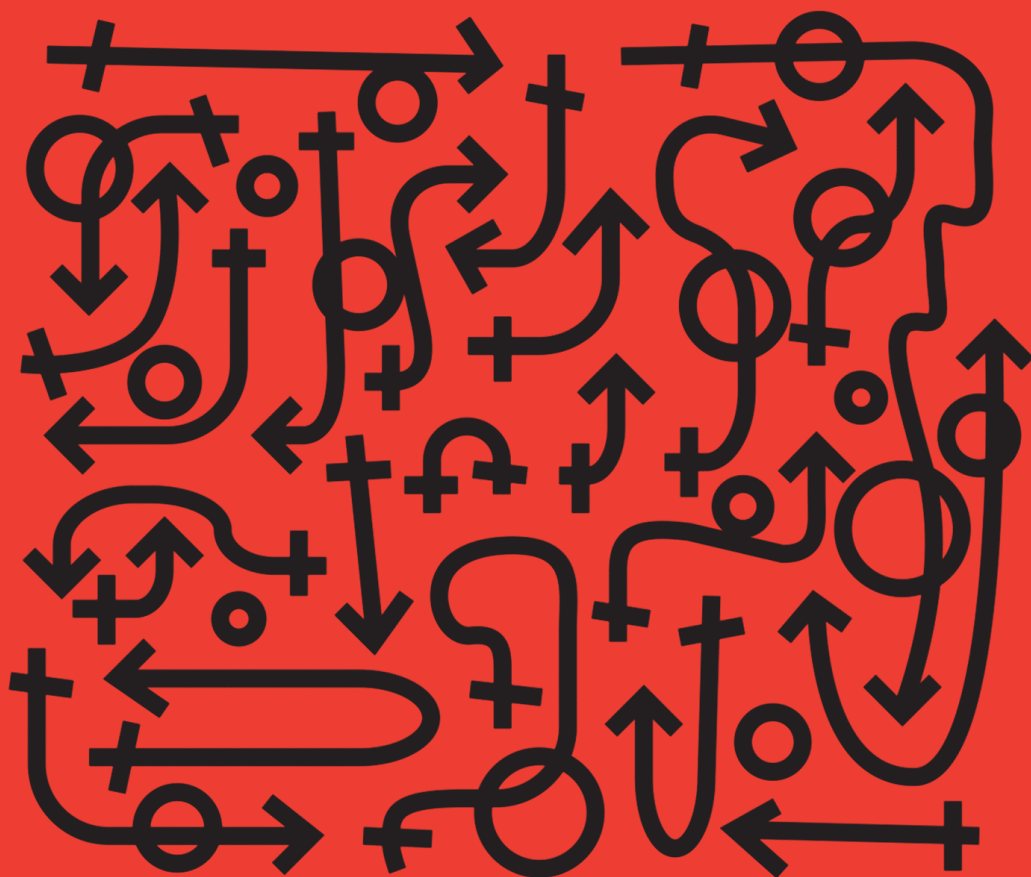


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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TURKEY

DISGUISED FORMS OF CENSORING SEXUAL EXPRESSION ONLINE IN TURKEY



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Introduction

This report discusses how the freedom of sexual expression is currently being censored in Turkey through existing legislation, and takes a look at the prevalence of hate speech and threats of violence online. We view the issue within its wider context – not just limited to the lesbian, gay, bisexual, transgender and intersex (LGBTI) communities – but impacting on all those who are confronted by hate speech or who have to endure threats of violence for not conforming to traditional (or patriarchal) values. We investigate the role of the government in perpetuating censorship and facilitating online bullying, hate speech and threats of violence against sexual expression, either by its actions or omissions. While there is nothing in Turkey's criminal code that acts punitively towards online sexual expression of any kind, hate speech and threats of legal action produce a form of self-censorship, and have a chilling effect on online freedoms. Therefore, there is in effect indirect censorship of the rights to online sexual expression. We argue here that in this way, the government subtly manages to disguise its authoritative and draconian nature.

Policy and political background

Despite becoming a republic in 1923, Turkey has struggled with democratisation and the strengthening of human rights until today. The country has endured several coups d'état, and its present constitution still remains highly restrictive in terms of attaining a reformist society. Despite numerous progressive steps taken in the past 15 years, especially becoming a member of the European Union (EU), Turkey still lacks a legal framework that provides a safe environment for freedom of expression. This is all the more the case when it comes to the internet. Due to the banning of social media platforms on several occasions, Turkey is now named among countries with the most draconian online surveillance and censorship laws. This only grew worse after the countrywide Gezi uprisings that took place

in June 2013, where social media was one of the primary tools of communication among protesters. While restrictive regulations do not specifically target freedom of sexual expression, they are often used for that purpose as well.

Online content is strictly monitored and kept under control by several laws. Apart from the specific laws that regulate online content – such as Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications – other laws that regulate different types of violations, such as the Turkish Criminal Code under articles 122, 125, 216 and 299,¹ are also

- 1 Article 122 (Discrimination): “Anyone who practices discrimination on grounds of language, race, colour, gender, disability, political ideas, philosophical beliefs, religion, sect or other reasons;
- preventing the sale or transfer of personal property or real estate or the performance or enjoyment of a service or who makes the employment of a person contingent on one of the conditions listed above,
 - withholds foodstuffs or refuses to provide a service supplied to the public,
 - prevents a person from carrying out an ordinary economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine.”

Article 125 (Insult): “1) Any person who attributes an act or fact to a person in a manner that may impugn that person's honour, dignity or prestige, or attacks someone's honour, dignity or prestige by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine. To be culpable for an insult made in the absence of the victim, the act should be committed in the presence of at least three further people.

2) Where the act is committed by means of an oral, written or visual medium message addressing the victim, the penalty stated in the above section shall be imposed.

4) Where an insult is committed in public, the penalty to be imposed shall be increased by one sixth....”

Article 216 (Inciting the population to enmity or hatred and denigration): “1) Anyone who openly incites sections of the population to enmity or hatred towards another group on the basis of social class, race, religion, or sectarian or regional difference, in a manner which may present a clear and imminent danger in terms of public safety shall be sentenced to imprisonment of from one to three years.

(2) Anyone who openly denigrates a section of the population on grounds of their social class, race, religion, sectarian, gender or regional differences shall be sentenced to imprisonment of from six months to one year.

(3) Anyone who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment of from six months to one year, where the act is sufficient to breach public peace.”

Article 299 (Insulting the President): “Anyone who insults the President of the Republic shall be imprisoned for a term of from one to four years.”

English translation source: www.tuerkeiforum.net/enw/index.php/Translation_of_selected_Articles_of_the_Turkish_Penal_Code

used for court decisions. But none of these articles offer any specific protection for the right to gender identity and sexual expression, nor do they deal with hate speech online. Similarly, globally recognised rights to sexual identity do not enjoy specific protection under the Turkish Constitution. The only articles which come close to being interpreted (rather widely) in terms of providing protection for LGBTI people are articles 10 (dealing with equality before law) and article 20 (affirming the right to privacy, which foresees the duty of the state to take necessary precautions to guarantee the protection of LGBTI people against any type of harassment including hate speech). The unlawful dissemination of personal data is also a crime under articles 132 to 140.

However, a progressive step to note is that in 2011 Turkey was the first country that signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention.² This provides legal protection for women against “any sort of violence and discrimination”, and imposes a duty on signatory states to amend their laws and domestic policies to bring about full gender equality between men and women. Another improvement was introduced in 2014 when the Turkish constitutional court ruled that referring to LGBTI people as “perverts” on the basis of their sexual orientation and gender identity is hate speech and subject to criminal prosecution.³

Creating conditions for self-censorship online

Despite the above protections, online bullying and hate speech have a chilling impact on freedom of expression in Turkey, and appear to be a natural outcome of the Turkish state’s reluctance to implement progressive laws that may exist on paper (what we call its strategy of “doing and not doing”). All those – including sexual minorities – expressing themselves online in a way that does not tally with traditional gender codes in Turkey have met with online bullying and hate speech. Online newspapers and portals run by conservative Islamists have, in particular, systematically targeted LGBTI communities, leading social or political figures, and their allies from non-government movements, amongst other things calling them “perverted”. Although

victims of online hate speech have tried to take legal action, there are insurmountable problems regarding the way justice functions, and until now no perpetrator has been punished. Up to this point, the state’s inactivity entails not properly conducting effective prosecutions, and a narrow interpretation of “gender” as protected by article 216/2 of the Turkish Criminal Code, in accordance with the ruling of the European Court of Human Rights⁴ and the decisions of UN Human Rights Council resolutions.⁵ The failure to investigate and punish perpetrators encourages other potential perpetrators to attack any identity or expression that does not comply with prevalent heteronormative patterns. This implicitly guarantees perpetrators that there will be no legal prosecution or punishment of hate-driven harassment of LGBTI people.

Online bullying is one of the least discussed or visible topics in Turkey. A pertinent example is the harassment that followed the Twitter hashtag *#sendeanlat* (which can be translated as “tell your story too”), which appeared right after the brutal murder of Özgecan Aslan.⁶ Özgecan was a 20-year-old university student who was stabbed to death as she resisted an attempted rape in Mersin on 11 February 2015 while travelling by bus to her home during the evening. The social media hashtag campaign attracted wide public attention, resulting in around 6.5 million people tweeting about the incident, in addition to around 800,000 tweets⁷ from women of different age groups sharing their harassment, rape and assault stories online. The content of the tweets varied from stories of daily harassment on the streets or on public transport systems, to overt or covert assaults. However, women who “came out” against gender-based violence in everyday life in Turkey received online threats or replies such as that levelled at Nihat Dogan, a well-known pop singer: “Do not scream as you wear miniskirts and are harassed by perverts demoralised by this secular system.”⁸ A sinister type of bullying involves trolls who tried to eroticise these sexual harass-

2 For more information on the Istanbul Convention, see: www.coe.int/en/web/istanbul-convention/home

3 Constitutional Court decision 2013/5356 of 8 May 2014. English translation: www.anayasa.gov.tr/en/inlinepages/leadingjudgements/IndividualApplication.html

4 For more information on the wide interpretation of “gender” status of the court, see this judgement: [hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3353755-3754421#{"item id":"003-3353755-3754421"}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=003-3353755-3754421#{)

5 www.ohchr.org/EN/Issues/Discrimination/Pages/LGBTUNResolutions.aspx

6 BBC World Service. (2015, 24 February). Sexual Harrassment in Turkey. *BBC*. www.bbc.co.uk/programmes/p02kq3pb

7 Alfred, C. (2015, 25 February). Women In Turkey Share Devastating Stories Of Sexual Harassment In #Sendeanlat Twitter Campaign. *Huffington Post*. www.huffingtonpost.com/2015/02/17/turkey-sendeanlat-twitter-campaign_n_6699702.html

8 cemedib.blogcu.com/ozgecan-aslan-cinayeti-ve-sendeanlat-kalkismasi/19987304

ment stories, in this way hijacking a movement aimed at protesting sexual harassment.

While the hashtag campaign is still active, these kinds of reactions discourage women from talking openly about harassment, assault and even rape. This is especially true of online harassment, bullying and hate speech, which is very weakly monitored – due both to legal shortcomings and the inability of websites or social media platforms to implement preemptive measures.

Besides this, there is the new and intriguing way in which the former prime minister – now president – Recep Tayyip Erdoğan prompted an escalation of censorship and self-censorship. Following the Gezi protests, Erdoğan filed lawsuits against ordinary Twitter or Facebook users on the grounds that they had “insulted” him or “insulted the president”. This was done by resorting to articles 125 and 299 of the Turkish Criminal Code. Prior to the legal amendment which enabled him to file these charges with the ludicrous and unsubstantiated accusation of “insult”, he was indirectly involved in many prosecutions against Gezi protesters, simply because they had also criticised him on Facebook or Twitter.⁹

Among the many suits¹⁰ Erdoğan filed was one against Levent Pişkin, an openly gay lawyer and activist based in Istanbul. The incident followed a tweet by Erdoğan that said: “If being Alevi¹¹ means to love Prophet Ali, then I am a perfect Alevi” (a statement aimed at rejecting the accusations of the Turkish government’s discriminatory practices against Alevis in the country). As Erdoğan has been found to resort to authoritative rhetoric quite often, Pişkin tweeted a tongue-in-cheek response: “I’m expecting from Erdoğan to say ‘I am a perfect queer, you cannot teach me how to be a queer.’ Kisses. #LGBTinconstitution”.¹² Since Erdoğan interpreted “queer” as an insult, he filed a lawsuit using article 125 of the Turkish Criminal Code against Pişkin, claiming compensation for non-pecuniary damages. Legal proceedings ordered Pişkin to pay 1,500 TL (approximately USD 520) to Erdoğan.¹³

Before this, Erdoğan filed a similar lawsuit against columnist Hakan Demir, who mockingly commented on Twitter in response to a claim made on repeated occasions by then prime minister Erdoğan during the Gezi protests: “I am the primary environmentalist, we are not going to learn how to be environmentalists from these [Gezi protesters], we have planted 3 billion trees”. On 30 June 2013, against the backdrop of both the Gezi protests and a gay pride protest that took place in Istanbul, Demir tweeted: “We expect a statement from the Prime Minister saying: ‘We are not going to learn how to be a homosexual from these people; I am the primary homosexual; I planted 3 billion homosexuals’”. Demir was accused by Erdoğan of resorting to “heavy insult and [using a] shameful figure of speech” in his capacity as a publicly known person. Nevertheless, unlike Pişkin, Demir was not found guilty by the court. The court found he had exercised his right to free speech.¹⁴

Conclusions

The three examples illustrate how the state’s approach of “doing and not doing” is designed to politically oppress and intimidate potential dissent. The Pişkin case is a good example of how the right to access justice can be abused by people in power to suppress online freedom of expression and the right to choose sexual orientation. Legal codes have no standard application and how they are applied changes case by case, usually in favour of the people in power, or those who hold traditional hetero-normative moral values. This, with its direct link to self-censorship, should be read as a new form of censorship.

Action steps

The following advocacy steps are suggested for civil society in Turkey:

- Article 10 of the Turkish Constitution should be amended to constitutionally protect the right to sexual orientation and gender identity.
- As advised by the Yogyakarta Principles, the UN,¹⁵ and European Union recommendations,¹⁶ the Turkish state should amend the relevant

9 Anadolu Ajansı. (2014, 21 April). Erdoğan İzmir’deki “twitter davası”na müdahil oldu. www.aa.com.tr/tr/turkiye/316344-basbakan-erdogan-izmirdeki-quot-twitter-davasi-quot-na-mudahil-oldu

10 According to an online media report, President Erdoğan filed 67 lawsuits from December 2014 to March 2015: <https://line.do/tr/son-uc-aydaki-cumhurbaskanina-hakaret-davalari/e6m/vertical>

11 Alevism is a branch of Islam whose followers are found in Turkey but are a significantly minority group compared to the predominant Sunni branch.

12 Tahaoglu, C. (2014, 29 August). Newly-Elected President Sues LGBTI Activist. *Bianet*. www.bianet.org/english/gender/158200-newly-elected-president-sues-lgbti-activist

13 Soylemez, A. (2014, 18 November). Columnist Acquits From Erdoğan’s “Queer” Complaint. *Bianet*. www.bianet.org/english/gender/160052-columnist-acquits-from-erdogan-s-queer-complaint

14 Cumhuriyet. (2014, 18 November). Erdoğan’ın “Eşcinsel Davasında” beraat. www.cumhuriyet.com.tr/haber/turkiye/143307/Erdogan_in_Escinsel_Davasinda_beraat.html#

15 See the UNESCO page dedicated to the internet and freedom of expression: www.unesco.org/new/en/communication-and-information/freedom-of-expression/freedom-of-expression-on-the-internet

16 See the EU 2014 Progress Report on Turkey: avrupa.info.tr/resource-centre/news-archive/news-single-view/article/the-2014-progress-report-on-turkey-is-published.html

legislation and enact new legislation in order to explicitly protect the right to gender identity, sexual orientation and gender expression on online platforms.

- Law 5651 should be amended to protect freedom of expression online, and to ensure that any blocking of websites, IP addresses, ports, network protocols or social networks is in accordance with international standards.¹⁷
- Article 216/2¹⁸ of the Penal Code should be reformed to bring it in line with article 17 of the International Convention on Civil and Political Rights (ICCPR), article 4 of the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence, judgments of the European Court of Human Rights and the Constitutional Court.
- All legal and public actors, but especially public prosecutors, judges, relevant public authorities and bureaucrats, should be trained on how to stop any sort of online violence against sexual expression and identities.
- The Turkish state should collaborate with national and international NGOs fighting for online freedoms, by raising awareness online, and running campaigns, conferences and workshops.

¹⁷ ARTICLE 19. (2014, 3 December). Statement on freedom of expression in Turkey UPR pre-session, December 2014. www.article19.org/resources.php/resource/37833/en/statement-on-freedom-of-expression-in-turkey-upr-pre-session,-december-2014

¹⁸ www.yogyakartaprinciples.org

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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2015 Report

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