

Sorry, That Page Doesn't Exist!: Confounding the Value of Privacy with Access to Information in Turkey

FAZLIOGLU

The recent ban imposed by the government of Turkey on Twitter, enacted on March 20, 2014, followed by a ban on YouTube just days prior to the local elections, have hindered the fundamental rights of access to information and freedom of expression. Yet, restricting access to the Internet in Turkey is not without precedent. The number of banned websites currently stands at over 40,000.¹ These politically motivated decisions to block access to social media websites along with recent legislative changes have caused heightened concerns over fundamental rights and freedoms.

The pace at which the government has blocked access to websites increased with the Turkish Parliament's adoption in 2007 of the "Internet Law."² Istanbul Bilgi University law professor Yaman Akdeniz argues that, with the enactment of this law, Turkey has become the "land of Internet censorship."³ As another leading scholar, Ozgur Uckan, has observed, the vaguely defined categories of illegal content in the law have made it easy for the government to censor various websites promoting legitimate activism, LGBT issues, and political opposition.⁴

Recent legislation has given the government even greater powers to block access to websites and online content. Amendments to the Internet Law, shuttled through the Parliament

¹ ENGELLIWEB, <http://engelliweb.com> (last visited Mar. 30, 2014).

² Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting, Law No.:5651 Official Gazette, May 23, 2007 No.26530, enacted: May 4, 2007.

³ Mohammad Fakhar Zaman, *Fighting Political Internet Censorship in Turkey: One Site Won Back, 10,000 to Go*, INDEX ON CENSORSHIP (Mar. 4, 2011), <http://www.indexoncensorship.org/2011/03/fighting-political-internet-censorship-in-turkey-one-site-won-back-10000-to-go/>.

⁴ Ozgur Uckan, *Yeni 5651 Internet Sansur ve Gozetimine, Kaba Guce Karsi Matematik* [The New 5651 Internet Censorship and Surveillance, Mathematics against Brute Force], EVRENSEL (Jan. 19, 2014), <http://www.evrensel.net/haber/76657/yeni-5651-internet-sansur-ve-gozetimine-kaba-guce-karsi-matematik.html#.UzHZonebEuE>.

on February 5, 2014, stirred controversy by expanding the grounds for restricting websites.⁵

These amendments increased the Telecommunications Communication Presidency's (TIB) already problematic authority⁶ to remove content deemed to infringe privacy,⁷ while reducing judicial oversight of the blocking decisions.⁸

During a political rally on March 20, 2014, Prime Minister Recep Tayyip Erdogan dismissed the negative reactions of the public and international community, claiming he would “wipe out” or “eradicate” all platforms like Twitter and YouTube.⁹ These remarks came days after audio recordings that implicated Erdogan and his inner circle in a corruption scandal were circulated on social media.¹⁰ Erdogan refuted the authenticity of the audio recordings, adding, “Freedom does not mean the right to intrude on someone’s privacy.”¹¹

Hours after Erdogan’s speech, access to Twitter was restricted.¹² TIB imposed the ban on the grounds that Twitter failed to respond to a court order to remove content alleged to violate

⁵ Andrea Peterson, *Is the Turkish Twitter Ban Even Legal, Experts Say No*, THE WASHINGTON POST (Mar. 24, 2014), <http://www.washingtonpost.com/blogs/the-switch/wp/2014/03/24/is-the-turkish-twitter-ban-even-legal-experts-say-no/>.

⁶ The European Court of Human Rights (ECHR) observed TIB’s expansive authority over the judiciary in *Ahmet Yildirim v. Turkey*. The ECHR contended this derives from the shortcomings of the Internet Law, which did not set forth obligations for the courts to analyze ‘wholesale blocking’. Press Release, European Court of Human Rights, *Restriction of Internet Access without a Strict Legal Framework Regulating the Scope of the Ban and Affording the Guarantee of Judicial Review to Prevent Possible Abuses Amounts to a Violation of Freedom of Expression* (Dec. 18, 2012), [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4202780-4985142#%22itemid%22:\[%22003-4202780-4985142%22\]](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4202780-4985142#%22itemid%22:[%22003-4202780-4985142%22]).

⁷ #BBCtrending: *Half a Million ‘Internet Censorship’ Tweets in Turkey*, BBC NEWS (Feb. 7, 2013), <http://www.bbc.com/news/blogs-trending-26089517>.

⁸ *Turkey: President Gul: Veto Restrictive Internet Law Changes*, AMNESTY INT’L (Feb. 12, 2014), <http://www.amnesty.org/en/library/asset/EUR44/002/2014/en/7bda1153-98cf-4146-aaf4-851952250945/eur440022014en.pdf>.

⁹ Eyder Peralta, *“We Will Eradicate Twitter,” Turkey’s Prime Minister Vows*, NPR (Mar. 20, 2014), <http://www.npr.org/blogs/thetwo-way/2014/03/20/292095106/turkeys-recep-erdogan-well-eradicate-twitter>.

¹⁰ Sebnem Arsu & Dan Bilefsky, *In Turkey, Twitter Roars After Effort to Block It*, N.Y. TIMES (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/world/europe/turks-seek-to-challenge-twitter-ban.html>.

¹¹ Fulya Ozerkan, *Turkey Blocks Twitter after PM’s Threat to ‘Wipe Out’ Service*, YAHOO NEWS (Mar. 20, 2014), <http://news.yahoo.com/turkey-pm-threatens-wipe-twitter-191202049.html>.

¹² *Turkey Blocks Access to Twitter Website*, AL JAZEERA (Mar. 21, 2014), <http://www.aljazeera.com/news/europe/2014/03/turks-report-widespread-twitter-outages-20143210429682465.html>.

personal privacy.¹³ Twitter brought a legal challenge against the court order, expressing concern that the content in question had accused a former minister of corruption.¹⁴

Users in Turkey, however, were able to circumvent the ban by changing the Domain Name System (DNS) settings on their devices.¹⁵ Turkish Twitter users sent 1.2 million tweets the night the ban was imposed,¹⁶ elevating the hashtags #Twitterisblockedinturkey, #occupytwitter, #turkeyblockedtwitter, and #dictatorerdogan to the list of global trending topics.¹⁷ Turkey's efforts to tighten the block by implementing it at the IP level failed as people got around it by using Virtual Private Networks (VPNs) or anonymizing tools such as Tor.¹⁸

Various groups including lawyers, journalists, and opposition parties filed complaints to overturn the ban on the grounds that it was illegal and unconstitutional.¹⁹ An administrative court in Ankara issued a temporary injunction instructing TIB to restore access,²⁰ yet Turkish authorities have not restored access to Twitter.²¹

Just one day after the Ankara court's decision about Twitter, the Turkish government blocked YouTube in response to a leaked conversation between the foreign minister, the head of

¹³ Sebnem Arsu, *Turkish Court Overturns the Government's Ban on Twitter*, N.Y. TIMES (Mar. 26, 2014), http://www.nytimes.com/2014/03/27/world/middleeast/turkey-twitter.html?smid=tw-share&_r=0.

¹⁴ Vijaya Gadde, *Challenging the Access Ban in Turkey*, TWITTER BLOG (Mar. 26, 2014), <https://blog.twitter.com/2014/challenging-the-access-ban-in-turkey>.

¹⁵ *Turkey Internet Activists warn the Government 'Cannot Stop Us'*, DEUTSCHE WELLE (Jan. 27, 2014), <http://www.dw.de/turkey-internet-activists-warn-the-government-cannot-stop-us/a-17389654>.

¹⁶ *1.2 Million Tweets Sent in Turkey, Despite Ban*, MASHABLE (Mar. 21, 2014), <http://mashable.com/2014/03/21/turkey-twitter/#:eyJzIjoidCIslmkiOiJfZGw0ZmQ0eTR4NnJ3b2hlN3EwNzYyaDg1X>.

¹⁷ Sebnem Arsu & Dan Bilefsky, *In Turkey, Twitter Roars After Effort to Block It*, N.Y. TIMES (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/world/europe/turks-seek-to-challenge-twitter-ban.html>.

¹⁸ Lorenzo Franceschi-Bicchieri, *Turkey Blocks Access to YouTube*, MASHABLE (Mar. 27, 2014), <http://mashable.com/2014/03/27/turkey-blocks-youtube-access/>.

¹⁹ Suzan Frazer, *Turkish Court Orders Halt to Twitter Ban*, ABC NEWS (Mar. 26, 2014), <http://abcnews.go.com/Technology/wireStory/report-turkish-court-orders-halt-twitter-ban-23061793>.

²⁰ *Court in Turkey Moves to Suspend Ban on Twitter*, BBC NEWS (Mar. 26, 2014), <http://www.bbc.com/news/technology-26749374>.

²¹ Turkish authorities apparently have thirty days to implement this injunction. Jessica Guynn, *Twitter Gets Court Victory in Turkey, but Ban Not Lifted*, L.A. TIMES (Mar. 28, 2014), <http://www.latimes.com/business/technology/la-fi-tn-twitter-gets-court-victory-in-turkey-but-ban-not-lifted-20140328,0,850405.story#ixzz2xNqtp2BR>.

the National Intelligence Agency, and various military officials allegedly discussing the possibility of going to war with Syria.²²

More attention should be given to questions on how to balance the interests of national security, privacy, and data protection with the rights of individuals to access information and engage in online political expression in Turkey. The relationship between social media platforms and “privacy” concerns should be subject to further analysis, respecting the public’s interest in the availability of political information. Communication and information flow through social media channels is a key concern for users, and significant restrictions to access just before local elections raise concerns about the freedom of political expression.

Importantly, Turkey does not have any comprehensive laws relating to privacy. The draft law regarding the Protection of the Personal Data has been stalled since 2003. Though it was drafted in alignment with the European Union’s Data Protection Directive and marked an effort to keep up with the information age, its privacy protections are already outdated.

Privacy protection cannot be served by disregarding the values of access to information and freedom of expression. According privacy a higher place on the information policy agenda in Turkey is a key challenge, but in order to effectively protect privacy, the discussions should first revisit the problematic aspects of the Internet Law. As demonstrated by these recent episodes, the widespread availability of circumventing technologies and the ease of information distribution has made blocking access to websites a highly ineffective policy tool. Therefore, these ineffective and disproportionate measures should be abandoned, and more effort should be placed on managing the delicate boundaries of fundamental freedoms like the right to privacy,

²² Gul Tuysuz & Ivan Watson, *Turkey Blocks YouTube Days After Twitter Crackdown*, CNN (Mar. 28, 2014), <http://www.cnn.com/2014/03/27/world/europe/turkey-youtube-blocked>.

access to information, and freedom of expression, or else the government will risk undermining these important values.