

Internet rights that went wrong in Turkey

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Abstract

This report presents an up-to-date assessment of internet rights in Turkey, and has been prepared for the Internet Governance Forum (IGF) 2014 which is being hosted by Turkey in Istanbul on 2–5 September 2014. The IGF is a space that strives for a democratic and inclusive internet and this report assesses the Turkish government’s respect for international human rights standards in relation

to freedom of expression online. The assessment is based on the La Rue framework¹ and focuses on internet regulation, internet access, blocking, surveillance, liability of internet intermediaries, criminalisation of legitimate expression, and cyber-attacks. The report concludes with recommendations for actions to promote and protect an open and free internet in Turkey.

¹ The framework was developed by the Association for Progressive Communications and is based on the work of the former United Nations Special Rapporteur on Freedom of Opinion and Expression Frank La Rue. It is available online at: http://www.apc.org/en/system/files/APC_FLRFramework_20140620.pdf

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Background

Turkey is a melting pot of different cultures due to its geographical position and its history dating back to the Ottoman Empire. Situated at the junction of Asia and Europe, to the north of the Arabian Peninsula, it surely contains the characteristics of all these different geographies. Therefore, in order to understand the social and political dynamics in Turkey thoroughly, there is a need to understand a complex set of variables.

Following the declaration of republic in 1923, the country has been struggling constantly with the democratisation process. Being a secular republic with a growing economy, Turkey has set an exemplary model for the other countries in its region. Moreover, as a candidate for the European Union (EU) membership, Turkey has come a long way in adjusting its legal system to the EU standards. In the last decade, Turkey has improved its legal infrastructure in many ways, especially in terms of enhancing minority rights (mainly for the Kurdish population). However, there are still many practical and legislative complications for sustaining human rights in the country. Press freedom, the right to information, freedom of expression, and the right to privacy remain contentious.

Turkey is ranked 154th out of 180 countries in the Reporters Without Borders' Report of World Freedom of Press Index 2014.² According to this report, there are around 60 journalists that were in detention by the end of 2013, which gave Turkey the notorious reputation of "world's biggest prison for media personnel."³ This illiberal attitude towards the press is in line with the government's intense censorship and surveillance on the internet. Consequently, the Web Index Report prepared by the World Wide Web Foundation

ranked Turkey 58th out of 81 countries according to indicators based on universal access, freedom and openness, and empowerment.⁴

According to a Freedom House report by Kelly, Cook, & Truong, until 2011 "the government had a hands-off approach to internet regulation but has since taken considerable legal steps to limit access to certain information, including some political content."⁵ In contrast to this early approach, by 2011, Turkey had become the first country in the OSCE to introduce a government controlled and maintained content filtering system.⁶ And today, Turkey sits atop the Google Transparency Reports with the by far highest number of requests for content removal from governments.⁷

The drastic change in the approach towards internet regulation and governance can be examined in a broader political context related to the traditional problems of restrictions in the freedom of expression and media in the country. Another related factor is the highly accelerated penetration of the internet in the early 2000s. Internet penetration among the population was 5,2% in 2001⁸ and leaped to approximately 50% by 2013.⁹ There are now an estimated 36 million of internet users in Turkey, and as a result of the combination of high numbers of internet users and

2 Reporters Without Borders (Paris: Reporters Without Borders, 2014) https://rsf.org/index2014/data/index2014_en.pdf

3 Reporters Without Borders

4 World Wide Web Foundation <http://thewebindex.org/wp-content/uploads/2013/11/Web-Index-Annual-Report-2013-FINAL.pdf>

5 Sanja Kelly, Sarah Cook & Mai Truong, eds. (New York: Freedom House, 2012), 525 <http://www.freedomhouse.org/sites/default/files/FOTN%202012%20FINAL.pdf>

6 Yaman Akdeniz (Astana: OSCE 2010), 28 <http://www.osce.org/fom/80723?download=true>

7 The constantly updated Google Transparency Report is available online at: <http://www.google.com/transparencyreport/removals/government/countries/>

8 Mestçi, Aytaç (Turkey: Beykent Üniversitesi, 2007) <http://ab.org.tr/abo8/bildiri/17.pdf>

9 Türkiye İstatistik Kurumu "Hanehalkı Bilişim Teknolojileri Kullanım Araştırması, 2013" (TUIK Haber Bülteni, 22 August 2013) <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=13569>

the government's penchant for controlling media, regulations on the internet got tighter together with the increasingly authoritarian attitude of the government.

This report assesses freedom of expression and the internet in Turkey in light of the work of former UN Special Rapporteur on the Right to

Freedom of Opinion and Expression Frank La Rue, who first assessed freedom of expression in his annual report to the United Nations Human Rights Council in 2011.¹⁰ The questions in the framework are intended to provide guidance in monitoring and reporting internet-related human rights violations, specifically those related to freedom of expression.

¹⁰ UN Human Rights Council (Geneva: OHCHR, 16 May 2011) http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf

I. General Legal Framework Regulating Internet Content

According to the La Rue Framework, the first indicator of compliance with international human rights standards is that national law or the constitution protects freedom of expression online. The Turkish Constitution does contain protection for freedom of expression in general terms by Article 25 and 26 which is in line with the European Convention of Human Rights. However, this general protection has been severely curtailed by new internet-specific legislation that affects online freedom of expression.

In Turkey, there are two main laws that restrict the content of web pages on the internet. Law 5651 on the “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication” is concerned with the contents of the websites like child pornography or drug and gun sales and also more subjective issues like insulting Mustafa Kemal Atatürk or the propaganda of terrorist groups.¹¹ Law 5846, the intellectual property rights (IPR) law, regulates IPR as its name suggests.¹² Although it is not specific to online content, the internet is heavily affected by this law. Whilst the former law regulates the content in terms of catalogue crimes (considered as illegal under different laws), the latter is related to commerce as it aims to protect the profit generated through intellectual property. It is mainly The Telecommunication Directorate (TIB) and The Information and Communication Technologies Authority (BTK) that are in charge of following up on compliance with these laws, however, public prosecutors and individuals may also file cases based on these laws.

Thousands of websites have been blocked in the last seven years based on the application of these laws. Although there is no definite number released by the state authorities, according to the EU’s latest report on *Turkey’s Progress in Access to the European Union*, 32,000 websites

are estimated to have been censored for various reasons based on these laws.¹³ According to Engelli Web (Impaired Web), a civil initiative working on specifying the number and the list of restricted websites, more than 50,000 websites have been blocked in Turkey.¹⁴ Of all these, only 4.1% have been blocked via court decision, whereas 91.4% have been blocked directly by The Telecommunication Directorate.

When the Law 5651 came into effect in 2007, it was met with much discontent and surprise, as it was prepared without any proper consultation with experts. The manner in which the bill was passed in the parliament (over one night) did not allow time for any public deliberation. The bill was already very controversial because of the way it was prepared and the fears that it would be open to subjective interpretation due to vague content. Since the bill was passed, the situation deteriorated. The legal ground to maintain autonomy on the internet and freedom of access to information has been continuously weakened by new regulations.

In 2013, Turkey went through unprecedented events in its history. The Gezi uprising, a series of protests named after the park that sparked the initial protest, spread throughout the whole country after peaceful civil resistance of some hundred young people trying to save the last green area in Taksim was met with brutal police attacks. The attacks ignited a weeks-long civil protest against the Prime Minister Tayyip Erdoğan’s autocratic policies. When the mass media turned a blind eye to the protests of hundreds of thousands of people, social media, especially Twitter, became the main means of communication.¹⁵ Not long after that, Erdoğan called Twitter “a menace

11 The full text of the law is available online at: <http://www.resmigezete.gov.tr/eskiler/2007/05/20070523-1.htm>

12 Law 5846 dates back to 1951 but has been amended several times after 2000, with the latest update in 2012. The full text of the law is available online at: www.mevzuat.gov.tr/Mevzuat-Metin/1.3.5846.doc

13 European Commission (Brussels: European Commission, October 2013) http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/tr_rapport_2013_en.pdf

14 The constantly updated Engelli Web tracker is available online at: <http://engelliweb.com/istatistikler/>

15 Olga Khazan “These Charts Show How Crucial Twitter Is for the Turkey Protesters” 12 June 2013 <http://www.theatlantic.com/international/archive/2013/06/these-charts-show-how-crucial-twitter-is-for-the-turkey-protesters/276798/>

to the society” for it allowed swift information dissemination during Gezi protests.¹⁶

A government corruption scandal broke out on in December 2013 after hacked phone conversations were leaked on Soundcloud and YouTube, and disseminated on Twitter. The banning of Twitter and YouTube as a consequence of these events will be explained Section II of this report, but these events also resulted in the preparation of legislation to make amendments to the Law 5651 for heightened censorship and surveillance.

In February 2014, a month before the mayoral elections in Turkey, Law 5651 was again extended through a bundle of legislation that contained 120 more articles, regulating laws such as the Social Security Law, General Health Insurance Law and Anti-Terrorism Law. Hidden within this bundle, were further changes. Public consultation had been bypassed during the preparation of the legislation, and as a result of new regulations, TIB was given full authority to remove web pages without having to wait for a court order. Defying demonstrations on the street and warnings from experts against allowing extreme levels of surveillance and censorship, the legislation passed in mid-February 2014.¹⁷

According to the new law:

- The President of TIB is entitled to remove any website should he conclude that they are interfering with privacy. On the other hand, the owners of the website must get a court order to reinstate their website.
- TIB is entitled to block access to websites within four hours after the filing of a complaint, without a court order.

- Anyone with a claim that a website intrudes upon their personal life can demand a website's ban through a petition submitted to TIB, again without a court order.
- Websites can be shut down by either blocking IP addresses or specific URLs. This means that only the specific contentious page can be shut down instead of the entire website. However to be effective, this means that a Deep Packet Inspection of the source of the content is also required.

These are some of the amendments made to the content of 5651 in terms of simplifying the process of blocking the websites. However this new legislation also added a heightened surveillance mechanism for the internet. According to new law, both web hosting companies and service providers are obliged to keep records of all internet activities of all users for two years. In order to control and enforce this, all the service providers are also obliged to be members of a union to be established which will enable more centralised control. Whenever needed, hosting and service provider companies are obliged to provide a record of all online activity for each user.

In summary, while Turkey has constitutional protection of freedom of expression and limits must be prescribed by law, in practice serious violations are taking place. While internet regulation in Turkey is set out in law, these laws do not comply with international human rights standards on freedom of expression and are being misused in practice for censorship and to stifle diverse political opinions and lawful democratic debate.

16 NTVMSNBC “Erdoğan: Twitter denilen bir bela var” 2 June 2013 <http://www.ntvmsnbc.com/id/25446690/>

17 Catherine Stupp “Unclear internet law spells uncertain future for free expression in Turkey” Xindex 12 February 2014 <http://www.indexoncensorship.org/2014/02/amendments-internet-law-approved-turkish-parliament-remain-murky/>

II. Access to Content, Blocking and Filtering

The La Rue Framework emphasises that states must ensure there are no generic bans of online content and sites are not prohibited solely on the basis of political or government criticism. States may only block online content based on lawful criteria, are obliged to provide lists of blocked websites and must provide explanations of the reasons for blocking or filtering. Blocking and filtering must only take place if ordered by a court or other competent judicial body and, in relation to child pornography, must be linked to national law enforcement strategies.

In Turkey, the following four areas highlight the numerous violations of these standards: blocking of entire platforms/services, access to blocked content by ordinary users, wholesale website blocking without adequate explanation or transparency, and government filtering of content both directly and indirectly.

a. Google/YouTube

By the force of both laws, there has been a great variety of websites that were banned in the last seven years but what made Turkey infamous in terms of censorship most was its banning YouTube access for more than three years between 2007 and 2010.¹⁸ The overt reason for the court decision were the videos on YouTube considered illegal under the Law No. 5651 that listed “insulting Turkishness” and “insulting Atatürk” as offences. Although YouTube claimed to have fulfilled the request from the public prosecutor to remove the videos, users mainly from Greece replaced them shortly after.¹⁹ During the long period of the YouTube ban, even the least skilled internet users were able to learn to change domain name system (DNS) settings or use internet protocol (IP) numbers instead of electronic addresses (URLs) – in doing so they were able to have access to the banned site. Therefore despite it

being blocked, YouTube remained the eighth-most accessed website in Turkey during the ban.²⁰ This absurd inconsistency went so far that in November 2008, Prime Minister Tayyip Erdogan stated publicly that he could easily access the website and advised the public to do the same.²¹

During the years that YouTube was banned, there was also the “tax issue” which was often brought up by then Turkish Minister of Transportation, Maritime Affairs and Communications Binali Yildirim who was responsible for information and communication technologies policies in Turkey. Due to bilateral agreements, and sales operations happening through Ireland, Google does not pay tax from the sales made to Turkish customers. So when there were questions raised about the YouTube ban, Yildirim made statements such as, in June 2010:²²

“You (Google) do earn a lot of money from Turkey, have a branch office just for marketing and then will not pay any tax! Then you will invite Turkish journalists to your headquarters for the sake of the Internet freedom. That is not right, it is our duty to reserve the rights of our citizens who pay their taxes.”

Another statement, made in November 2012 was that “Google has searched everything but the location of the tax office...”²³

²⁰ Kelly, Cook & Truong, eds.

²¹ NTVMSNBC “Erdogan: Ben YouTube’ a giriyorum, siz de girin” 21 November 2008 <http://arsiv.ntvmsnbc.com/news/466693.asp>

²² Ümit Kozan “Ulaştırma Bakanı: ‘Google, BTK ile görüşmeye geliyor’” 12 June 2010 <http://gundem.milliyet.com.tr/ulastirma-bakani-google-btk-ile-gorusmeye-geliyor-gundem-gundemdetay/12.06.2010/1250047/default.htm> & Güneş Tavmen “The pathology of expecting social network websites to wave the ‘democracy flag’” 21 October 2013 <https://www.opendemocracy.net/g%C3%BCne%C5%9F-tavmen/pathology-of-expecting-social-network-websites-to-wave-%E2%80%998democracy-flag%E2%80%99>

²³ Milliyet “‘Her şeyi arıyor, vergi dairesini aramıyor’” 8 November 2012 <http://ekonomi.milliyet.com.tr/her-seyi-ariyor-vergi-dairesini-aramiyor-ekonomide-tay/08.11.2012/1624000/default.htm>

¹⁸ Tom Zeller Jr. “YouTube Banned in Turkey After Insults to Atatürk” 7 March 2007 http://thelede.blogs.nytimes.com/2007/03/07/YouTube-banned-in-turkey-after-insults-to-ataturk/?_php=true&_type=blogs&_r=1YouTube

¹⁹ Associated Press “Turkey pulls plug on YouTube over Atatürk ‘insults’” 7 March 2007 <http://www.theguardian.com/world/2007/mar/07/turkey>

In late March 2014, following the alleged corruption revealed on YouTube, another hacked phone call revealing the alleged discussion of Syria plans between the minister of foreign affairs and the chief of intelligence led to another blockade of the YouTube website. This time, the blockade was enabled without any court order, under the amendments made to Law 5651.²⁴ Defying several court decisions that challenged the legitimacy of the YouTube blockade, government authorities insisted on keeping YouTube inaccessible for several months. However when the constitutional court, which is the highest court in the country, ordered the access to be restored as the ban impeached the right to information and freedom of speech, the ban was finally lifted in early June.²⁵

Access to the Google Sites hosting platform has been another troublesome issue. Because of a criminal court decision from Denizli in 2009 regarding Ataturk being insulted on a single page on Google Sites, the entire hosting platform was kept blocked for close to five years. In 2012, as a consequence of a litigation started by Ahmet Yildirim who also had a website on Google Sites, the European Court of Human Rights (ECHR) found Turkey guilty of impeding the exercise of free speech on the internet. The ECHR further stated that likewise decisions by local courts to block entire websites or services due to content on a single page violated internet users' right to information.²⁶ However, access to the whole platform continued to be blocked until mid-2014 defying the ECHR verdict. This has been one of the flagship examples of Turkish citizens defending their right to information on the internet on legal grounds.

b. Twitter

Just before the March 2014 mayoral elections, Twitter came under scrutiny by Turkey's government after tapes with hacked phone conversations were disseminated through anonymous accounts on Twitter. After Prime Minister Erdogan promised to "eradicate" Twitter

regardless of what the international community said, it got blocked in March 2014. That decision was also taken without a court order but was enabled by the recent changes in Law 5651 as explained above.²⁷ In reply to citizen reaction and the press, BTK made a statement saying that Twitter had breached privacy of individuals and therefore in response to the complaints, it was completely blocked.²⁸ Two weeks later, the ban was lifted following an administrative court order from Ankara. As the international community were closely monitoring the current affairs in the country, this censorship yielded many reactions from international organisations including the Association for Progressive Communications.²⁹

Nonetheless, during the Twitter blockade, internet users in Turkey were once again able to circumvent this censorship thanks to their previous experiences. However, simply changing DNS settings did not work this time as the new articles in Law 5651 required redirection of network routes and getting correct information from the DNS was disabled. So users found themselves redirected to other websites controlled by local service providers.³⁰ This led to widespread adoption of virtual private network (VPN)³¹ services as instructions on how to install and use VPN and how to make use of Tor were spread online.³² To the amusement of the internet community, tweets in Turkish have gone up 138% on the days Twitter was banned.³³

24 Andrew J. Barden "Turkey Blocks YouTube after Syria Incursion Plans Leaked" 28 March 2014 <http://www.bloomberg.com/news/2014-03-27/turkey-blocks-youtube-after-leak-of-syria-incursion-planning.html>

25 BBC News "Turkish court orders YouTube access to be restored" 29 May 2014 <http://www.bbc.com/news/technology-27623640>

26 Freedom House (New York: Freedom House, 2013), 1–14 http://freedomhouse.org/sites/default/files/resources/FOTN%202013_Turkey.pdf

27 Constanze Letsch "Turkey Twitter users flout Erdogan ban on micro-blogging site" 21 March 2014 <http://www.theguardian.com/world/2014/mar/21/turkey-twitter-users-flout-ban-erdogan>

28 Kevin Rawlinson "Turkey blocks use of Twitter after prime minister attacks social media site" 21 March 2014 <http://www.theguardian.com/world/2014/mar/21/turkey-blocks-twitter-prime-minister>

29 "Turkey violates human rights by banning Twitter" (March 2014) www.apc.org/en/node/19101/

30 Kathy Brown "The Internet Society on Turkey's Internet Traffic" (Internet Society, 2014) <http://www.internetsociety.org/internet-society-turkey-internet-traffic>

31 VPN allows users get connected through a remote virtual network that might have different privileges than the private network.

32 Tor is a free application bundle and an open network designed to keep anonymity online. For more details, see: <https://www.torproject.org/>

33 Karyne Levy "Tweets In Turkey Are Up 138% Even Though The Country Banned Twitter" 21 March 2014 <http://www.businessinsider.com/turkey-bans-twitter-but-more-people-start-tweeting-2014-3#ixzz2wmb5KBJQv>

c. Other Blocked Websites

Apart from the content-related blockades, many websites are inaccessible in Turkey due to copyright violations. Grooveshark, the music streaming website, has been blocked in Turkey since 2010 by a court order.³⁴ In March 2011, access to Blogspot was blocked following a complaint from Digiturk, a Turkish Satellite TV provider, as some blogs were reported to have distributed broadcast materials under Digiturk's ownership.³⁵ In reaction to the ban, the Internet Technologies Association in Turkey filed a case reporting Digiturk's request to block a website with four million Turkish users through blocking the IP address, not the individual electronic addresses of offending sites and pages.³⁶ Digiturk, which had become the nemesis of millions of bloggers, also sued Google with the claim that blocking the whole IP address was the fault of Google. Consequently, a few weeks later, the order was removed as Google blocked only particular blogs for violating IPR laws.³⁷

In September 2008, the evolutionary biologist Richard Dawkins' website was also blocked as a result of request from Adnan Oktar, the leader of an Islamic group defending creationism, though it is still unclear under which law the order was given.³⁸

These are just a few examples of the thousands of websites blocked pursuant to Law 5651 and Law 5846. For example, many LGBT related websites have also been blocked although they did not contain any sexual material.³⁹ In addition, there are thousands of pornography websites blocked directly by TIB and BTK without a court order.

d. Filtering

In February 2011, BTK came up with draft legislation to enforce a countrywide mandatory filtering system maintained and controlled by state

authorities. This filtering application was called the "Safe Internet Application." The aim, as declared by BTK, was to protect children from harmful content like explicit sexuality and drug sales.⁴⁰ The first draft was too flawed both technically and legally, and within a few months, there were many amendments to the original draft. Originally it proposed four main filter categories: domestic, children, family and standard. In later versions of the legislation, the domestic filter category was abolished. That was due to its annihilating net neutrality principles by allowing users to have access only to domestic, Turkish, websites.⁴¹

As a consequence of the BTK initiative, one of the world's largest civil campaigns against censorships on the Internet began in Turkey. On 15 May 2011, a demonstration called "Don't touch my Internet" took place in Istanbul at which 50,000 people marched in Taksim.⁴² Moreover, an independent media outlet Bianet and Alternative Information Technologies Association (ABD) appealed to the higher court.⁴³ After the protests, BTK backed down and declared that unless users opted in for a filter, they would automatically be under the "standard" category, which is the same as the previous internet service⁴⁴. This meant that the internet service provided to "standard" users would be censored only as much as before the legislation.

By November 2011, the filtered Internet was available for free to those who demanded it. At first glance, preventing children from having access to harmful content seems a positive step for internet use. However, the fact that it is only the state authority BTK that has all the power to decide what is harmful and what is not, was seen

34 Milliyet "Grooveshark da Artık Yasak" 9 September 2010 <http://www.milliyet.com.tr/grooveshark-da-artik-yasak/yasam/haberdetay/09.09.2010/1286973/default.htm>

35 Erisa Dautaj Şenerdem "Blogger becomes latest victim of Turkish Internet Bans" 2 March 2011 <http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=blog-spot-is-banned-2011-03-02>

36 NTVMSNBC "Digiturk için suç duyurusu" NTVMSNBC.com 7 March 2011 <http://www.ntvmsnbc.com/id/25189798/>

37 Bianet "Blogspot'a Erisim Yasası Kalkıyor" 15 March 2011 <http://www.bianet.org/bianet/ifade-ozgurlugu/128577-blog-spot-a-erisim-yasagi-kalkiyor>

38 Riazat Butt "Turkish court bans Richard Dawkins website" 18 September 2008 <http://www.theguardian.com/world/2008/sep/18/turkey>

39 Mariah Pittman "Turkey Really Doesn't Want Gay People to Have Sex" *Vice* 4 October 2013 http://www.vice.com/en_ca/read/grindr-vs-turkey

40 Alternatif Bilisim "BTK 4 Ağustos 2011 Güvenli İnternet Hizmetine İlişkin Usul ve esaslar Taslağı Değerlendirmesi" Accessed 28 August 2014 https://www.alternatifbilisim.org/wiki/BTK_4_A%C4%9Fustos_2011_G%C3%BCvenli_%C4%B-onternet_Hizmetine_%C4%Boli%C5%9Fkin_Usul_ve_esaslar_Tasla%C4%9F%C4%B1_De%C4%9Ferlendirmesi

41 Ibid.

42 NTVMSNBC "Paylaş Türk ve dünya basınında 'internetime dokunma'" 16 May 2011 <http://www.ntvmsnbc.com/id/25213509/>
For a photo and a description of the demonstration, see: http://commons.wikimedia.org/wiki/File:Turkey_internet_ban_protest_2011.jpg

43 Alternatif Bilişim "BTK Filtre Uygulaması Danıştay Davası Basın Bildirisi" Accessed 28 August 2014 https://www.alternatifbilisim.org/wiki/BTK_Filtre_Uygulamas%C4%B1_Dan%C4%B1C5%9Ftay_Davas%C4%B1_Bas%C4%B1n_Bildirisi

44 Milliyet "Güvenli internet dönemi başladı" 22 November 2011 <http://www.milliyet.com.tr/guvenli-internet-donemi-basla-di-internet-1465897/>

as unacceptable. Besides, the filtering category of children is implemented automatically in most of the schools so its effect was felt not only for those who opt in.

Moreover, there is a very tight filtering system in all state offices. Anecdotally, a Constitutional Court member reported to the author they have no access to many verdicts because of the filtering system. For instance, a search for online legal materials on hate crimes against LGBT people are almost impossible to carry out due to blocked key words. Subtle or not, filtering appears to be another big obstacle for right to information in Turkey.

In summary, these examples show that freedom of expression online is under threat in Turkey. Government violation of freedom of expression online is mostly linked to offline political issues, including a conservative political

discourse and intolerance to criticism resulting in direct and indirect silencing of online dissent. At the same time, these attempts to restrict freedom of expression online are being resisted by diverse civil society groups. Movements for democratisation have developed and there has been unprecedented mass mobilisation to protect the freedom of expression online and offline, forcing the government to retract in some cases.

However, the government continues to violate the right to freedom of expression online with both generic bans of online content and sites being prohibited solely on the basis of political or government criticism. There are no lists of blocked websites, or explanations of the reasons for blocking or filtering. Blocking and filtering mostly takes place without court order and is difficult to challenge.

III. Intermediary Liability

The La Rue Framework makes it clear that the government cannot delegate censorship to private entities and cannot ask private companies to violate human rights. States can only ask internet intermediaries to prevent access to content or disclose private information in very strictly limited circumstances (such as for criminal justice) and then only by court order. Remedies must be available for those affected by actions of private companies and states must disclose details of content removal requests. However, in Turkey, the government has changed laws to increase liability of intermediaries and extend their role in censorship. Private companies have also failed to uphold the right to freedom of expression online even where Turkish citizens have not violated local laws.

Until the recent legislation in February 2014 (the recently amended law 5651), ISPs, hosting services and content providers were not directly responsible for preventing illegitimate content. Despite this, the government did request content takedown. For example, in April 2011, TIB sent a warning letter to hosting companies in Turkey with a list of 138 words that cannot be used in domain and website names. The name list included such words as *blonde, fat, nude, hot, Adrienne, gay, breath, local, free, girl, partner, story, confession, skirt and adult*. The list included words with no literal meaning either in Turkish or in another language like “nubile.”⁴⁵ Fortunately this letter was not binding and could not be applied fully due to technical difficulties in differentiating harmful content of thousands of websites with such generic names.

After that, regulations enforcing intermediary liability went further. According to the amended Law 5651, hosting service providers and ISPs are obliged to remove content that breaches other articles listed under the same law. They are also under an obligation to record all traffic under their services for at least a year and up to a maximum of two years (as explained above).

There is also censorship by intermediaries beyond that which is permitted by law. Facebook has openly failed to be impartial when removing many pages aimed at the government even if these pages abided by the laws.⁴⁶ Perhaps that is why then-minister Yildirim publicly stated that the government was in good collaboration with Facebook.⁴⁷

Right after the Gezi protests, in late July 2013, Facebook started to shut down pages of several Kurdish politicians’ affiliated with Peace and Democracy Party (BDP). The reason given by the company was their general policy on avoiding terrorist actions on Facebook and claims there were images that praised terror groups on these pages. These images were in fact taken from a legal rally of a legal political party. As a result of many complaint actions taken by Kurdish organisations and human rights activists within and outside of Turkey, according to the news website *firatnews.com*.⁴⁸ Facebook eventually admitted that they might have made a ‘mistake.’⁴⁹

Another ill-judged example from Facebook was the removal of pages of LGBT civil rights group from Eskisehir, MorEl (Purple Hand) together with the personal pages of its activist members in January 2011. Facebook declared that this was due to their no-tolerance policy on the practices of “abuse of drugs, nudity, violence, threatening of a certain individual or a group, and terrorist actions.”⁵⁰ There was no clear evidence of which of these practices were committed by MorEl.

A citizen journalism initiative ‘Otekilerin Postasi (the Others’ Mail)’ became famous as it was blocked by Facebook nine times in less than three years up

45 Esra Gürmen “Turkey Almost Lost Its Internet” 2 January 2012 <http://www.vice.com/read/turkey-almost-lost-its-internet-000078-v18n12>

46 Tavmen “The pathology of expecting social network websites to wave the ‘democracy flag’”

47 Ibid.

48 Fırat News “Facebook yetkilileri sansürü kabul etti” 20 September 2013 <http://www.firatnews.com/news/guncel/facebook-yetkilileri-sansuru-kabul-etti.htm>

49 Tavmen “The pathology of expecting social network websites to wave the ‘democracy flag’”

50 BIA News Center “Facebook’ta MorEl Eskişehir’e Sansür” 7 January 2011 <http://www.bianet.org/bianet/toplumsal-cinsiyet/127053-facebook-ta-morel-eskisehir-e-sansur>

to August 2014.⁵¹ One of these many removals from Facebook was due to so-called “pornographic” content. Right at that time, the group was writing actively about a misogynistic claim of a speaker on the state run TV channel, about the pregnant women’s “distorted” sights. Once the ban became public, Facebook sent a letter to Otekilerin Postası saying they had made a mistake by accusing them of “pornographic” content though they would still keep the page banned.⁵²

While certainly not to the same extent of Facebook, Twitter was also forced to come to some terms with the Turkish government. After it

got blocked in March 2014, they also agreed to “withhold” several accounts that leaked evidences of alleged corruption in the state.⁵³ That was on the basis again of the vague standards in Law 5651 that “protected” information about private life.

In summary, both the government and internet intermediaries are interfering with the right to freedom of expression in Turkey. The government does that as an extension of its administration style. As for the intermediaries, their motivation is a combination of legal obligations and their will to keep their relationships smooth with the government.

51 “Ötekilerin Postası sayfası 9. kez Facebook yönetimi tarafından gerekçe gösterilmeden yayından kaldırıldı!” (Ötekilerin Postası, 1 August 2014) <http://otekilerinpostasi.org/2014/08/01/otekilerin-postasi-sayfasi-9-kez-facebook-yonetimi-tarafindan-gerekce-gosterilmeden-yayindan-kaldirildi/>

52 Özgün Çağlar “Facebook yönetimi: Ötekilerin Postası sayfası iade edilmeyecek” 12 July 2013 <http://www.agos.com.tr/facebook-yonetimi-otekilerin-postasi-sayfasi-iade-edilmeyecek-5365.html>

53 Seda Sezer “Turkey Twitter accounts appear blocked after Erdogan court action” *Reuters* 20 April 2014 <http://www.reuters.com/article/2014/04/20/us-turkey-twitter-idUSBREA3JoET20140420>

IV. Protection of the Right to Privacy and Data Protection

According to the La Rue Framework, states must have adequate data and privacy protection laws, the right to anonymity must be protected and the state must not regularly track the online activities of human rights defenders, activists or opposition members. Encryption technologies should be legally permitted and the state must ensure that limitations on the right to privacy are exceptional, with safeguards to prevent abuse.

However, the right to privacy and data protection is another problematic issue in Turkey as data collection on individuals, including biometric data, is ubiquitous. For example, at some private hospitals, patients are required to give a full palm scan should they wish to claim benefits from the social security system. This application has been highly controversial⁵⁴ Despite such intense data gathering, there is no proper legal framework to regulate the right to privacy and data protection. Moreover, a lack of legal obligations around how to keep data securely and an institution to monitor the applications may also result in data centres being vulnerable to cyber attacks.

According to the Article 135 in the Turkish Criminal Code, illegal data processing is a crime. However, the definition of the conditions under which it is a crime is absent.

However, in 2010, through the amendments in the Constitution, the right to privacy and data protection are defined as basic constitutional rights.

According to the paragraph added by Act 5982:⁵⁵

“Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.”

The amendment states that sub-legislation would be prepared to further define the legal grounds.

But in Turkey, the draft law on private data protection has a long and winding history dating back to 1989. Even after 25 years, it has not been passed by parliament and the draft law is still waiting at the prime minister’s office to be sent to the parliament to come into force.⁵⁶ Needless to say, the draft law has been modified many times, adjusting to the conditions of the day by several commissions directed by the ministry of justice. However its continued status as a draft moving back and forth between the prime minister’s office, the parliament and the ministry of justice means that the right to privacy and data protection in Turkey is not protected.

In addition to impairing civil rights severely, this has many other implications for Turkey such as the EU classifying it as a non-secure third-party country in terms of privacy and data protection. Consequently, Turkey cannot sign agreements on operational cooperation with the Europol and EUROJUST and it cannot get involved in the Schengen Information System due to lack of data privacy.⁵⁷

54 Milliyet “Avuç içi okutma sistemi için kritik uyarı” 3 December 2013 <http://www.milliyet.com.tr/avuc-ici-okutma-sistemi-icin/ekonomi/detay/1801889/default.htm>

55 The full text of the act can be found online, at: http://www.ilo.org/aids/legislation/WCMS_150722/lang--en/index.htm

56 For a copy of the draft law, see: <http://www.kgm.adalet.gov.tr/Tasariasamalari/Basbakanlik/Basbakanlik.html>

57 TiHK (Turkey: TiHK, May 2012 <http://www.tihk.gov.tr/www/files/kisisel-verilerin-korunmas%C4%B1-kanun-tasar%C4%B1si-hakkinda-bilgi-notu.pdf>

V. Legitimate Expression

Frank La Rue highlighted that states have an obligation to ensure that legitimate freedom of expression is not criminalised. Journalists and bloggers should be protected against abuse and intimidation and expression should only be restricted in very narrow circumstances such as where there is a threat of imminent violence and a direct connection between the expression in question and the threat of violence.

However, there have been several very high profile cases of Turkish citizens being prosecuted and given severe criminal penalties for expressing their views on social media or on websites. For example, pianist and composer Fazil Say was given a ten-month sentence due to committing blasphemy on Twitter. His penalty for insulting religion was later suspended unless he committed a similar crime in the following five years.⁵⁸ This court decision led to an outrage both in Turkey and in international community. The English group PEN prepared an open letter signed by many UK musicians and writers addressed to then Minister of Justice Sadullah Ergin.⁵⁹ Another blasphemy case targeted linguist and former newspaper columnist Sevan Nisanyan in May 2013. He was given a thirteen-and-a-half month sentence for attacking part of population's religious values on his own blog.⁶⁰

While Twitter had been the main means of information dissemination and communication during the Gezi protests, it became a trap for many users. On 5 June 2013, around time when Gezi protests took place, 38 people were reported to be taken under detention because of what they have been writing in support of Gezi on Twitter.⁶¹ In February 2014 an indictment filed by the public prosecutor asked for three years of prison for 29 of them. In April 2014, Prime Minister Erdogan intervened in the case as third party and as the victim.⁶² The case is still proceeding and no verdict has been given yet.

Many cases have also been filed using anti-terrorism laws. For example, in 2011, journalist Recep Okuyucu was prosecuted for allegedly supporting terrorist groups because he downloaded Kurdish music and had access to the blocked Kurdish Firat News Agency website.⁶³

58 Doğan News Agency “Turkish pianist Fazil Say sentenced to 10 months in prison for blasphemy in retrial” Hurriyet Daily News <http://www.hurriyetdailynews.com/turkish-pianist-fazil-say-sentenced-to-10-months-in-prison-for-blasphemy-in-retrial.aspx?PageID=238&NID=54824&NewsCatID=341>

59 Cat Lucas “PEN protests the sentencing of Fazil Say” (English PEN: 15 April 2013) <http://www.englishpen.org/turkey-pen-protests-the-sentencing-of-fazil-say/>

60 T24 News “Sevan Nişanyan 13.5 ay hapis cezasına çarptırıldı” 22 May 2013 <http://t24.com.tr/haber/sevan-nisanyan-135-ay-hapis-cezasina-çarptırıldı,230422>

61 Anadolu Ajansı “Erdogan Izmir'deki “twitter davası”na müdahil oldu” 21 April 2014 <http://www.aa.com.tr/tr/turkiye/316344--basbakan-erdogan-izmirdeki-quot-twitter-davasi-quot-na-mudahil-oldu>

62 Ibid.

63 Freedom on the Net 2013, Freedom House

VI. Cyber-attacks

States are not permitted to carry out cyber-attacks and they must also protect their citizens from cyber-attacks. However, in Turkey there have been numerous cyber-attacks from non-state actors, some as an alleged form of civil protest, some as a way to attack human rights defenders and legitimate online expression.

There have been several technical attacks by worldwide famous *hacktivist* group Anonymous in Turkey in protest against the state authorities. In early 2012, the collective launched a distributed denial of service (DDoS) attack against several public bodies including TIB and BTK.⁶⁴

A frequent cyber attack victim in Turkey is Agos, a newspaper run by Armenian Turkish citizens. The website of Agos has been hacked by racist groups several times, with the latest attack occurring in July 2014.⁶⁵ A group calling themselves “neo-

Ottomans under the commandment of Tayyip Erdogan” hacked the website by placing a note calling Armenians “traitors.” Kaos GL, an LGBT rights civil initiative is another victim of regular cyber attacks. After being hacked at several occasions, they were left with notes on their website containing disguised hate speech. Consequently, after one of the attacks in 2012, two hackers were caught and sentenced to six months prison under the Turkish Penal Code 244/3.⁶⁶

There has been no known cyber attacks carried out by Turkish administration. However, it is a commonly used practice against political groups by non-state actors. Moreover, as mentioned above, the lack of solid legal framework on data protection makes the country prone to cyber attacks.

64 BIA News Center “Anonymous Hacked BTK Database” 15 February 2012 <http://www.bianet.org/english/world/136178%E2%80%90anonymous%E2%80%9020hacked%E2%80%90obtk%E2%80%90odatabase>

65 T24 News “Agos hacklendi: Sizin gibi vatan hainlerini çok gördük!” 9 July 2014 <http://t24.com.tr/haber/agos-hacklendi-sizin-gibi-vatan-hainlerini-cok-gorduk,263774>

66 kaosGL.org “kaosGL.org Sitesine Yönelik Saldırıya Hapis Cezası!” kaosGL.org, 20 March 2014 <http://www.kaosgl.org/sayfa.php?id=16112> For an update in English, see: <http://lgbtinewsturkey.com/2014/03/23/prison-sentence-for-cyber-attack-on-kaosgl/>

VII. Conclusions and recommendations

There is a constant struggle for democratisation and freedom in Turkey. The internet in Turkey is not exempt from these struggles. On the contrary, it has become the main medium for resistance. On the one hand, there are draconian rules limiting access to and expression on the internet. On the other hand, there is a strong civil society determined to keep it open and safe. As the majority of the population is young and can be very innovative when protecting their means of communication, the struggle will likely continue.

Civil society is trying to leverage awareness around censorship and surveillance on the internet and is very active. ABD, Pirate Party Turkey, Engelli Web and many citizen journalism initiatives have proved to be effective in creating public resistance for the future. Although that did not prevent the government from taking more restrictive measures on the internet, the internet by its nature is hard to control fully thanks to technical tools created to keep it open and safe. That said, circumventing censorship and surveillance is not a sustainable solution. The legal battleground needs to gain more priority as the laws as they are today allow very easy on-demand censorship based on subjective judgements.

Hacking, using VPNs, and changing DNS settings cannot be the only future for internet users in Turkey looking for a free and open internet. These tools and techniques are useful for those with the technical knowledge, but do not offer a systematic solution. The impediments on legitimate expression area pressing issue and result in self-censorship that cannot be quantified. Therefore, Turkey needs a transparent and a

deliberative process of legislation preparation with participation of multiple stakeholders. That is, of course, closely related to the improvements that have to be made in the general political atmosphere in the country. Unless the Turkish government changes its approach towards the right to information and freedom of expression, the future of the country looks rather bleak.

In order to improve and sustain open and safe internet, Turkish civil society should implement the following:

- More skills sharing on use of alternative technologies so that citizens are empowered to use technologies to claim their rights
- More activities directed to raise awareness about surveillance practices by the government and corporate firms
- Capacity building among civil society
- Protections for political expression including for LBGT groups
- Transparent policy making processes that include all stakeholders.

Most importantly, online and offline struggles for democracy and to uphold the right to information and freedom of expression should be linked. The announcement that the IGF would take place in Istanbul amidst heightened censorship and surveillance of the internet in Turkey is a positive development. As people who struggle for a free and open internet, we hope that the IGF will provide an opportunity to challenge the murky situation and create awareness at a broader level.



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