

# Personal Rights and Freedom of the Press: a Legal Perspective

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The individual is the basis of the existence of law. In other words, the basic aim of law is to protect the rights of individuals and provide them the means to exercise their rights. The most important rights of the individual are personal rights. The modern state is charged with protecting individuals from violations of personal rights and providing for the exercise of their rights in line with the essence thereof.

The term “personal rights” refers the rights that are retained at birth and include the rights to health, association, thought and belief. These rights are considered to be inalienable and sacred, mainly because they constitute the basis of the modern liberal concept of state. The properties of personal rights show their importance. Personal rights that are absolute can be violated by anyone. A person has the right to demand any other person not violate these rights. These rights cannot be equated to a monetary value. Thus persons do not have independent authority over these rights.

Violation of personal rights can result from a legal transaction or tort by expression, speech or documents as well.

Personal rights have a wide spectrum of protection in international law. In Turkish Law, these rights are protected by, first of all, Constitutional Law, the Turkish Criminal Code, the Press Law and other specific laws. At times however, the legal system has to balance between the personal rights of conflicting parties, in this instance the rights of an individual compared with the freedom of the press. Thus the law, while avoiding excessive restrictions on the press allows individuals many options for remedying any violation of their rights.

## The Scope of the Concept of the Press

The concept of the press includes all published newspapers and magazines that aim to convey messages, ideas and news to society periodically. The press serves society, exercising a civil service, and also it is a significant tool for the development of society and increasing consciousness.

By their very nature, contemporary and democratic countries accept the necessity of freedom of the press. Freedom of the press is covered by constitutional guarantees. The Turkish constitution regulates freedom of the press with Constitutional Provision 28. Additionally, Law no. 5187, the Press Law, came into force in 2004 in order to regulate freedom of the press specifically and the exercise of this freedom.

Freedom of the press includes the right to announce, the right to information and the right to criticize and comment. For all these properties, it is a significant concept and also it comprises sensitive issues. Namely, public opinion domestically and abroad is shaped by the press.

## The Limits of Freedom of the Press

In Turkish law, there are some restrictions on freedom of the press. Law no. 26 restricted the exercise of freedom of expression and freedom of propagation regarding the punishment of criminals, information considered a state secret, protection of private and family life and also protection of professional secrets.

## Violation of Personal Rights through Press

Violations of personal rights usually result from torts. In addition to these, violations of personal rights can result from contradiction of agreements.

News and articles that are contrary to the law, damage the spiritual and material values of a person or cause a decline in those values are all considered a violation of personal rights.

Violations of personal rights can occur in relation to spiritual values or material values. However, in general violations are usually related to spiritual values, especially honor and dignity.

Violation of these rights can be exercised in two (2) ways; picture and writing. Violation through writing includes explanations of thought and act. In the explanation of thought, personal opinions of the writer on a specific case are included. If these explanations are made for a specific case, the untruth of this case results in a violation of the law. If this case is true, protection of balance and fair treatment should be provided.

A true story is presented to public opinion using explanations thereof. Any case that is presented could be true or untrue. An untrue news story is a contradiction of the law according to basic legal principles. However, true news should be up-to-date and for the furtherance of public welfare.

Another result of these violations is the violation of living space. These violations can occur in two (2) ways, that of common living space and private living space.

## Ways to Protect Against Violation of Personal Rights

Turkish law gives the right of protection against violations of personal rights. The state regulates personal rights in the Civil Code, Law no. 25, and Code of Obligations, Law no. 49.

In the Civil Code, the prevention of the danger of a potential violation, termination of a continuous violation, determination of any violation of the law of a terminated act, and the adjustment of publications that include a violation are regulated.

In addition to these rights, the right to controvert and rebut is regulated in the Press Law.

In violation cases where penalty laws apply, a re-

quest for protection is possible by exercising the right to complain in crimes that are dependent on complaint, by crime reporting in cases that are not dependent on complaint.

## Right to Controvert and Rebut

The right to controvert and rebut is in place to respond to and correct untrue news about the person whose personal rights have been violated. The aim of this protection is to reduce the effects of a violation in a short period. The authorities are supposed to publish information controverting and rebutting untrue news. If this violation is included in a court decision and not published, the violator will have to pay a judicial fine.

## Prevention of Violation

This type of case is filed to prevent violations that have not yet occurred but there is a strong suspicion will. The person whose rights will be infringed on requests detainment.

## Suspension of Violation

In a situation of an infringement on personal rights and ongoing attacks, the person whose personal rights are attacked may demand the stop of these attacks in order to prevent further damages. This type of case is related to a cease of unlawful legal acts.

## Declaratory Lawsuit

These cases are intended to determine the violation of personal rights with a court decision and cite it as evidence in suits for damages. In these cases, the court examines only illegality.

## Declaration of the Prevention, Suspension and Declaratory Rulings to Third Parties or Claim the Right to Broadcast

The person may request the determination of a violation by court decision and announcement and publication of the decision in order to minimize the effects of the violation on third parties.

## Acting Without Authority

If personal considerations are published without permission to gain pecuniary advantages and profits from the person whose personal rights are violated, the person has the right to reclaim these profits pursuant to the provisions of acting without authority.

### Unjustified Enrichment

Although not mentioned in the Civil Code, Law no. 25, if the person who violated the rights of a person gains an unfair profit, that profit can be demanded by the person whose personal rights were violated in accordance with unjustified enrichment provisions.

### Criminal Cases

If articles or images in the press have criminal properties, the person violating others' personal rights is liable for penal consequences.

### Suits for Damages

These suits are intended to eliminate deficiencies regarding immaterial rights and property ownership

rights. Also these cases are a type of personal action. They can involve pecuniary damages or non-pecuniary damages. Those demands can be requested in a single case or different cases.

### Conclusion

Freedom of the press may allow for the publication of untrue news. Such false publications are more harmful than other violations of personal rights. As a result, Turkish law provides many options to protect these rights.

The state balances between the freedom of the press and individual rights by permitting publication but allowing extensive remedies for any infringement on personal rights.