

EXTENDED SUMMARY

An essential condition for pluralistic democracy is a political environment where minority opinions, even those that may be shocking or hurtful to the majority of society, can be freely expressed, and where freedom of the press is safeguarded. Freedom of expression is regarded as a fundamental means for individuals to comprehend the world, articulate their thoughts to others, and fulfill their personal potential. A similar assertion can be made regarding the freedom of the press. While visual and audio media outlets critique political power by expressing their opinions on social issues, they simultaneously fulfill their duty to enlighten society and ensure the public's right to information. In a system where the press is subjected to censorship or feels pressured, it cannot be claimed that the powers of political authorities are entirely restrained. Moreover, freedom of expression and the press ensure that information is not monopolized by a single source. The access to alternative information sources plays a crucial role, particularly during election processes, empowering citizens to effectively exercise their right to vote and stand for election.

*As evident, freedom of expression and the press serve as prerequisites for the effective exercise of numerous rights and freedoms. In this context, the crime of publicly disseminating information misleading the public (Turkish Penal Code Art. 217/A) has been established in Turkish law through Article 29 of Law No. 7418, dated 12.10.2022. However, the article in question, which imposes limitations on freedom of expression and the press, raises numerous constitutional controversies. Firstly, certain expressions in the text of the article, such as 'false information', 'anxiety', 'fear', or 'panic', may not be clearly defined or predictable for citizens. However, according to the principle of legality of crimes and punishments (*nullum crimen nulla poena sine lege*), criminal laws, especially, must be written in concrete, clear, and precise terms. Furthermore, the concepts with abstract content such as 'the country's domestic and foreign security, public order, and general health', as expressed in the provision, are matters typically addressed in constitutions rather than criminal laws.*

According to the article, the requirement that the crime be committed solely with the 'motive of creating fear, panic, or anxiety' among the public may result in perpetrators acting with other motives (such as financial gain or increasing followers in social media) remaining unpunished, which contradicts the principle of equality. The article fails to mention alternative measures besides imprisonment, which could be equally effective while being less restrictive to personal liberty. Additionally, it overlooks the potential chilling effect on freedom of expression and the press that this crime may have. Moreover, the regulation of committing the crime with an anonymous identity as an aggravating factor excessively limits the right to remain anonymous, a crucial safeguard against authoritarian governments. Considering previous decisions of the Constitutional Court and the European Court of Human Rights, it is arguable that Article 217/A of the Turkish Penal Code should be annulled. However, the Constitutional Court's decision not to annul it despite the mentioned unconstitutionality has opened the door to new legal problems concerning rights and freedoms.

Hakem Değerlendirmesi: Dış bağımsız.

Çıkar Çatışması: Yazar çıkar çatışması bildirmemiştir.

Finansal Destek: Yazar bu çalışma için finansal destek almadığını beyan etmiştir.

Peer-review: Externally peer-reviewed.

Conflict of Interest: The author has no conflict of interest to declare.

Grant Support: The author declared that this study has received no financial support.

Peer-Review: Externes Peer-Review-Verfahren.

Interessenkonflikt: Der/die Autorinnen unterliegt/unterliegen keinem Interessenkonflikt.

Finanzielle Unterstützung: Der/die Autorinnen erklärt/en, dass diese Studie keine finanzielle Unterstützung erhalten hat.