

## **Turkey's New Internet Law and Its Effects on Freedom of Media**

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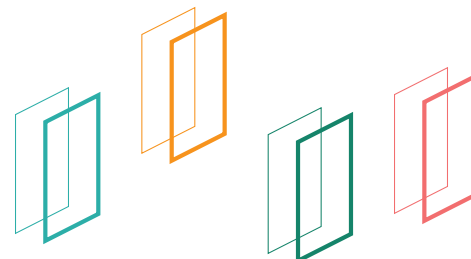
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## Turkey's New Internet Law and Its Effects on Freedom of Media<sup>1</sup>

The erosion of media freedom is not an entirely new phenomenon in Turkey. It first became apparent during the Gezi protests when mass media outlets were unable to cover either the protests spreading from Istanbul across the country nor the increasing government-sanctioned police violence in response. The Gezi protests revealed two important phenomena: First, the public became aware that for a long time, mainstream news and media channels had been broadcasting a kind of government-controlled Truman Show that made access to even relatively unbiased information impossible. Second, the AKP government realised that unrestricted public access to social media platforms and internet technologies threatened their hegemonic hold over the dissemination of information. Especially during the protests, young people deployed various creative tools provided by social media platforms to increase their mobilisational and organisational capacities. These heightened capabilities posed a considerable risk to the AKP, whose established control over traditional media had not yet extended to the powers of resistance available through social media. For this reason, it is not surprising that Erdogan repeatedly described Twitter as a “scourge” and condemns social media as “the worst menace to society”. (Vick 2014) After Youtube enabled widespread and unfettered coverage of the 2013 corruption scandal involving cabinet ministers and their relatives, the government acted decisively to revise its internet policy and amend the related legal documents with greater urgency. Similar to other authoritarian governments, the AKP is seeking to implement more targeted legal restrictions as well as extralegal methods

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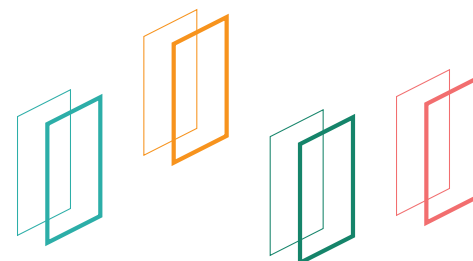


to control internet and social media access. The approved July 2020 amendments should therefore be read and analysed as further steps – and probably not the last steps – of this crusade to control cyberspace. To understand the aims and possible effects of these amendments, it is necessary to look back at the previous legal framework concerning the internet and social media and thereby reveal how the AKP government has built, step by step, a digital censorship system.

#### *First Internet-Specific Legislation: Law No. 5651*

From the first connection on 12 April 1993 until 2007, the internet, like in many countries, was free in Turkey from a systematic legal approach. During this period, courts issued several blocking orders by referring to clauses of different laws. The Turkish government passed its first internet-specific legislation in 2007: Law No. 5651, Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications. This law, briefly known as the Internet Law, defined important concepts related to internet governance, provided a list of ‘internet’ crimes and established the legal framework for banning websites. Law No. 5651 established the Telecommunications Communication Presidency (TIB) as the organisation responsible for monitoring internet content and executing blocking orders issued by judges and public prosecutors. The law also provided a catalogue of crimes with reference to the provisions of the Turkish Penal Code (TCK) and other related laws.

The Gezi protests and the corruption scandals showed that the

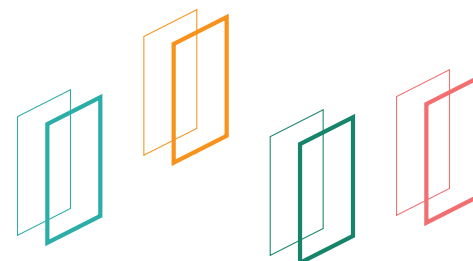


government's legal framework was not able to control news flows from the internet and social media. In this context, the first amendment to the Internet Law was made on 6 February 2014. Although the government justified the amendment as “protecting the esteem and honour of individuals against defamation on the Internet” (Akgül and Kirlidog 2015:11), the main aim was to block websites broadcasting information about corruption scandals. This amendment enabled the TIB to block websites without seeking a court order ruling. Additionally, it forced internet providers to store data on web users' activities for two years and make them available to authorities when requested.

After Erdoğan was elected President, the Turkish Parliament approved an omnibus bill, Law 6639 which amended the Internet Law. The amendment gave the Prime Minister or a relevant Cabinet minister the authority to either ban a website or have specific content removed for a wide range of reasons. At the same time, the law dictated that the TIB would be able to block access to the whole website if problematic content was not removed within four hours after a request from the TIB.

### *The Coup Attempt and State of Emergency*

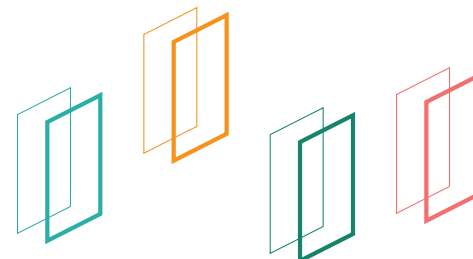
The coup attempt on 15 July 2016 and the following two-year state of emergency had tragic repercussions on both socio-political life and the media environment in Turkey. The government structured its repressive rule through decree laws and broadening media censorship. In two years, a total of fifty-three newspapers, twenty magazines, sixteen TV channels,



twenty-four radio stations and six news agencies were shut down through state of emergency decrees. (Duvar 2020) The increasing incidence of reporters imprisoned or charged with crimes against the state galvanised international organisations defending media freedom to launch an online campaign with the hashtag: #FreeTurkeyJournalists.

During this period of suffocating political climate, three decree laws had direct impact on internet and communication technologies. The Decree Law No. 670 lists, in four annexed documents, persons who “have membership, affiliation or connection to the Fetullah Terrorist Organization (FETÖ/PDY)” and that as it pertains to these persons, “all kinds of information and documents including those related to interception of communication through telecommunication [...] shall be provided by all the public and private institutions and organisations without delay.” (Article 3)

The Decree Law No. 671 dissolves the TIB – which allegedly had been under “the control of Gülenists” (Yetkin 2014)- and transfers all its powers to the Information and Communication Technologies Authority (BTK - Bilgi Teknolojileri ve İletişim Kurumu). Article 25 paragraph 11 of this decree states that “The Authority may receive information, documentation, data, and records from the relevant authorities within the scope of its duty; it may benefit from archives, electronic data processing centres and the communication infrastructure and may contact with them and may take other necessary measures or have them taken in this regard.” (Decree Law 671) The same article also states that any company that provides digital communications, including cable or cellular network providers, is

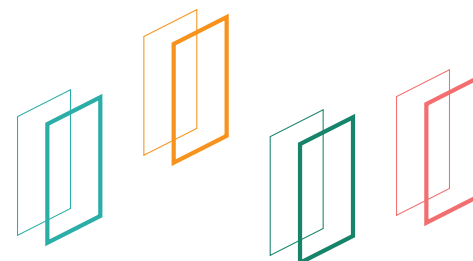


obliged to respond to the government's orders within two hours.

Lastly, Article 27 of the Decree Law No. 680 amends the Law No. 2559 on the Duties and Powers of the Police and authorises the Department of Cybercrimes “to have access to identity information of the Internet subscribers.” (Decree Law 680) The same article obliges internet service and content providers to “communicate the requested information to the relevant police unit established for the purposes of fighting against such crimes.” (Decree Law 680)

At first glance, the amendments to the Internet Law and the clauses of these decrees can seem like legal particulars with outcomes that are difficult to assess. However, they do not exist in a vacuum. From the Anti-Terrorism Law to the Law Amending the Law on State Intelligence Services, the National Intelligence Organisation Law and the Domestic Security Package, different laws and regulations have strengthened the executive branch and given extraordinary powers to the police and prosecutors as agents of the executive.

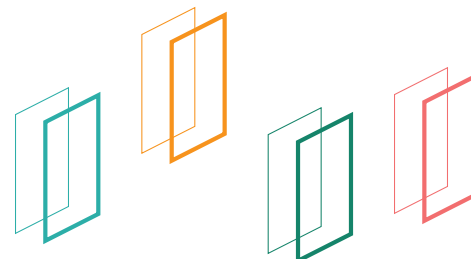
And yet, apparently, these regulations were not enough for President Erdoğan. Using insults directed at his family via Twitter as a pretext, he vowed on 1 July 2020 to further tighten government controls on social media. (Euronews 2020) The Turkish parliament reacted quickly and on 29 July 2020 approved the new Law No. 7253 enforcing stricter monitoring of social media content.



### *July 2020 Amendments and the New Internet Law*

The amendments in Law No. 7253 impose new obligations for content and hosting providers, add port numbers to the monitoring scope of traffic information, and introduce a version of the right to be forgotten. However, the most significant amendment, the supplemental Article 4, concerns social media companies with over one million users per day. Beginning 1 October 2020, the date when the additional Article 4 goes into enforcement, affected international companies must appoint a permanent representative with an office in Turkey who will act as the contact person for the Turkish authority. If they refuse to comply, the Information and Communication Technologies Authority (BTK) is authorised to impose financial fines, which can then be escalated through advertising bans as an additional penalty. If the companies still refuse to register, the BTK can ask the court to slow the bandwidth of the sites to restrict user access. If international companies comply and open offices in Turkey, these offices would be responsible for responding to the requests from the BTK as well as individuals to block or remove content hosted on their platforms that is deemed offensive within forty-eight hours. If the request is rejected, the response should provide the reasons behind the decision. They should also provide biannual reports on the implementation of content removal/access blocking decisions.

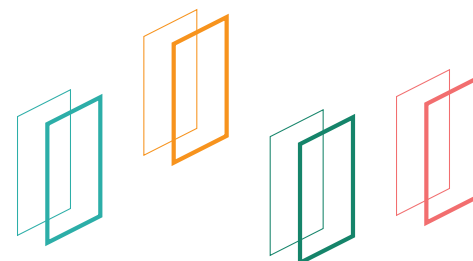
Paragraph 5 of Article 4 also concerns data storage. The amended version of the law forces social network providers (foreign and domestic) to store user data inside Turkey. This makes it easier for the police and



prosecutors to confiscate data about users from tech companies, which raises privacy concerns. Lastly, Paragraph 8 clarifies that if there is a court decision to remove or block content, all social network providers must act in accordance with the order within twenty-four hours of notification. If they fail to do so, they are liable for the indemnification of any damages.

With their high user numbers, Facebook, Twitter, and YouTube have clearly been the main target of the government's legal agenda. Twitter in particular has been effective as a platform where people can obtain unpublished and uncensored information, bypassing the mainstream mass media. The 2019 "Twitter Transparency Report" reveals the tensions between Turkey and Twitter. According to this report, between July and December 2019, Turkish courts submitted five hundred and thirteen content removal requests. Turkey's demands account for nineteen percent of the global legal demands, constituting the third highest share after Japan and Russia. (Twitter Transparency Center 2019) In this context, the recent amendments leave Twitter managers torn between two options: Either they refuse to appoint a permanent representative and face sanctions, or they cooperate with the Turkish government and become collaborators of an authoritarian regime.

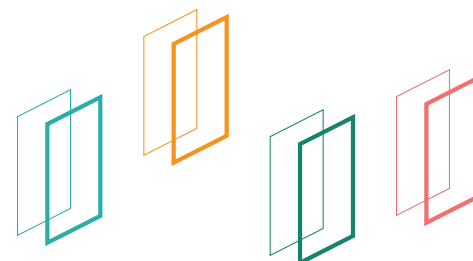
Since 1 October 2020, the BTK has issued all concerned foreign-based social network providers that do not comply with the supplemental Article 4 an initial administrative fine of ten million Turkish lira, followed by a second fine of thirty million Turkish lira. At the beginning of January 2021, in an effort to comply with the new rules and avoid an advertising





ban, YouTube, Tiktok, DailyMotion and Facebook set up a legal entity in Turkey. Although Facebook announced that „they will continue to review and examine the requests coming from the state in line with their principles”, their vulnerability to the government’s censorship demands as well as their potential complicity in rights violations in Turkey have become clear. (Bianet 2021a)

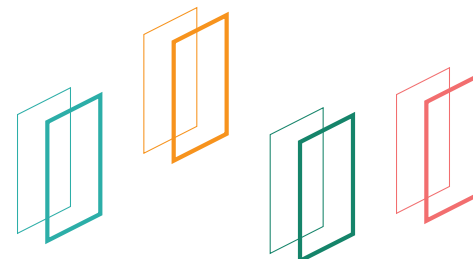
Signaling the third phase of the penal process, the Official Gazette published on 19 January 2021 the BTK’s decision against Pinterest, Twitter, and Periscope to ban advertising on the platforms for not opening a compliance office in the country. According to this decision, if Turkey-based firms breach the ban and publish advertisements with these social media platforms, they will also face legal consequences. The BTK decision aims to deprive these resisting social media platforms of their advertisement revenues. Almost two months later, Twitter (T24 2021) and Pinterest agreed to appoint local representatives in Turkey. Meanwhile, at the end of March, Periscope shut down world widely due to an „unsustainable maintenance-mode state.“ (Kastrenakes 2021) Following Pinterest’s decision, the deputy minister of transport and infrastructure minister, Ömer Fatih Sayan, announced proudly via Twitter that “Thus, there is no social network provider from abroad, whose daily reach is more than 1 million in our country, which has failed to notify that they will be appointing a representative in our country.” (Bianet 2021b) In other words, all global social media companies have complied with the New Internet Law and become more vulnerable vis-à-vis eventual content removal and take-down requests of the Turkish authorities.



### *How Should We Interpret the New Internet Law?*

In Turkey, the freedom of the press has been under attack for years. Because more than ninety percent of Turkey's conventional media is now controlled by conglomerates with close ties to the government, internet and social media platforms appear to be the last hope for access to independent information. A significant number of independent journalists risk bypassing state control to connect with their readers and/or audiences via Twitter and YouTube. From this perspective, as different press freedom organisations underline, the new Internet Law has the potential to raze this remaining small piece of unrestricted public space resisting authoritarian state control.

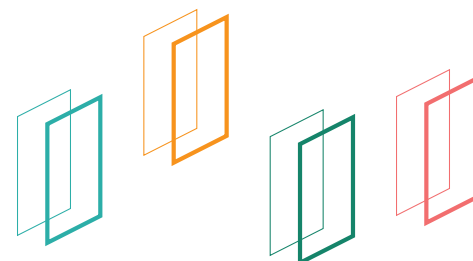
Criticising the restriction and regulation of social media should not be antithetical to criticism of its inherent problems like cyberbullying, disinformation or hate speech, which have escalated to shocking degrees with the development of communication technologies. The government also tried to justify the latest amendments under the guise of counteracting cyberbullying, disinformation, and terrorist propaganda. Almost two months before the latest amendments, Turkey's Presidential Complex published its Guidebook for Social Media Use and warned about the rapid spread of incorrect or 'fake' news across social media platforms. According to this publication, „Turkey's enemies, especially terrorist organizations, aim to spread lies and chaos“ via these platforms. (DW 2020a) Erdoğan has several times accused social media companies of “digital dictatorship and cyberbullying” and said that “these platforms do not suit this nation.



We want to shut down, control [them] by bringing [a bill] to parliament as soon as possible.” (Reuters 2020) Ankara has also argued that the new legislation is based on Germany’s Network Enforcement Act, or NetzDG. (DW 2020b) However, it would be naive to believe that the Internet Law and its recent amendments aim to tackle ‘only’ hate speech and illegal content on social networks. There are at least three fundamental reasons to be sceptical of this justification of the Internet Law:

Firstly, the limits regarding illegal content are very blurry in Turkey. For years, different clauses of the Turkish Penal Code and especially the Anti-Terrorism Law have been highly criticized by the EU and Venice Commission, as these legal documents do not contain definitions of an armed terrorist organisation or the offence of membership. Anyone can be easily declared a ‘terrorist’ if her/his speech criticises the government or Erdogan. The vagueness of these criminal provisions and their arbitrary and broad interpretation form a dystopic legal backdrop. The detainment of thirty-nine Twitter users for allegedly „conducting terror propaganda“ in the first week of February 2021 is an illustrative example of this troubling system. (Duvar 2021)

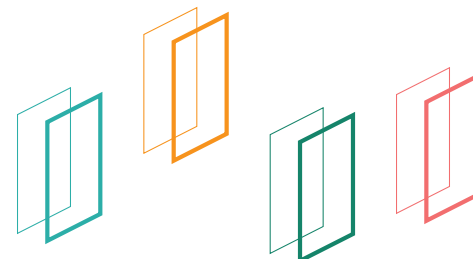
Secondly, the erosion of judicial independence is happening at such a worrisome and threatening level that the commissioner of the Council of Europe regularly warns Turkish authorities to restore judicial independence. Even the most basic principles of law, such as presumption of innocence, no punishment without crime, or the non-retroactivity of offences, have not been respected by courts. Unfortunately, as a



consequence of these two institutional factors, Turkey is still one of the world's largest jailers of journalists.

The third reason is that regulatory bodies like the RTÜK and BDK are also under the strict control of the government. The fact that the RTÜK fined four media outlets critical of the government thirty-six times in one and a half years exemplifies very well the level of control the government holds over these so-called independent agencies. (Bianet 2020) We can expect that the BDK will follow the same path and act as the long arm of the government regarding social media platforms, which obviously threatens the possibility for unrestricted public debate.

In brief, with this legal and political background, it is clear that the latest amendments will provide a flexible tool for the government to target dissidents and plurality in society. The government has laid another brick onto its digital censorship wall. The manner and scope with which the new Internet Law will be enforced remains unclear, but it will inevitably place internet users under enhanced surveillance and strengthen the government's ability to access content. If all of these amendments are seen in the context of the ongoing crisis of judicial independence and the lack of rule of law, it can be definitively concluded that the new Internet Law will weaken the rights to freedom of expression and freedom of media in Turkey.



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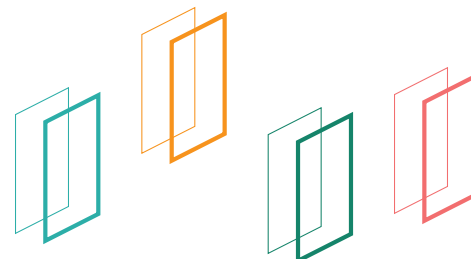
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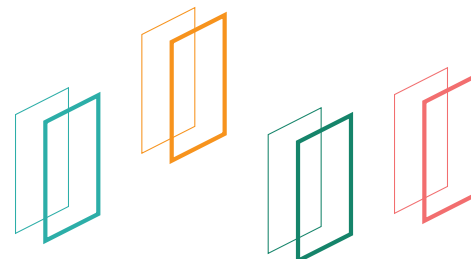
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Gülçin Balamir Coşkun is a senior researcher at the Chair of Comparative Political Science and Political Systems of Eastern Europe and at the Center for Comparative Research on Democracy, the Institute of Social Sciences, Humboldt University Berlin. She was an Einstein Fellow at the same institute until April 2021. She received her undergraduate degree from Galatasaray University and MA degree from University Paris I-Panthéon-Sorbonne. She holds a PhD degree from International Relations Program at Istanbul University. Her research focuses on authoritarianism, media, rule of law, and refugees. Her last article on media capture strategies in Turkey has recently been published in Publizistik.

