş MP

Dear rapporteurs,

Following up the meeting we held with the Commission, the Opposition Party members were also consulted and some amendments were made to the proposal by consensus. At the Commission stage, **6 articles** were amended by consensus. I would kindly like to request that these amendments be examined in the commission reports.

Best regards,

Ahmet ÖZDEMİR
AK Party, Kahramanmaraş MP



Av. Abdullah KOÇ
HDP Ağrı Milletvekili
Adalet Komisyonu Üyesi
Dijital Mecralar Komisyonu Üyesi

Distinguished rapporteurs of the Venice Commission,

First of all, I am very pleased that you contacted us to give the final form of the draft report you have prepared. I have carefully studied the draft version of your report. Although there is no paragraph that requires criticism, I would like to say with pleasure that its scope is quite good.

Best Regards,

Abdullah Koc

Member of Parliament (HDP)

-DISSENTING OPINION-

against

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TÜRKİYE

**URGENT JOINT OPINION
OF THE VENICE COMMISSION AND
THE DIRECTORATE GENERAL OF HUMAN RIGHTS AND RULE OF LAW (DGI)
OF THE COUNCIL OF EUROPE**

**ON THE DRAFT AMENDMENTS TO THE PENAL CODE REGARDING THE
PROVISION ON “MISLEADING INFORMATION”**

**ATTY. HALİL ÖZTÜRK
MEMBER OF JUSTICE COMMITTEE
KIRIKKALE MP
06.10.2022**

TO WHOM IT MAY CONCERN;

I would like to provide some comments on and rectifications to the draft opinion on the “Draft Amendments to the Penal Code Regarding the Provision on 'Misleading Information'” of 04.10.2022.

First of all, I would like to note that the ‘Legislative Proposal on Amendment to the Press Law and Some Other Laws’ on which you dwelled in your Joint Opinion was discussed by the Justice Committee and the Committee on Digital Channels at the Grand National Assembly of Türkiye (GNAT) and it is now in the stage of being deliberated at the Plenary Session, **about which I previously informed you during our online meeting.**

The deliberations on the proposal began at the GNAT's Plenary Session this week and it has not been enacted yet. During the Plenary Session deliberations, some amendments may as well be made to the proposal.

Furthermore, I have come to the conclusion that the Venice Commission has a biased take on the legislative proposal in question.

To put clearly, the Proposal is in no way meant to "restrict the freedom of press and expression" as the Commission seems to be insistently indicating, and I find this curious.

It is true that a provision will be introduced into the Turkish Penal Code, granting the judges of authorized courts the power to impose penalties on *"those who publicly disseminate misleading information, exclusively to cause public concerns, fear or panic, regarding the country's internal and external security, public order and general well-being in a way conducive to disturbance of the public peace"*.

The main goal is to prevent the spread of fake, untrue, baseless, and false information designed to create a specific perception, and ensure that anonymous accounts can be associated with real persons.

I would like to remind you how Elon Musk announced he would buy Twitter and shut down fake accounts, which was a hot topic while ago. Right after that, a company called Cyabra informed Musk that probably 11 percent of Twitter consisted of bot or fake accounts.

As of the first quarter of 2022, the number of active social media users around the globe was more than 4,7 billion. Facebook has more than 2,9 billion, YouTube has more than 2,4 billion, Whatsapp has more than 2 billion and Instagram has more than 1,4 billion users.

These figures are enormous, and the atmosphere of chaos which false or misleading information could drive poses the same level of threat to all countries.

Dear Madam/Sir,

Disinformation is essentially an alarming and dangerous problem experienced at a global scale, in response to which a wide range of measures have been put in place.

Disinformation can be described as false or inaccurate information or distorted information that is being deliberately disseminated.

Untrue and fake news involving disinformation has been a part of our lives since the beginning of time. However, it has recently reached an unprecedented speed and magnitude in history, due to the social media.

We have all witnessed cases where fabricated intelligence and rumors were easily disseminated via methods including fake documents and hand writings as well as photoshopped images and edited videos.

Looking back on the milestones associated with disinformation across social media especially during pandemic, natural disasters, and election periods, the following quickly comes to mind:

- How social media posts with strong disinformation content affected the way the Arab Spring, which swept the Middle East and North Africa transformed into a mass and even a regional people's movement,
- How false information about the virus and the vaccines spread across the social networks during the pandemic, i.e. the infodemic,
- How racism and hate speech was disseminated especially by anonymous accounts who hide their real identities, and
- How terrorist organizations tried to infringe the international initiatives and achievements of Türkiye, which are all dangerous developments.

The posts shared inside and outside the country with the hashtag “Help Türkiye” which drove a trending topic on social media not only in Türkiye but also globally can be referred to as one of the leading examples of disinformation and perception distortion initiatives.

It turned into a vortex of distorted perception which was kicked off by fake and bot accounts that were created on the same day, amplified by accounts with huge numbers of followers, who merely did a "copy-paste", and also dragged along several celebrities in Türkiye.

Known for his works in the fields of Middle East Studies, digital authoritarianism, social media and disinformation, British Expert Marc Owen Jones who is an Assistant Professor at Hamad bin Khalifa University in Qatar announced that, although they were also shared by real persons, the posts marked with the hashtags “Help Türkiye” and “Global Call” were mainly disseminated artificially by fake and bot accounts, and in this respect, these posts were the products of a manipulation campaign.

After conducting a network analysis of around 160,000 interactions associated with the hashtag “Help Türkiye” from around 46000 unique Twitter accounts, Jones found that the accounts which shared the greatest number of posts were indeed fake accounts and bots.

I firmly believe that the legislative proposal will mark the onset of the combat against contents that only promote irony, parody accounts, click-bait posts, misleading headings, images and statistics, original content that has been decontextualized through editing, tactical contents, manipulated or fabricated contents, etc.

On the other hand, the fight against fake news and disinformation may not deliver the intended impact exclusively through the measures implemented by the state.

In this regard, involvement and input of civil society organizations and relevant professional chambers would prove essential.

On another note, large-scale social media platform should clearly share their policies on when and why they would remove a content or not, and establish internal accountability mechanisms to oversee to what extent these policies are being implemented.

It needs to be ensured that these companies which implement different policies depending on the country embrace a standard policy, and share it transparently.

Perhaps, it would be convenient to require platforms with a certain number of users to set up a complaint reporting and review mechanism for the contents shared through their networks.

In order to make this measure effective and enhance the accountability of these platforms, it would make it more binding to introduce new legislations to independently oversee these complaint mechanisms and the way they operate.

In this context; enactment of our “**Legislative Proposal on Amendment to the Law No. 5651 and Some Other Laws**” (<https://www2.tbmm.gov.tr/d27/2/2-4130.pdf>) (of which I am the first signatory) which entail establishing 'social media compliant committees' in each province might contribute to the efforts towards bringing a solution to the existing problems in this field.

Rectifications and Additional Comments on the Items Listed in the Draft are as follows:

Paragraph 6: There is an ambiguous statement suggesting that the Nationalist Movement Party is one of the governing parties. The Nationalist Movement Party is not one of the governing parties, but is an essential part of the Republican Alliance.

Paragraph 13: I believe it would be unfair to include the Legislative Proposal in this scope of the 'Opinion Report' before the proposal has been enacted and the implementation results and statistics have been reviewed. It would be more appropriate to wait and finalize the draft opinion only after the proposal has been adopted and enacted.

Paragraph 19: The Legislative Proposal is designed to prevent the deliberate dissemination and sharing of false, misleading information, not dissemination of thought.

Paragraph 20: The text of the legislative proposal is clear. ‘Publicly and deliberately disseminating untrue and false information is considered under the same scope, whether it has been shared with a group of friends or it has been made public, depending on the nature of the platform. The main goal of the legislative proposal is to prevent the spread of untrue and false information or news. Whether a content is untrue, false or misleading will be determined by the judges and expert witnesses, within the justice system.

Paragraph 22: This is completely the duty of courts, and the courts will decide whether a content entails misleading, false information by consulting expert witnesses.

Paragraph 25: The Legislative Proposal uses the term "organization", not "institution". This term clearly refers to terrorist organizations.

Paragraph 58: In Türkiye, penalties of 1 to 3 years are generally enforced in the form of supervision and oversight; in other words, arresting people is out of question.

On the other hand, preventing the dissemination and sharing of misleading and false information is not something to be afraid of. To the contrary, it is an essential regulation and measure to promote public security across the society.

Paragraph 71: Of course, as is the case in all developed countries, today in Türkiye, all kinds of opinions, views and information are freely expressed and shared within the framework of the applicable laws. The aim of the Legislative Proposal is to prevent the spread and sharing of untrue, misleading and false information.

Finally, I would like to note that I would appreciate if the additional comments and dissenting opinions I provided herein were integrated into your work of the draft opinion. I wish you all the best in your endeavors.

Kind regards,