

Restrictions on the Internet Freedom in Turkey

Siska Katalin

Faculty of Law, University of Debrecen, Hungary

Email : siska.katalin@law.unideb.hu

ABSTRACT

Turkey's Internet has 42.3 million active users and holds a 'Not Free' ranking in Freedom House's index. The Turkish Government has constantly blocked websites like Facebook, Twitter, YouTube, and Wikipedia. According to Twitter's transparency report, Turkey leads in social media censorship. Reporters Without Borders ranked Turkey 149th out of over 180 countries, between Mexico and DR Congo, with a score of 44.16. In my study, I summarize the legislative amendments of recent years that apply to internet regulation, with particular regard to those rules that allow the restriction of internet freedom. I pay special attention to the institutional changes that followed these amendments.

Keywords: *Human Rights; Internet freedom; National security; Public order; Republic of Turkey.*

Introduction

The Turkish Criminal Code allows the Government to block or remove content for reasons of national security or protecting public order if there are reasonable suspicions that relevant law is being violated, especially violating the founder of the Republic of Turkey, Mustafa Kemal Atatürk, or insulting the current President. The law also allows people who find that a website has violated their privacy rights to ask the regulatory body to order Internet Service Providers (ISPs) to remove the content. The leaders of the Government, including the President, use an apparatus to monitor Internet content continuously and to initiate prosecutions against persons who offend them.¹

According to Freedom House's report, the Government is increasingly restricting access to the Internet and blocking certain online content that criticizes government policies. Evidence shows that the Government monitors private online communications with vague legal reasons and authority. The Freedom House's report, Freedom on the Net 2020: The Pandemic's Digital Shadow, noted that the Government has monitored, harassed, arrested, and detained journalists, activists, and bloggers for their legal online activities, especially during the COVID-19 pandemic.²

¹Internet bans in Turkey. asylegal.com, <https://www.asylegal.com/internet-bans-in-turkey/2019.oktöber> (Access: 10 March 2022.)

²<https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow> (Access: March 10, 2022.)

In Turkey, Internet regulation is primarily regulated by the Electronic Communications Act (ECL) and The Law Numbered 5651 on the Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (hereafter 'Internet Law'), so-called Internet Law or Turkish social media Law.³ According to the law, the National Assembly and the Government have the right to limit Internet freedom through the supervision of the Ministry of Justice. The law stipulates that the authorities can access internet users' data for national security, public order, health protection, and the protection of decency or to prevent crime. The law also establishes the Information and Communication Technology Authority (Turkish: Bilgi Teknolojileri ve İletişim Kurumu/BTK)⁴, which is responsible for enforcing website restriction orders. The authority can block websites that threaten privacy or publish discriminatory or offensive content without a court decision. The law also obliges Internet service providers to keep data on the activities of Internet users for two years and to make them available to the authorities upon request without notifying the affected parties. The judiciary's task was to inform the content providers about the prescribed restrictions.⁵

Results and Analysis

In Turkey, even before the law was enacted, it was easy to stop the operation of websites with a court decision. However, now, this is no longer necessary. Access to WordPress, DailyMotion, the video-sharing portal Vimeo, and YouTube was blocked in Turkey for two years before 2010. During the series of protests that erupted over the fate of Gezi Park in Istanbul, Erdogan specifically accused Twitter, used by the protesters to mobilize, of inciting the riots. Because of the restrictions, the Internet giant Google mentioned Turkey and China as some of the powers that censor the World Wide Web the most.⁶

The government ministers are entitled to demand that internet service providers remove offensive content or block objectionable websites within four hours. In 2018, the Turkish Parliament passed a law that empowered the national broadcasting media regulatory authority, the Broadcasting Service Council (RTÜK), to monitor and regulate internet services. The

³ Turkish Internet Law. <https://mbkaya.com/turkish-internet-law/> (Access: April 09, 2023.)

⁴ <https://www.icta.mu>

⁵ Gülcin Balamir Coskun: Turkey's New Internet Law and Its Effects on Freedom of Media.2021.07.12. <https://www.resetdoc.org/story/turkey-internet-law-freedom-media/> (Accessed: March 10, 2022.)

⁶ Why Turkey's Regulators Became Such a Problem for Google. NY Times, 2021.07.29. <https://www.nytimes.com/2021/07/29/technology/google-turkey-regulators.html> (Accessed: April 09, 2023.)

President appoints the President, vice president, and office members.⁷ In the event of a violation, the regulatory body (RTÜK)⁸ Must notify the court within 24 hours, which will decide within 48 hours. The entire website may be blocked if it is impossible to remove individual content within a specified time. ISP administrators can be jailed for six months to two years or fined between 50,000 and 500,000 lire (\$6,400 to \$64,000) if they fail to comply with the court order.⁹

In July 2021, Parliament amended the Act on the Regulation of Online Social Media Providers. According to this amendment, starting in October 2021, social media companies with more than one million hits per day must establish legal representation in Turkey, have a Turkish citizenship representative authorized to receive and respond to administrative orders and store national user data. Failure to appoint legal representation entails severe sanctions, starting with a fine of up to 40 million lire (approx. 690 M HUF), a ban on advertising at the company, and a bandwidth restriction of up to 90 percent. The law also regulates content removal and requires social media companies to respond to content removal requests within 48 hours in the case of individuals and within 24 hours in the case of court requests or face heavy fines. From June 2021, the law requires the leading social media companies (Facebook, TikTok, Twitter, Instagram) to report every six months and publish statistics on content removal on their websites. Opponents of the law claimed that the procedure was aimed at silencing dissent and stifling online expression. There have also been concerns that representatives of social media companies could be held criminally liable if they do not comply with government requests, and advocates have raised serious privacy concerns over new data storage regulations.¹⁰

⁷ The Economist. Turkey's Government Takes New Powers to Censor the Internet. The Government grants itself more power to control the web. 2018.05.24. <https://www.economist.com/europe/2018/05/24/turkeys-government-takes-new-powers-to-censor-the-internet> (Access: May 10, 2023)

⁸ New Law Reinforces Turkish Government's Control of the Internet Reporters without Borders. RSF. 2018.03.27.) <https://rsf.org/en/new-law-reinforces-turkish-government-s-control-internet> (Access : May 10, 2023)

⁹ How do you check if the website is blocked in Turkey? <https://ntc.party/t/how-to-check-if-the-website-is-blocked-in-turkey/136> (Access: March 10, 2022.)

¹⁰ Ayla Jean Yackley, 2023, Turkey's Social Media Law: A Cautionary Tale. 2021.03.29. <https://www.politico.eu/article/turkeys-social-media-law-a-cautionary-tale/> (Access: March 10, 2023)

In November and December 2020, the Information and Communications Technology Authority fined several social media companies, including Facebook, Twitter, and Instagram, for failing to comply with the law's domestic legal representation requirements.¹¹

The Government requires ISPs, including internet cafes, to use BTK-approved filtering tools that block certain content. Additional internet restrictions will also come into effect in government and university buildings. According to EngelliWeb, an NGO dealing with internet freedom, the Government blocked 61,049 domain names in 2019, bringing the number of blocked sites to 408,494. Seventy percent of the domain names blocked by the Government were eliminated based on the decision of the BTK, which did not require court approval. According to EngelliWeb's report, 5,599 news articles were blocked in 2019, and news providers removed 3,528 pieces during the blocking.¹²

In January 2020, following the December 2019 court decision, the Government lifted the ban on Wikipedia, which, according to the Constitutional Court, was a violation of freedom of expression. The Government ordered the ban in April 2017 based on “national security concerns” after Wikipedia refused to remove pages that the Government found offensive, including references to its links to terrorists and Syrian militants.¹³ The legal background to the ban was a law that allowed the Government to block websites it deemed to threaten national security.¹⁴ Turkey blocked YouTube and Twitter in 2014, but the Constitutional Court declared those bans unconstitutional.

According to a report by the Stockholm Center for Freedom - based on Twitter's internal transparency report - in the last six months of 2019, the company received 5,195 court orders and other legal requests from authorities to remove content.¹⁵ Turkey was responsible for 19 percent of legal claims against Twitter.¹⁶

According to a statement from the Cybercrime Department of the Police Headquarters, on the day after the earthquake of February 06, 2023, in which more than 41,000 people died,

¹¹ Arife Yildiz Unal: Turkey Slaps Social Media Platform 3.8 M USD Fines. 2020.11.12. <https://www.aa.com.tr/en/economy/turkey-slaps-social-media-platforms-38m-fines/2073502> (Access: March 10, 2023)

¹² Engelliweb 2019: An Iceberg of Unseen Internet Censorship in Turkey. <https://ifade.org.tr/en/press-releases-announcements/engelliweb-2019/> (Access: March 10, 2023)

¹³ Mihir Zaveri: Turkey's Ban on Wikipedia Is Unconstitutional, Court Says. 2019. 12.26. The New York Times. <https://www.nytimes.com/2019/12/26/world/europe/wikipedia-ban-turkey.html> (Access: April 09, 2023)

¹⁴ Turkey's ban on Wikipedia is Unconstitutional, Court says. NY Times. <https://www.nytimes.com/2019/12/26/world/europe/wikipedia-ban-turkey.html> (Access: May 10, 2023.)

¹⁵ Turkey made the highest number of removal requests to Twitter in 2019; the report shows 2020.07.06. <https://stockholmcf.org/turkey-made-highest-number-of-removal-requests-to-twitter-in-2019-report-shows/> (Access: May 10, 2023.)

¹⁶ David Gauthier-Villars: Twitter, Facebook Fined by Turkey for Breaching Law Aimed at Curbing Dissent. 2020.11.04. The Wall Street Journal. <https://www.wsj.com/articles/twitter-facebook-fined-by-turkey-for-breaching-law-aimed-at-curbing-dissent-11604501440> (Access: March 10, 2023.)

Turkish police arrested 24 people for "provocative" social media posts, legal proceedings were initiated against 441 users, 129 people was detained by the instructions received from the General Prosecutor's Office. Those arrested posted provocative posts on social media about earthquakes to create fear and panic among citizens, police said.¹⁷

Following the first days of the disaster, the police targeted social media users, journalists, and experts who were critical of the Government's slow and ineffective response. Journalists' unions reported several incidents of police preventing journalists from writing in the earthquake zone. "We are monitoring and documenting increasing threats, violence, and censorship of journalists reporting on earthquakes and their aftermath," said MLSA, the Media and Law Studies Association, a leading NGO that monitors media freedom violations.¹⁸ The actual death toll is "at least three to four, maybe five times worse than the reported figures. We have to rebuild provinces," said Sirnak provincial governor Osman Bilgin, who was in charge of earthquake relief in Gaziantep's Nurdagi district.¹⁹ The Government previously blocked most access to Twitter Tiktok. It slowed the Internet in the country as the public became angry over President Recep Tayyip Erdogan's Government's response to the crisis. However, access to social media networks and the Internet was fully restored a day after the move was heavily criticized. Critics accused the Government of cutting off a key source of communication for victims, survivors, and relatives of aid workers.²⁰

On October 13, 2022, President Erdoğan approved the amendment of the Social Media Law (Law No. 7418)²¹, the so-called censorship law that imposes penalties, including up to three years in prison, for people found to have posted fake news and misinformation on social

¹⁷ Devastating twin earthquakes shook southern and southeastern Turkey on February 06, measuring 7.9 and 7.7 on the Richter scale. According to Turkey's Disaster and Emergency Management Agency, AFAD, more than 41,000 people have now died, and more than 108,000 others have been injured, in addition to leaving millions more homeless. Since then, at least 2 million people have gone to the area around the earthquake for safer places. Hamri- Firat Buyuk: Turkey Arrests 24 for 'Provocative' Social Media Posts on Quakes. 2023.02.20. <https://balkaninsight.com/2023/02/20/turkey-arrests-24-for-provocative-social-media-posts-on-quakes/> (Access: May 10, 2023.)

¹⁸ 'Journalism and Press Freedom in the Disaster Area': MLSA and Amnesty International hold World Press Freedom Day panel. 2023.05.03. <https://www.mlsaturkey.com/en/journalism-and-press-freedom-in-the-disaster-area-mlsa-and-amnesty-international-hold-world-press-freedom-day-panel/> (Access: May 10, 2023.)

¹⁹ Governor in Earthquake Zone Says Death Toll Could be 5 Times Higher than Official Figure. Turkish Minute. 2023.02.20. <https://www.turkishminute.com/2023/02/20/governor-earthquake-zone-say-death-toll-could-be-5-times-higher-than-official-figure/> (Access: May 10, 2023.)

²⁰ Turkey Arrests 24 for 'Provocative' Social Media Posts on Quakes. February 20, 2023. <https://balkaninsight.com/2023/02/20/turkey-arrests-24-for-provocative-social-media-posts-on-quakes/> (Access: April 29, 2023.)

²¹ <https://www.legal500.com/developments/thought-leadership/law-no-7418-on-amendment-of-press-law-and-certain-laws-is-published/> (Access: May 10, 2023)

media.²² Thus, critical reporting, statements, or comments can be prosecuted, even if they in no way support violence.²³ According to the new legislation, anyone who criticizes the Government on online platforms can be prosecuted on charges of disinformation. In doing so, the new rule forces tech companies to become an apparatus of state censorship. Article 29 of the law²⁴ caused the most concerns regarding freedom of expression. According to the law, those who "spread false information about the internal and external security, public order and general health of the country with the sole intention of causing anxiety, fear or panic in a way that violates public peace and endangers public order" can expect a prison sentence of one to three years. The penalty can be increased by half if the identity of the accused was concealed at the time of distribution or if the crime was committed in the context of organized criminal activity. The vague and broadly worded provision, which allows prosecutors and courts already under politically solid control to define what constitutes false information and anxiety-provoking intent, seriously threatens freedom of expression and puts anyone who criticizes the Government online at risk. The Council of Europe's expert legal body, the Venice Commission, issued an urgent opinion, according to which the new crime threatens freedom of expression.²⁵

Human Rights Watch reports²⁶ The timing of the legislation, months before the 2023 presidential and parliamentary elections, could raise concerns that the Government may want to stifle online reporting and commentary critical of the Erdogan government ahead of the polls. According to Sarah Clarke, the Head of Europe and Central Asia, the new legislation marks a draconian chapter ahead of the 2023 election by increasing the Government's arsenal to enforce censorship and tighten control over social media and independent online news sites. The organization strongly objected to Article 19 because tech companies face severe

²² Reuters.com Turkey's Parliament Adopts Media Law Jailing Those Spreading 'Disinformation.' October 24, 2022. <https://www.reuters.com/world/middle-east/law-that-would-jail-those-spreading-disinformation-progresses-turkey-2022-10-13/> (Access: 2023. 05. 02.), Turkey: Dangerous, Dystopian New Legal Amendments.

²³ Stockholm Center for Freedom. Erdoğan Signs Controversial Media Law Critics They Will Stifle Free Speech. October 18, 2022. <https://stockholmcf.org/erdogan-signs-controversial-media-law-critics-say-will-stifle-free-speech/> (Access: May 02, 2023.)

²⁴ Text in Turkish: <https://www.resmigazete.gov.tr/eskiler/2022/10/20221018-1.htm> (Access: May 02, 2023)

²⁵ Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Draft Amendments to the Penal Code Regarding the Provision of "False or Misleading Information." 2022.10.07. Council of Europe, European Commission for Democracy through Law. Venice Commission. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2022\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2022)032-e) (Access: May 10, 2023.)

²⁶ Human Rights Watch. Questions and Answers. Turkey's Control of the Internet and the Upcoming Election. 2023.05.10. <https://www.hrw.org/news/2023/05/10/questions-and-answers-turkeys-control-internet-and-upcoming-election> (Access: May 10, 2023.)

penalties for failing to comply with requests to remove user data and content. The new law forces tech companies to use almost total censorship.²⁷

According to the Committee to Protect Journalists (CPJ), in Turkey in 2022, close to the elections, the number of imprisoned journalists has increased significantly, and the Government is using the media law as an additional tool to prosecute journalists. In 2022, the number of incarcerated journalists rose from 18 to 40, and 25 Kurdish journalists were arrested on terrorism charges.²⁸ According to the 2022 World Press Freedom Index published by Reporters without Borders (RSF), Turkey was ranked 149 out of 180 countries.²⁹

Conclusion

The legislative amendment in criminal code in recent years shows that internet regulations, particularly in access to the Internet and blocking certain online content, restrict internet freedom and freedom of expression, especially after the change of institution following the amendment.

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²⁸ Stockholm Center for Freedom. 2022.12.15. Record Number of Jailed Journalists Globally, Turkey among Top Offenders: CPJ, <https://stockholmcf.org/record-number-of-jailed-journalists-globally-turkey-among-top-offenders-cpj/> (Access: May 10, 2023)

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