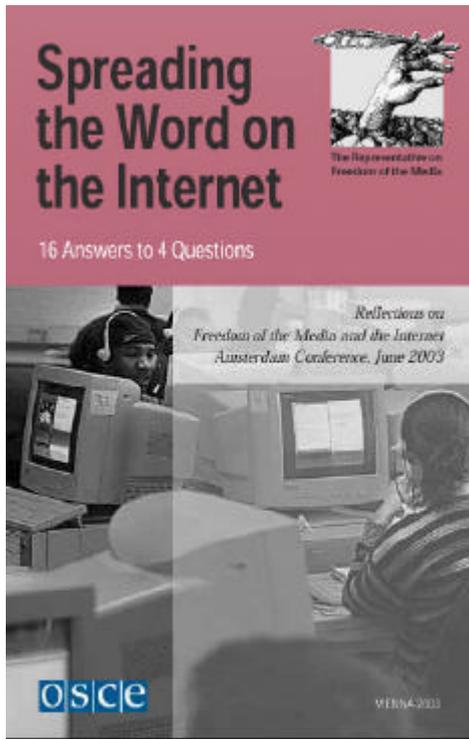


Internet Governance, and Freedom in Turkey



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The research for this chapter has been gathered as part of an ongoing research project entitled *Civil Society Participation to the policy making process of the Turkish Government in relation to the development of an Information Society in Turkey* which is supported by the Open Society Institute – with the contribution of the International Policy and Information Policy Fellowship programmes of OSI-Budapest.

Internet Governance, and Freedom in Turkey, in Organization for Security and Co-Operation in Europe (“OSCE”) Representative on Freedom of the Media eds, *Spreading the Word on the Internet: 16 answers to 4 questions, Reflections on Freedom of the Media and the Internet*, pp 29-43, Vienna: 2003.

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Introduction

This chapter will provide an overview of the legislative attempts to regulate Internet content in Turkey and will also provide an overview of the application of certain provisions of the Turkish Criminal Code to Internet publications and websites. Obviously, there may be different approaches to the growth of the Internet in different societies and the impact of the Internet on different nation-states may have different results. Different nation-states present a different level of economic development, respect for rights, trans-nationality, and technological sophistication. While Turkey may be considered at a developing stage with respect to the Internet, others may be far more sophisticated with regards to Internet access, use, and penetration. Inevitably, this will be reflected in the policy making process and approaches to the governance of the Internet. But the Turkish approach to Internet governance can only be described as emerging. Internet governance has not been a top priority within the government agenda, and its transition to a “knowledge society” has been slow with major concerns about the development of the infrastructure for Information Society services in Turkey.¹

¹ See generally Republic of Turkey Ministry of Transportation (TUENA), Turkish National Information Infrastructure Masterplan, Final Report, Ankara: TUENA, October 1999, at <<http://www.tuena.tubitak.gov.tr/pdf/tuenafinalreport.pdf>>. See further the Turkish Industrialists and Businessmen’s Association report, *Information Society and eTurkey Towards European Union*, T/2001-07/304, Istanbul: TUSIAD, 2001. This report is available through <<http://www.tusiad.org.tr/>> and the author has contributed to the preparation of this report. See further Approaches to eEurope+ initiative in Turkey at <<http://www.bilten.metu.edu.tr/eEurope+/>>.

Because of cultural, historical and socio-political diversity, there will inevitably be divergent approaches to the growth and governance of the Internet in different European societies.² For example, while the German³ and French governments⁴ have political fears and sensitivities about the use of the Internet by Neo-Nazis, the United Kingdom takes a more relaxed attitude to the dangers of racism but conversely has a long cultural tradition of repression towards the availability of sexually explicit material. On the other hand, the Turkish government, may be more concerned about defamatory statements made in relation to state officials and politicians, and the dissemination of racist and xenophobic propaganda.⁵

Legislative attempts to regulate Internet content in Turkey

The Turkish Constitution through article 26 refers to freedom of expression and dissemination of thought and states that “everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures or through other media, individually or collectively.”⁶ Article 26 further states that these rights may for example be restricted for the prevention of crime⁷ but this provision “shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.”⁸ Turkish law and court judgments are also subject to the European Convention on Human Rights and are bound by the judgments of the European Court on Human Rights and there are several cases involving Turkey and article 10 of the ECHR.⁹ More recently, in August 2000, Turkey also signed the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.¹⁰

² See generally Walker, C., & Akdeniz, Y., “The governance of the Internet in Europe with special reference to illegal and harmful content,” [1998] *Criminal Law Review*, December Special Edition: Crime, Criminal Justice and the Internet, 5-19.

³ Criminal case of Somm, Felix Bruno, File No: 8340 Ds 465 JS 173158/95, Local Court (Amtsgericht) Munich. An English version of the case is available at <<http://www.cyber-rights.org/isps/somm-dec.htm>>.

⁴ *League Against Racism and Antisemitism (LICRA), French Union of Jewish Students, v Yahoo! Inc. (USA), Yahoo France*, Tribunal de Grande Instance de Paris (The County Court of Paris), Interim Court Order, 20 November, 2000; Akdeniz, Y., Case Review of the Yahoo! Case, [2001] *Electronic Business Law Reports*, 1(3) 110-120.

⁵ Report of debates of the Second Part of the 2001 Ordinary Session on the Draft Cyber-Crime Convention, Council of Europe, Parliamentary Assembly (Assembly Spring Session, 23-27 April 2001), 24 April, 2001.

⁶ Note the recent changes within the Turkish Constitution in relation to article 26. Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Degistirilmesi Hakkında Kanun, No: 4709, Kabul Tarihi: 3.10.2001, T.C. Resmi Gazete, No: 24556 (Mukerrer) 15 October, 2001.

⁷ Note that Restrictions on the exercise of this right, such as “national security, public order, public security, the fundamental characteristics of the Republic and the protection of the indivisible integrity of the State with its territory and nation”, are added to the second paragraph of Article 26. See further Republic of Turkey Prime Ministry Secretariat General for European Union Affairs, *An Analytical Note on the Constitutional Amendments*, Ankara, 4 October 2001. This document is available through <<http://www.abgs.gov.tr/>>.

⁸ The Constitution of the Republic of Turkey at <http://www.turkey.org/politics/p_consti.htm>.

⁹ Among others see: *Erdogdu and Ince* judgment of 8 July 1999, Reports 1999, *Sürek and Özdemir* judgment of 8 July 1999, Reports 1999, *Okçuoglu* judgment of 8 July 1999, Reports 1999, *Zana* judgment of 25 November 1997, Reports 1997 - VII.

¹⁰ European Commission, Regular Report on Turkey’s progress towards accession, November 2000, p 11, at <<http://europa.eu.int/comm/enlargement/turkey/>>. Note also the November 2001 progress report from the same pages. It should also be noted that under its MEDA programme for Turkey, the European Commission committed more than 70 million ECU in 1997 to strengthen civil society and human rights within Turkey. See EU Press release, Working together to strengthening civil society and human rights in Turkey, Brussels, 30 January, 1998, DN: IP/98/109.

The Turkish government adopted a hands-off approach to regulation of the Internet until 2001. However, during 2001, the Turkish government introduced a parliamentary bill with the intention of regulating internet publications according to the same rules that govern the mass media.¹¹ This prompted strong protests¹² and it was thought that

“the bill was aimed at stifling the independence of a few aggressive Internet news portals, which have been publishing stories about corruption and politics that the mainstream media -- firmly tied to the establishment -- consider too hot to handle.”¹³

The bill was vetoed by Ahmet Necdet Sezer, the President of Turkey in June 2001. Sezer at the time stated that¹⁴

“The most important aspect of Internet broadcasting, which is like a revolution in communication technology, is that it is the most effective area for freely expressing and spreading ideas and for forming original opinions..... Leaving the regulation of the Internet to public authorities completely and linking it to the Press Law does not fit with the characteristics of Internet broadcasting.”¹⁵

This however proved a Pyrrhic victory for the opponents as the sponsors of the Bill were successful the following year. In May 2002, the Parliament approved the Supreme Board of Radio and Television (RTUK) Bill (No 4676). The bill regulates the establishment and broadcasting principles of private radio and television stations and amends the current Turkish Press Code. It includes provisions that would subject the Internet to restrictive press legislation in Turkey. Although it attempts to apply only some aspects of the Press Code (such as to do with publishing “lies”), the vague provisions are open to various interpretations. Critics maintain that the rationale behind these provisions would appear to be the silencing of criticism of the Members of the Turkish Parliament and to silence political speech and dissent.¹⁶ In general terms strong criticism is acceptable in Turkey. But, as noted by a Human Rights Watch report:

“Such freedom, however, ends at the border of a number of sensitive topics. Alongside the arena of free discussion there is a danger zone where many who criticize accepted state policy

¹¹ Section 27 of the proposed legislation would bring the Internet within the ambit of the 5680 numbered Press Law. Radyo ve Televizyonların Kuruluş ve Yayınları Hakkında Kanun, Basın Kanunu, Gelir Vergisi Kanunu ile Kurumlar Vergisi Kanununda Değişiklik Yapılmasına Dair Kanun Tasarısı, T.B.M.M. (S. Sayısı : 682), Dönem : 21 Yasama Yılı : 3.

¹² The bill was so thoroughly ridiculed that no agency admitted drafting or introducing it and no member of parliament acknowledged voting for it: “Turkey in a Tangle Over Control of Web; President Vetoes Bill Curbing Internet As Concern About Free Speech Grows,” *The Washington Post*, 21 June, 2001.

¹³ “Turkey in a Tangle Over Control of Web; President Vetoes Bill Curbing Internet As Concern About Free Speech Grows,” *The Washington Post*, 21 June, 2001.

¹⁴ Presidential Statement in relation to proposal to amend the Press Law, 18 June, 2001, at <<http://www.cankaya.gov.tr/ACIKLAMALAR/18.06.2001-1159.html>>. See further Anderson, J.W., “Turkey in a Tangle Over Control of Web,” *Washington Post*, 21 June, 2001.

¹⁵ *Ibid.* See further “Turks Face Strict Censor In Internet Crackdown,” *The Times Higher Education Supplement*, 31 August, 2001.

¹⁶ See further Statement by Dr. Yaman Akdeniz in relation to the Internet related provisions of the Turkish Supreme Board of Radio and Television (RTUK) Bill (No 4676), 15 May, 2002, at <http://www.cyber-rights.org/press/tr_rtuk.htm>. Note also “Press group slams Turkish moves on the media,” *Agence France Presse*, 05 June, 2001.

face possible state persecution. Risky areas include the role of Islam in politics and society, Turkey's ethnic Kurdish minority and the conflict in southeastern Turkey, the nature of the state, and the proper role of the military."¹⁷

It should be noted, however, that no action has been taken in relation to any Web publications under the provisions of the legislation to date.

Control of CyberCafes

Apart from this widely discussed and opposed legislation,¹⁸ the only notable Internet related regulation exists in relation to cybercafes in Turkey.¹⁹ The regulation is mainly concerned with location (for example, cafes may not open near schools) and requires cafes to be licensed, like gaming places. Minors under the age of 15 are not be allowed into such cafes and access to illegal sites (such as pornography²⁰ and national security) is prohibited from such cafes. The regulations do not specify, however, whether the cafes should need filtering software or how they should achieve blocking.

Handful of criminal prosecutions involving Internet publications

There have been three reported cases involving Internet related prosecutions and attempts at censorship involving the Turkish criminal code. However as of today these remain as odd cases and each has been heavily criticised. Each case centred on Article 159(1) of the Turkish Criminal Code which states that:

“Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government, the ministries or the military or security forces of the State or the moral personality of the judicial authorities shall be punished by a term of imprisonment of one to six years.”

The details of each case are set out below.

Emre Ersoz Prosecution

Emre Ersoz, 18 years old, received a 10-month suspended sentence for “publicly insulting state security forces” after comments he made in an online forum operated by one of Turkey's ISPs in June 1998.²¹ Insulting state authorities and the police is a criminal offence in Turkey, under section 159(1) of the national criminal code. Ersoz was taking part in a debate over allegations of rough police treatment of a group of blind protesters who were complaining about potholes in the nation's capital, Ankara. After saying he believed that the national police had beaten the protesters, Ersoz repeated the allegation in a posting on a current events forum provided through Turknet, an ISP. As it turned out,

¹⁷ But note that even when writing on sensitive topics, however, a wide latitude holds sway, and different realities exist for different individuals. See further Human Rights Watch, *Violations of Free Expression in Turkey*, February 1999, <<http://www.hrw.org/reports/1999/turkey/>>.

¹⁸ See websites such as <<http://www.birlik.com/english.htm>>.

¹⁹ Regulation B.05.1.EGM.011.03.05, dated 01/03/2000.

²⁰ It should be noted that under the Turkish law, “provision” (or distribution) of obscene publications to children is criminalised rather than “possession” of such content.

²¹ See further Akdeniz, Y., “Turkish teen convicted for Web postings,” *Freedom Forum*, 08 June, 1998, at <<http://www.freedomforum.org/templates/document.asp?documentID=11277>>. Note also Altintas, K., Aydin, T., Akman, V., “Censoring the Internet: The Situation in Turkey,” *First Monday*, May 2002, at <http://www.firstmonday.dk/issues/issue7_6/altinta/>.

Ersoz was mistaken: the protesters had been beaten by municipal officers, not by the national police whom he specifically criticized in his posting.

Ersoz, who signed off using his real name and e-mail address, was reported to authorities by another person on the Turknet forum. State prosecutors then asked Turknet for Ersoz' full address, and the ISP complied. At 3:30 a.m., Ersoz' home was raided by a special anti terrorism police squad, and he was taken into custody and held by police for two days. The public prosecutor of the Beyoglu municipality in Istanbul brought the charges and demanded a sentence of one to four years. Ersoz pleaded not guilty, claiming his writings were not in the public domain. In the trial, he testified that his online comments could not be construed as public because the forum was open only to Internet users. Ersoz' 10-month sentence was suspended on the condition that he is not convicted of similar charges during the next five years.

Coskun Ak Prosecution

Coskun Ak, a former moderator of various forums operated by Superonline, one of the largest ISPs in Turkey was sentenced to 40 months in prison due to a particular message about human rights abuses in Turkey sent to a Superonline forum by an anonymous poster. The message that triggered a prosecution under article 159 of the Turkish Criminal Code was sent anonymously in May 1999.

The court decided to sentence Ak for insulting and weakening the Republic of Turkey, the Military Forces, the Security Forces, and the Ministry of Justice, to one year in prison for each insult separately, totaling four years. Later, the good conduct of the accused in court was taken into account and his sentence was reduced to 10 months for each insult, totaling 40 months.

In an interview in relation to his trial, Coskun Ak said that he tried to explain to the prosecutor what the Internet was and what these forums were about, but he could not make them understand:

“At the end of two hours, the prosecutor asked me, ‘Are you the Godfather of the Internet?’”²²

On 14 November 2001, the Supreme Court reversed this ruling. It was decided that Ak's case should be reconsidered, once experts selected from universities had analysed the situation.

On 12 March 2002 Istanbul Criminal Court No. 4 passed a second verdict against Coskun Ak. The sentence of 40 months' imprisonment was commuted to a fine of TL 6 million (app. \$4). On 24 April, 2003, this second sentence was quashed by the Court of Appeal.

Ideapolitika.Com Prosecution

In December 2001, a court in Istanbul ordered the closure of the web site ideapolitika.com (site of the magazine Idea Politika) for insulting and degrading the armed forces under article 159 of the Turkish Criminal Code.²³ This followed from the initial prosecution of the magazine itself which carried the articles that were deemed to be illegal under article 159. However, despite various court cases, ideapolitika.com continued to be available on the Internet through a foreign server outside Turkey carrying the banned issues of the magazine. It should also be noted that it is possible to access

²² “Turkey in a Tangle Over Control of Web; President Vetoes Bill Curbing Internet As Concern About Free Speech Grows,” *The Washington Post*, 21 June, 2001.

²³ BBC News, “Turkey: RSF Deplores “Repressive” Amendments Of Media Law,” 17 May, 2002.

ideapolitika.com in Turkey and the public prosecutors took no action to block access to this website from within Turkey.

Closure of Subay.Net

Subay.Net was a Turkish web site critical of the administration of the Turkish Armed Forces (TSK). The website which invited members of the Turkish army to air complaints about the military was taken off the Internet in February 2001, after rousing the ire of the powerful Chief of General Staff according to Turkish Daily News.²⁴ The site which was thought to be established in September 2000 had a forum entitled "Free Fire" for soldiers to sound off on army life and share jokes about superiors. Some of the visitors of the forum defended the TSK while others criticised it, trading insults with one another as they left notes on the site. One of the messages on the website was: "The biggest obstacle to Turkey's development is the TSK. From now on remain in your barracks."²⁵

However, the website was threatened with a prosecution under article 159 of the Turkish Criminal Code as the pages were thought to be insulting the military.²⁶ More than 18,000 Internet users visited the website within four days of a story about the website was published in Milliyet, a popular Turkish daily newspaper.²⁷

Filtered Websites

On the other hand a small number of websites are being filtered by Turkish Internet Service Providers following court orders. These websites generally include allegations of corruption within the Turkish government and army. However, these handful of websites are still accessible through the servers of Turkish Internet Service Providers by using anonymous proxy servers, and access is also possible through anonymizer.com.

Impact of international developments on Turkey

Turkey is a member of the Council of Europe, United Nations, the OECD, and the OSCE and has adopted a wait and see approach while polices have been fostered at the international level. It has also respected its international obligations on at least one occasion by starting the ratification process for the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography²⁸ into the Turkish legal system.²⁹

²⁴ "February: Political Row Sparks Unprecedented Economic Crisis, TL Floated Against \$," *Turkish Daily News*, 5 March, 2001.

²⁵ "Turkish Press Scanner : Big Fight Over Subay.Net," *Turkish Daily News*, 10 February, 2001. See further "Turkish Website Takes Jabs At Powerful Military: Subay.Net Includes A Forum Called "Free Fire", Where Soldiers Sound Off On Life In The Army And Share Jokes About The Top Brass," *Turkish Daily News*, 08 February, 2001.

²⁶ "Website Under Fire," *The Independent* (London), 18 February, 2001.

²⁷ "Turkish Press Scanner : Big Fight Over Subay.Net," *Turkish Daily News*, 10 February, 2001. See further "New Website - Topic of the Day At The General Staff," *IPR Strategic Business Information Database*, 14 March, 2001.

²⁸ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000, Fifty-fourth session (97th plenary meeting), Agenda item 116 (a), Distr. General A/RES/54/263, 26 June 2000. Not yet in force (the Optional Protocol will enter into force three months after the date of deposit of the tenth instrument of ratification or accession with the Secretary-General of the United Nations, in accordance with its article 14).

²⁹ TBMM Proposal for legislation and the report of the Foreign Office Commission on the Optional Protocol, No: 690, 31 May, 2001, at <<http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss690m.htm>>.

Turkey has not signed or ratified the Cyber-Crime Convention nor the additional first protocol of the CyberCrime Convention as of August 2003. But it remains to be seen what approach will be adopted by the new Turkish government. A major communications congress took place at the end of February 2003 in Ankara and representatives of the government, academia, NGOs, and the internet industry discussed the way forward and what regulation if any should be introduced in Turkey.

At the same time, membership to the European Union in the future will also have a major impact upon the governance of the Internet in Turkey. The development of the Internet and a regulatory framework for the Internet within the European Union is directly relevant and important for the development of the Internet in Turkey. In December 1999, Turkey was recognised as a candidate country for full membership to the European Union and it is therefore, crucial to align Turkish Internet policy with regulatory initiatives within the European Union.³⁰

Future membership could shape Turkish policy even though there has not been prior alignment of its policies with the European Union as far as Internet governance is concerned.³¹ However, Turkey as a candidate country is included as of June 2001 within the *eEurope+ 2000* Action Plan programme of the European Commission³² which mirrors the priority objectives and targets of eEurope programme for the EU member states.³³ The overall aim of the Commission is to make the whole of Europe “the most competitive and dynamic knowledge-based economy in the world”.³⁴ For this purpose,

“positive action on the basis of a strong, political commitment is needed to ensure that the EU Candidate Countries use the full potential offered by the Information Society and avoid a further digital divide with the EU.”³⁵

The targets, including acceleration of the putting in place of the basic building blocks for the Information Society, provision of a cheaper, faster, secure Internet, investing in people and skills, and the stimulation of the use of the Internet (including the acceleration of e-commerce), will have to be met by the candidate countries by the year 2003.³⁶ If these targets are met, Turkey then in theory

³⁰ Paragraph 12 of the conclusions of the Helsinki European Council stated that “The European Council welcomes recent positive developments in Turkey as noted in the Commission’s progress report, as well as its intention to continue its reforms towards complying with the Copenhagen criteria. (DN: PRES/99/999, Helsinki, 10 and 11 December 1999, Presidency Conclusions)

³¹ But note EU and Turkey open contacts on harmonising Turkish law, DN: IP/00/649, Brussels, 22 June, 2000; EU Presidency Conclusions, DN: PRES/99/999, Helsinki, 10 and 11 December 1999.

³² See *eEurope+ 2000: A co-operative Effort to implement the Information Society in Europe*, Action Plan, prepared by the Candidate Countries with the assistance of the European Commission, June 2001. See generally <http://europa.eu.int/information_society/international/candidate_countries/index_en.htm>. Note also the press release, Commission welcomes eEurope+ initiative of EU Candidate Countries, Brussels, 16 June 2001, at <http://europa.eu.int/comm/gothenburg_council/eeurope_en.htm>.

³³ *eEurope 2002 - An Information society for all - Draft Action Plan* prepared by the European Commission for the European Council in Feira - 19-20 June 2000, COM/2000/0330 final; Communication from the Commission to the Council and the European Parliament - *eEurope 2002: Impact and Priorities* A communication to the Spring European Council in Stockholm, 23-24 March 2001, COM/2001/0140 final.

³⁴ *eEurope+ 2000: A co-operative Effort to implement the Information Society in Europe*, Action Plan, p 2.

³⁵ *Ibid*, p 1.

³⁶ *Ibid*, p 3.

could start implementing some of the more specific EU policies such as those provided within the Electronic Commerce Directive³⁷ and the Electronic Signatures Directive.³⁸

Furthermore, in general terms Turkey is already making progress towards EU membership and its national programme *for the Adoption of the Acquis*³⁹ include the preparation of a legal infrastructure for

“data security and the use of data by taking into consideration technological developments and the development of electronic commerce, and for allowing public access via the internet to information produced by the public and private sector, bearing in mind the need to protect personal data and national data security.”⁴⁰

Although there is no deadline set up for achieving these goals, the document outlining the national programme suggest that this will be achieved in the medium term.⁴¹

Conclusion

Under the Adoption of the Acquis programme,⁴² the Turkish Constitution and relevant provisions in other legislation are under revision in order to enhance the freedom of thought and expression in the light of the criteria referred to in Article 10 of the European Convention on Human Rights and Fundamental Freedoms, including those concerning territorial integrity and national security. This review is undertaken on the basis of the fundamental principles of the Turkish Constitution, particularly those concerning the secular and democratic character of the Republic, national unity and the unitary state model.

Content regulation remains as a politically sensitive area within Turkey and elsewhere but it should also be remembered that the great appeal of the Internet is its openness. Efforts to restrict the free flow of information on the Internet, like efforts to restrict what may be said on a telephone, could place unreasonable burdens on well established principles of privacy and free speech.

It is hoped that there will be no further amendments to Turkish laws to restrict freedom of expression on the Internet and that Turkey will continue to relax its laws under the Adoption of the Acquis programme.

³⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Official Journal of the European Communities, vol 43, OJ L 178 17 July 2000 p.1.

³⁸ Directive 1999/93/EC of 13 December 1999 on a Community framework for electronic signatures, Official Journal L 013, 19/01/2000 P. 0012 - 0020

³⁹ Republic of Turkey Prime Ministry, The Secretariat General for EU Affairs, Turkish National Programme for the Adoption of the Acquis (NPAA), Ankara, 19 March, 2001, p 387. See generally <<http://www.abgs.gov.tr>>.

⁴⁰ *Ibid*, para 4.20, Telecommunications, p 387.

⁴¹ *Ibid*.

⁴² See generally <http://europa.eu.int/comm/enlargement/turkey/pdf/npaa_full.pdf>.