



TURKEY

	2012	2013
INTERNET FREEDOM STATUS	PARTLY FREE	PARTLY FREE
Obstacles to Access (0-25)	12	12
Limits on Content (0-35)	17	18
Violations of User Rights (0-40)	17	19
Total (0-100)	46	49

POPULATION: 74.9 million
INTERNET PENETRATION 2012: 45 percent
SOCIAL MEDIA/ICT APPS BLOCKED: Yes
POLITICAL/SOCIAL CONTENT BLOCKED: Yes
BLOGGERS/ICT USERS ARRESTED: Yes
PRESS FREEDOM 2013 STATUS: Partly Free

* 0=most free, 100=least free

KEY DEVELOPMENTS: MAY 2012 – APRIL 2013

- Turkish authorities added several thousand websites to its blocking list, increasing the total to almost 30,000 (See **LIMITS ON CONTENT**).
- Ruling in favor of a Turkish user, the European Court of Human Rights found Turkey in violation of Article 10 of the European Convention on Human Rights for blocking access to the hosting platform Google Sites (see **LIMITS ON CONTENT**).
- Several users received fines, prison time, or suspended sentences for comments made on social media, including renowned pianist Fazil Say. Say was handed a 10-month suspended sentence for insulting religious values on Twitter and will appeal. Meanwhile, a Turkish-Armenian linguist and columnist was handed a 10-month sentence on similar charges related to a blog post (see **VIOLATIONS OF USER RIGHTS**).

EDITOR'S NOTE ON RECENT DEVELOPMENTS

This report covers events between May 1, 2012 and April 30, 2013. In late May 2013, what started as a relatively small and peaceful protest at Gezi Park in the Taksim district of central Istanbul rapidly snowballed into the largest anti-government protests that Turkey has seen in years. Demonstrations spread from Istanbul to Ankara, Izmir, Adana, and other cities across the country. While the original protest called for the halt of a plan to transform Gezi Park into a shopping mall, public outrage grew over the disproportionate police response in which water cannons and tear gas were used in an excessive display of force. The dramatic events exposed the complicity of mainstream Turkish media, which largely failed to report the massive anti-government protests that ensued. Instead, sites such as YouTube, Facebook, and Twitter arose as some of the few outlets for reliable coverage on the protests, leading Prime Minister Recep Tayyip Erdoğan to describe social media as “the worst menace to society.” Dozens of people were arrested for their social media posts, and criminal investigations are expected under the use of Articles 214 and 217 of the Turkish Penal Code concerning incitement to commit a crime and disobey the law. The government also hinted that it may introduce further measures to exercise greater control over social media, with ministers calling for companies to assist law enforcement agencies in identifying anonymous users so that they may be prosecuted for allegedly violating the country’s laws.

INTRODUCTION

Internet and mobile telephone use in Turkey has grown significantly in recent years, though access remains a challenge in some parts of the country, particularly in the southeast. Until 2001, the government pursued a hands-off approach to internet regulation but has since taken considerable legal steps to limit access to certain information, including some political content. In February 2011, the Information and Communications Technologies Authority (BTK) announced plans to establish a countrywide mandatory filtering system with the aim of protecting citizens from so-called “harmful content,” which included but was not limited to sexually-explicit content and terrorist propaganda.¹ Subsequent to strong opposition from the public, street demonstrations, and a legal challenge, the policy was made optional for subscribers.² Nonetheless, civil society organizations have continued to criticize the system since it became operational in November 2011, and a legal challenge is ongoing at the Council of State level.

According to Engelliweb, there were over 29,000 blocked websites as of April 2013, almost 10,000 more compared to February 2012.³ Several domestic news websites and online streaming services, such as Last.fm and Metacafe, continue to be blocked in Turkey. Over the last three years, citizens have filed five separate applications to the European Court of Human Rights (ECHR) to challenge the government’s blocking of YouTube, music streaming site Last.fm, and the webpage

¹ Decision No. 2011/DK-10/91 of Bilgi Teknolojileri ve İletişim Kurumu, dated February 22, 2011.

² Yesim Comert, “Marchers protest new Turkish Web filtering rule,” CNN, May 15, 2011, <http://edition.cnn.com/2011/WORLD/meast/05/15/turkey.internet.protest/index.html>.

³ Engelliweb.com is a website that documents information about blocked websites from Turkey. Site accessed April 30, 2013,

creation tool Google Sites, after appeals before the local courts were rejected.⁴ YouTube was unblocked in 2010. In December 2012, ruling in the case of *Ahmet Yildirim v. Turkey*,⁵ the ECHR unanimously held that there had been a violation of Article 10 of the European Convention of Human Rights in the case of the Turkish court's blocking of the hosting platform Google Sites.⁶ The verdict, however, did not result in any shift in government policy related to the problematic Law No. 5651, used often to block websites. In its 2012 Progress Report for Turkey's Accession to the European Union (EU), the European Commission stated that "frequent website bans are a cause for serious concern and there is a need to revise the law on the internet."⁷

Over the past year, several social media users were prosecuted on charges related to terrorism, blasphemy, obscene content, and criticism of the state or its officials. In the most widely-covered case, the pianist and composer Fazil Say was given a suspended sentence of 10 months imprisonment for insulting religious values in a series of tweets he had posted to Twitter. A linguist and former columnist was handed 13 months for a similar offense related to a blog entry he had written on the offensive "Innocence of Muslims" video. Finally, a user was sentenced to nine years and seven months imprisonment for allegedly disseminating terrorist propaganda over Facebook. Many others received suspended sentences and fines.

OBSTACLES TO ACCESS

Despite an increasing penetration rate in the last few years, obstacles to internet access in Turkey remain. According to the International Telecommunication Union (ITU), internet penetration stood at 45 percent in 2012, up from 29 percent in 2007.⁸ Total broadband subscriptions stood at over 20 million at the end of 2012, of which over 10 million were mobile broadband subscriptions.⁹ In total, mobile penetration was at 91 percent in 2012 and all mobile phone operators offer third-generation (3G) data connections.¹⁰

Most users access the internet from workplaces, universities, and internet cafes. Poor infrastructure and a lack of electricity in certain areas, especially in the eastern and southeastern regions, have had a detrimental effect on citizens' ability to connect to the internet, particularly from home. While prices have decreased, they do remain high. Bandwidth capping has become standard practice and a part of the broadband services offered by major providers since 2011. A lack of technical literacy, particularly among older Turks, also inhibits wider internet use.

⁴ The YouTube block was lifted in November 2010 only after disputed videos were made inaccessible from the country.

⁵ Application no.3111/10.

⁶ See further Turkish block on Google site breached Article 10 rights, rules Strasbourg at <http://ukhumanrightsblog.com/2013/01/16/turkish-block-on-google-site-breached-article-10-rights-rules-strasbourg/>

⁷ European Commission, Turkey: 2012 Progress Report, COM(2012) 600, Brussels, 10.10.2012 SWD(2012) 336

⁸ International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2007 & 2012, accessed July 11, 2013, <http://bit.ly/14IlykM>.

⁹ "Electronic Communications Market in Turkey – Market Data (2012 Q4)," Information and Communication Technologies Authority, March 15 2013, Slide 30, accessed July 11, 2013, http://eng.btk.gov.tr/dosyalar/2012-4-English_15_03_2013.pdf.

¹⁰ International Telecommunication Union (ITU), "Mobile-cellular telephone subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

There are around 150 internet service providers (ISPs) in Turkey, though the majority act as resellers for the dominant, partly state-owned Turk Telekom, which provides more than 81 percent of broadband access in the country through its subsidiary TTNET.¹¹ Turkcell is the leading mobile phone provider, with 51.9 percent of subscribers, followed by Vodafone and Avea.¹² Overall, delays in the liberalization of local telephony continue to undermine competition in the fixed-line and broadband markets. ISPs are required by law to submit an application for an “activity certificate” from the Telecommunications Communication Presidency (TIB), a regulatory body, before they can offer services. Internet cafes are also subject to regulation. Those operating without an activity certificate from a local municipality may face fines of TRY 3,000 to 15,000 (\$1,900 to \$9,600). Mobile phone service providers are subject to licensing through the Information and Communications Technologies Authority (BTK).

The Computer Center of Middle East Technical University has been responsible for managing domain names since 1991. Furthermore, the Information and Communication Technologies Authority (BTK) oversees and establishes the domain name operation policy and its bylaws. Unlike in many other countries, individuals in Turkey are not permitted to register and own “.com.tr” and “.org.tr” domain names unless they own a company or civil society organization with the same name as the requested domain. A new set of rules on domain names registration was published in the Official Gazette on November 7, 2010.

The BTK and the TIB, which it oversees, act as the regulators for ICTs and are well staffed and self-financed.¹³ However, the fact that board members are government appointees is a potential threat to the authority’s independence, and its decision-making process is not transparent. Nonetheless, there have been no reported instances of certificates or licenses being denied. The TIB also oversees the application of the country’s website blocking law and is often criticized by pressure groups for a lack of transparency.

LIMITS ON CONTENT

Government censorship of the internet is relatively common and has increased steadily over recent years. Blocking orders related to intellectual property infringement continued in 2012 and in early 2013, particularly for file-sharing and streaming websites. In total, another several thousand websites were blocked over the past 12 months alone, including many sites that were blocked for political or social reasons. The prosecution of users for online posts has had a chilling effect on self-censorship, which remains extensive in online media as in traditional media. Finally, it is becoming increasingly difficult to find alternative sources of information, particularly related to LGBT and minority issues.

YouTube, Facebook, Twitter, and international blog-hosting services are freely available, although the government has routinely blocked access to these and other social media sites in the past.

¹¹ “Electronic Communications Market in Turkey – Market Data (2012 Q4),” Slide 32. Figures do not include cable internet.

¹² “Electronic Communications Market in Turkey – Market Data (2012 Q4),” Slide 38.

¹³ Information and Communication Technologies Authority, <http://www.tk.gov.tr/Eng/english.htm>.

Currently, access to the following services is blocked: Last.fm, Metacafe, Dailymotion, Google groups, and the photo-sharing website Slide. Access to the popular digital documents sharing website Scribd was also blocked in March 2013 by an Istanbul Court.¹⁴ In most instances, large-scale shutdowns of these websites have been blunt efforts to halt the circulation of specific content that is deemed undesirable or illegal by the government. YouTube, for example, was intermittently blocked multiple times in recent years to prevent users from accessing videos critical of Turkey's founding father Mustafa Kemal Atatürk, although it has remained accessible since October 2010. Since October 2012, YouTube operates in the country under a local "com.tr" domain which, the authorities claim, makes it easier for them to ask Google to remove objectionable content.¹⁵

The responsibilities of content providers, hosting companies, mass-use providers, and ISPs are delineated in Law No. 5651, enacted in May 2007 and titled "Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication."¹⁶ The law's most important provision calls for the blocking of websites that contain certain types of content, including material that shows or promotes the sexual exploitation and abuse of children, obscenity, prostitution, or gambling. Also targeted for blocking are websites deemed to insult Mustafa Kemal Atatürk, the founding father of modern Turkey. Domestically hosted websites with proscribed content can be taken down, while websites based abroad can be blocked and filtered through ISPs. In April 2011, the TIB sent a letter to hosting companies based in Turkey with a list of 138 potentially provocative words that may not be used in domain names and websites.¹⁷ This raised strong national and international criticism, to which the TIB responded that the list of words was intended to help hosting companies identify and remove allegedly illegal web content.¹⁸ According to Engelliweb.com, there were over 29,000 blocked websites as of May 2013.¹⁹

Although Law No. 5651 was designed to protect children from illegal and harmful internet content, its broad application to date has effectively restricted adults' access to some legal content. In some instances, the courts have also made politically motivated judgments to block websites using other laws. For example, the courts have indefinitely blocked access to the websites of several alternative news sources that report news on southeastern Turkey and Kurdish issues, such as Atilim, Özgür Gündem, Azadiya Welat, Keditör, Günlük Gazetesi, and Fırat News Agency. Access to the website of Richard Dawkins, a British etiologist, evolutionary biologist and popular science writer, was blocked in September 2008 after a pro-creationist Islamist claimed that the website

¹⁴ Istanbul 12th Criminal Court of Peace, Decision No 2013/209 D., 08.03.2013.

¹⁵ See further Reuters, "YouTube opens Turkish site, giving government more control," 02 October, 2012 at <http://www.reuters.com/article/2012/10/02/net-us-turkey-youtube-idUSBRE8910T420121002>

¹⁶ Law No 5651 was published on the Turkish Official Gazette on 23.05.2007, No. 26030. A copy of the law can be found (in Turkish) at <http://www.wipo.int/wipolex/en/details.jsp?id=11035>.

¹⁷ Several "controversial words" appeared on the list of "banned words" including: *Adrienne* (no one knows who she is), *Haydar* (no one knows who he is), *aayvan* (animal), *baldız* (sister-in-law), *buyutucu* (enlarger), *ciplak* (nude), *citir* (crispy), *etek* (skirt), *free*, *girl*, *ateşli* (passionate), *frikik* (freekick), *gay*, *gizli* (confidential), *gogus* (breast), *hikaye* (story), *homemade*, *hot*, *itiraf* (confession), *liseli* (high school student), *nefes* (breath), *partner*, *sarisin* (blond), *sicak* (hot), *sisman* (overweight), *yasak* (forbidden), *yerli* (local), *yetiskin* (adult), and so on.

¹⁸ Ekin Karaca, "138 Words Banned from the Internet," Bianet, April 29, 2011, <http://www.bianet.org/english/freedom-of-expression/129626-138-words-banned-from-the-internet>; See also, Erisa Dautaj Senerdem, "TIB's 'forbidden words list' inconsistent with law, say Turkish web providers," Hurriyet Daily News, April 29, 2011, <http://www.hurriyetsdailynews.com/n.php?n=tibs-forbidden-words-list-inconsistent-with-law-2011-04-29>.

¹⁹ Engelliweb.com is a website that documents information about blocked websites from Turkey. Accessed May 8, 2013.

contents had insulted him, his work, and his religion. An Istanbul Court later lifted the blocking order and rejected the defamation claims in July 2011. As of January 2013, the case is on appeal at the Court of Appeal, but the website is currently accessible from Turkey.²⁰

Access to several Redhack-related websites has also been blocked over the past year.²¹ The Marxist-Socialist group is known for conducting cyberattacks on government websites in order to obtain and release sensitive and damaging information. In July 2012, there were also calls by the Ministry of Foreign Affairs to block access to the cloud-storage service Dropbox, which Redhack had used for disclosing the identities of hundreds of Turkish bureaucrats and diplomats working outside Turkey.²²

In the past, there have been attempts to block websites that allegedly defame individuals. On September 28, 2010, the Ankara Third Criminal Court of Peace ordered the blocking of BugunKilicdaroglu.com, a website that assesses the policies and strategies of Kemal Kılıçdaroğlu, the leader of the Republican People's Party (CHP), Turkey's main opposition party. The injunction to block access to the website was requested by Mr. Kılıçdaroğlu's lawyers for reasons of defamation. The Ankara 11th Criminal Court of First Instance overturned the blocking decision in January 2011.²³

Despite the fact that it is not illegal, sexually-explicit content is often blocked by the authorities under the guise of protecting minors. Access to 5Posta.org, a Turkish-language website which features writings of a sexual nature, was blocked by two different decisions, and an appeal is ongoing.²⁴ Similarly, as of early 2013, an appeal is ongoing at the Council of State level with regards to the blocking of Playboy.com in Turkey. The user-based appeal was lodged by two university professors.

The Turkish government has come under criticism from a number of European bodies for its blocking practices. Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, stressed the need to review Law No. 5651 to align the grounds for restricting access to a website with those accepted in the case law of the European Court of Human Rights.²⁵ Similarly, the European Commission, in its 2012 Progress Report for Turkey's Accession to the European Union, stated that "frequent website bans are a cause for serious concern and there is a need to revise the law on the internet."²⁶

²⁰ "RD.net no longer banned in Turkey!" The Richard Dawkins Foundation, July 8, 2011, <http://richarddawkins.net/articles/642074-rd-net-no-longer-banned-in-turkey>.

²¹ Note the decision of the Ankara High Criminal Court No. 11, decision no 2012/1039 with regards to kizilhack.org, redhack.deviantart.com, redhackers.org and kizilhack.blogspot.com.

²² See <http://bit.ly/R2s4NO>.

²³ Yaman Akdeniz, "Fighting Political Internet Censorship in Turkey: One Site Won back, 10,000 To Go," Index on Censorship, March 4, 2011, <http://bit.ly/dSxV9Z>.

²⁴ Ankara 8th Administrative Court Decision No 2010/3103, dated 18 October 2012; Ankara 6th Criminal Court of Peace Decision No 2011/94 dated 24 January 2011.

²⁵ Thomas Hammarberg, "Freedom of Expression and Media Freedom in Turkey," Council of Europe, July 12, 2011, <https://wcd.coe.int/ViewDoc.jsp?id=1814085>.

²⁶ European Commission, Turkey: 2012 Progress Report, COM(2012) 600, Brussels, 10.10.2012 SWD(2012) 336

Five separate applications were made to the European Court of Human Rights (ECHR) between April 2010 and January 2011, after Turkish courts denied appeal to several cases regarding the blocking of YouTube, Google Sites, and Last.fm. In February 2011, the ECHR published the statement of facts for the appeals applications involving Google Sites and Last.fm and asked the government of Turkey to respond to a number of questions by June 2011.²⁷ The application related to Last.fm has yet to be decided and the YouTube applications are yet to be processed by the European court.

In December 2012, the ECHR published its decision in the case of *Ahmet Yildirim v. Turkey* concerning a criminal court's decision in Denizli, a city in southwestern Turkey, to block access to a webpage hosted by Google Sites for allegedly insulting the memory of Atatürk. Yildirim was the owner of a separate website hosted by Google Sites and, after the entire hosting platform was blocked, complained access had been restricted to his own site as an unwanted consequence. The European Court of Human Rights, finding a violation of Article 10 of the European Convention on Human Rights, held that a restriction on access to a source of information is only compatible with the Convention if a strict legal framework is in place regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses.²⁸ The ECHR ruled that by preventing access to information and preventing the means of disseminating it, the Turkish court's decision had infringed upon the right to free speech. Furthermore, the ECHR stated that local courts should have had regard for the fact that such a broad blocking measure would render large amounts of information inaccessible, thus directly affecting the rights of other internet users. After the government did not appeal, the verdict became final in March 2013. Despite this, Google Sites remains blocked within Turkey. A decision by the European Court on the Turkish government's blocking of Last.fm is expected later in 2013.

In an attempt to further increase control over the internet in Turkey, the BTK announced in February 2011 a decision to implement a mandatory countrywide filtering system with the aim of protecting families from harmful content online, such as pornography.²⁹ In response, the IPS Communication Foundation, which owns the alternative media website Bianet, initiated a legal challenge against the BTK in April 2011 at the Council of State, the highest administrative court in Turkey.³⁰ The pressure of legal action against the proposal eventually led the BTK to modify the policy in August 2011, annulling the original decision and making the adoption of the filtering system optional instead of compulsory.

²⁷ Application No. 3111/10 by Ahmet YILDIRIM against Turkey (Google Sites) introduced January 12, 2010 and Application No. 20877/10 by Yaman Akdeniz against Turkey (Last.fm) introduced April 6, 2010. Assessment of these two cases is currently ongoing as of early 2012.

²⁸ "Restriction of Internet access without strict legal framework amounts to violation of freedom of expression," Council of Europe, December 18, 2012, http://hub.coe.int/en/web/coe-portal/press/newsroom?p_p_id=newsroom&_newsroom_articleId=1288039&_newsroom_groupId=10226&_newsroom_tabs=newsroom-topnews&_pager.offset=0.

²⁹ Decision No. 2011/DK-10/91 of Bilgi Teknolojileri ve İletişim Kurumu, dated February 22, 2011.

³⁰ On September 27, 2011, the Council of State rejected the "stay of execution" request by Bianet referring to the annulment of the February 22, 2011. The case between Bianet and BTK is currently on-going as of early 2012.

Under the new rules, ISPs are compelled to offer two filtering profiles to subscribers, the “child” and “family” options. However, the filtering criteria have been criticized as arbitrary and discriminatory.³¹ For example, the child filter blocks access to several websites advocating the theory of evolution as well as the website of Richard Dawkins,³² while some anti-evolution websites remain accessible through the same filter.³³ The filter also blocks access to Facebook and the online video-sharing website YouTube, in addition to *Yasam Radyo* (Radio Life) and the Armenian minorities’ newspaper *Agos*.³⁴ While no detailed information is provided on the filtering process or criteria, the BTK claimed in November 2012 that over one million home subscribers were using its voluntary filtering system.³⁵

On November 4, 2011, a legal challenge was launched by *Alternatif Bilişim Derneği* (the Alternative Information Technologies Association), which asked the Council of State to annul the modified BTK filtering policy on the grounds that it lacked legal basis. The Association further argued that the BTK system discourages diversity by imposing a single type of family and moral values. The case continued at the Council of State level during 2012 and a decision is expected during 2013.

During 2012, in response to a number of parliamentary written questions, the Ministry of Education acknowledged that it uses the Fortiguard web filtering software at primary education institutions. The Ministry also received public criticism for blocking access to a number of minority news websites in January 2012.³⁶ Furthermore, in December 2012, the administrators of the Turkish parliament rejected claims from members of parliament (MPs) that, within the parliament, access to websites pertaining to the Alevi Islamic minority was blocked. In an earlier written response dated February 27, 2012 to MP Ibrahim Binici, officials from the parliament admitted that internet access from the parliament was filtered and that access to gambling, pornographic, gaming, and terrorist websites is blocked.³⁷

In addition to widespread filtering, state authorities are proactive in requesting the deletion or removal of content online. Google’s Transparency Report revealed that the number of content removal requests the company received from Turkey between January and June 2012 increased by 1,013 percent compared to the previous six-month reporting period.³⁸ In relation to YouTube,

³¹ “New Internet Filtering System Condemned as Backdoor Censorship,” Reporters Without Borders, December 2, 2011, <http://en.rsf.org/turquie-new-internet-filtering-system-02-12-2011,41498.html>.

³² Dorian Jones, “Turkey Blocks Web Pages Touting Darwin’s Evolution Theory,” Voice of America, December 23, 2011, <http://www.voanews.com/english/news/europe/Turkey-Blocks-Web-Pages-Touting-Darwins-Evolution-Theory-136162663.html>.

³³ Sara Reardon, “Controversial Turkish Internet Censorship Program Targets Evolution Sites,” Science Magazine, December 9, 2011, <http://news.sciencemag.org/scienceinsider/2011/12/controversial-turkish-internet-c.html?ref=hp>.

³⁴ “Agos’u Biz Değil Sistem Engelledi” [AGOS was filtered through the Ministry of Education filter. See Haber Merkezi], Bianet, January 23, 2012, <http://www.bianet.org/bianet/ifade-ozgurlugu/135645-agosu-biz-degil-sistem-engelledi>.

³⁵ See <http://www.tib.gov.tr/tr-uyuru-30-guvenli-internet-hizmeti%E2%80%99nin-1-yili-dolayisiyla-ankara-ve-istanbul%E2%80%99da-etkinlikler-duzenlendi.html>.

³⁶ See <http://www.tib.gov.tr/tr-uyuru-30-guvenli-internet-hizmeti%E2%80%99nin-1-yili-dolayisiyla-ankara-ve-istanbul%E2%80%99da-etkinlikler-duzenlendi.html>.

³⁷ See response to Ibrahim Binici dated 27 February 2012, TBMM response no. A.01.0.KKB.0.10.00.00-120.07(7/3747)-79795-50631.

³⁸ Google, “Turkey,” Google Transparency Report, accessed July 11, 2013, <http://www.google.com/transparencyreport/removals/government/TR/>.

Google received 148 requests from the TIB to remove 426 videos, all due to alleged criticism of Atatürk, the government, or national identity and values. Google took down 63 percent of those videos.³⁹ The amount of requests decreased between July and December 2012. Turkish authorities had requested to remove 17 YouTube videos and 22 Blogger posts. Google cooperated in 52 percent of cases related to YouTube, but did not remove any content on its Blogger service. In addition, the company removed 6,851 out of 8,119 search results based on an order from a Turkish court to remove copyright infringing material.⁴⁰

The procedures surrounding decisions to block websites, whether by the courts or the TIB, are nontransparent, creating significant challenges for those seeking to appeal. Judges can issue blocking orders during preliminary investigations as well as during trials. The reasoning behind court decisions is not provided in blocking notices and the relevant rulings are not easily accessible. As a result, it is often difficult for site owners to determine why their site has been blocked and which court has issued the order. The TIB's mandate includes executing judicial blocking orders, but it can also issue administrative orders under its own authority for certain content. Moreover, in some cases it has successfully asked content and hosting providers to remove offending items from their servers, allowing it to avoid issuing a blocking order that would affect an entire website. This occurs despite the fact that intermediaries are not responsible for third party content on their sites.

According to TIB statistics as of May 2009, the courts are responsible for 21 percent of blocked websites, while 79 percent are blocked administratively by the TIB. The regulator has refused to publish blocking statistics since then.⁴¹ In December 2011, an administrative court in Ankara rejected an appeal to obtain the official blocking statistics under Turkey's freedom of information law. A subsequent appeal to the Council of State, the highest administrative court in Turkey, was lodged in January 2012 to obtain the statistics.

Furthermore, the database and user profiles of the BTK's voluntary filtering system are controlled and maintained by the government. The "Child and Family Profiles Criteria Working Committee" was introduced in January 2012—almost three months after the new filtering system became operational—to address concerns about the establishment of filtering criteria. However, the formation of the committee itself raised concerns about its independence and impartiality: 7 of the 11 members of the committee are either from the BTK, the Family and Social Policies Ministry, or the Internet Board, and 3 experts are selected and appointed by the BTK. Moreover, the principles on which the committee will work remain unclear and there is no indication to suggest that the Child and Family Profiles Criteria Working Committee conducts meetings or performs any work.

Despite the large number of websites blocked, circumvention tools are widely available, enabling even inexperienced users to avoid filters and blocking mechanisms. Each time a new order is issued and a popular website is blocked, a large number of articles are published to instruct users on how to access the banned websites. As a demonstration of the extent of this phenomenon, during the

³⁹ Google, "Turkey."

⁴⁰ Google, "Turkey."

⁴¹ Reporters Without Borders, "Telecom Authority Accused of Concealing Blocked Website Figures," news release, May 19, 2010, <http://en.rsf.org/turkey-telecom-authority-accused-of-19-05-2010,37511.html>.

two and a half year block of YouTube, the video-sharing website remained the eighth most-accessed site in Turkey.⁴²

Turkish users increasingly rely on internet-based publications as a primary source of news, and despite the country's restrictive legal environment, the Turkish blogosphere is surprisingly vibrant and diverse. There are a wide range of blogs and websites through which citizens question and criticize Turkish politics and leaders, including issues that are generally viewed as politically sensitive. The majority of civil society groups maintain an online presence and social-networking sites such as Facebook, FriendFeed, and especially the microblogging platform Twitter are used for social and political campaigns.

In May 2011, internet users organized a major protest against the introduction of the proposed country-wide filtering system. The protest gathered approximately 50,000 people in Istanbul to demand freedom from filtering and the abolishment of Law No. 5651.⁴³ Arguably, the protest and its associated media coverage had a significant impact on the modification of the mandatory filtering system into a voluntary one.

Shortly after it was discovered that Turkey's largest ISP, TTNET, had installed the behavioral advertising service Phorm on its networks in July 2012,⁴⁴ the Alternative Informatics Association launched an online campaign to demand that TTNET end its relationship with the controversial company.⁴⁵ The association also submitted an official complaint with a public prosecutor's office on October 17, 2012.⁴⁶ Phorm has come under consistent criticism from governments, internet companies, and privacy experts around the world. The company collects information on users' online behavior without their knowledge, performing deep-packet inspection (DPI) to essentially monitor a user's connection line and create a profile of the individual's online activities to then sell to advertisers.⁴⁷ The campaign resulted in a decision by the BTK to investigate TTNET's use of the Phorm system in December 2012.⁴⁸

VIOLATIONS OF USER RIGHTS

The Turkish constitution includes broad protections for freedom of expression. Article 26 states that "everyone has the right to express and disseminate his thought and opinion by speech, in writing or in pictures or through other media, individually or collectively."⁴⁹ Turkish law and court

⁴² According to Alexa, a web information company, as of August 26, 2010, <http://www.alexa.com/topsites/countries/TR>.

⁴³ "Turks marched against government censorship of the Internet in Istanbul," CyberLaw Blog, July 19, 2010, <http://cyberlaw.org.uk/2010/07/19/17-temmuz-2010-internette-sansuru-protesto-etmek-icin-2000-kisi-yuruduk>.

⁴⁴ "Commencement of Commercial Activities in Turkey with TTNET," Press Release, Phorm, July 9, 2012, <http://www.phorm.com/sites/default/files/2012.07.09%20TTNET%20Commercial%20Activities.pdf>.

⁴⁵ For the online campaign, please see "EmPhormasyon," Accessed April 23, 2013 <http://enphormasyon.org/english.html>.

⁴⁶ "Turkey: Internet Report on Digital Rights 2012," EDRi-gram newsletter, October 24, 2012, Digital Civil Rights in Europe, <http://www.edri.org/edriagram/number10.20/turkish-report-2012-digital-rights>.

⁴⁷ See <http://enphormasyon.org/english.html>.

⁴⁸ BTK decision to investigate is available in Turkish: <http://bit.ly/19ci5BR>.

⁴⁹ "The Constitution of the Republic of Turkey," Constitutional Court of the Republic of Turkey, Accessed April 22, 2013, <http://www.anayasa.gov.tr/index.php?l=template&id=210&lang=1&c=1>.

judgments are subject to the European Convention on Human Rights and bound by the decisions of the European Court of Human Rights. The constitution also seeks to guarantee the right to privacy, although there are limitations on the use of encryption devices, and surveillance by security agencies is highly prevalent. There are no laws that specifically criminalize online activities like posting one's opinions, downloading information, sending e-mail, or transmitting text messages. Instead, many provisions of the criminal code and other laws, such as the Anti-Terrorism Law, are applicable to both online and offline activity. Over the past year, only one user was sentenced to prison, while many others received suspended sentences and fines.

Several recent court cases have illuminated how the existing laws are being used to prosecute online activity. For example, in October 2011, the Anti-Terrorism Law was used to prosecute journalist Recep Okuyucu for allegedly advocating terrorist propaganda by downloading Kurdish music files and accessing the blocked Kurdish *Firat News Agency* website.⁵⁰ A Diyarbakir court found him not guilty. More recently, Adana High Criminal Court No. 8 sentenced Metin Öztürk to nine years and seven months imprisonment for sharing and disseminating terrorist propaganda through Facebook in January 2013.⁵¹ Ten people, including three university students, were arrested in relation to the Redhack movement and face terrorism related charges, including membership in a terrorist organization.⁵² They have denied all charges and any association with Redhack, stating they do not possess the technical knowledge required to hack into government servers. Redhack has reiterated that the accused individuals have no ties with the group. Indeed, speaking through social networks, Redhack stated that the terrorism allegations are simply part of the government's ongoing targeting of its domestic opponents.⁵³

Users are also prosecuted for posts that can be deemed as insulting state authorities. A 17-year-old from northwest Turkey received a suspended sentence of 11 months and 20 days for insulting the Prime Minister on Facebook in July 2012 after a five-month trial at the Balıkesir Juvenile Court.⁵⁴ In November 2012, a senior post office official named İbrahim Davutoğlu was sentenced by the Zonguldak Penal Court of First Instance No. 2 to a fine of TRY 6,080 (\$3,368) on charges of "insulting a public officer due to the performance of his public duty" under Article 125 of the Turkish Penal Code. The sentence was later reduced to five years of court supervision. According to the court, Davutoğlu shared politically offensive news articles and caricatures on his Facebook wall and insulted the prime minister.⁵⁵ A previous administrative investigation by the Turkish Post and Telegraph Organization (PTT) found Davutoğlu guilty of "insulting state officers," which resulted in his forced assignment to Ordu and Bartın provinces. The house of Irem Aksoy was searched by the police subsequent to a tweet in which she criticized the Mayor of Ankara for his

⁵⁰ "Court Acquits Journalist Who Interviewed Kurdish Separatist," Reporters Without Borders, December 29, 2011, <http://en.rsf.org/turkey-journalists-under-pressure-as-26-10-2011,41282.html>.

⁵¹ See <http://www.evrensel.net/news.php?id=45658>.

⁵² See <http://english.alarabiya.net/articles/2012/11/26/251896.html>.

⁵³ See 'Terrorist organization'? Turkish hackers face quarter-century prison terms, 10 October, 2012 at <http://rt.com/news/redhack-turkey-terrorism-trial-056/>.

⁵⁴ Suleyman Okan, "Kid Faces Jail Term After Insulting PM Erdoğan on Facebook," *Sosyalmedya.co*, July 23, 2012, <http://sosyalmedya.co/en/kid-insulting-erdogan/>.

⁵⁵ Bianet, PM Critic Facebook User Fined, at <http://www.bianet.org/english/freedom-of-expression/142130-pm-critic-facebook-user-fined>.

comments on the issue of abortion. The 17-year-old student was detained by the police and a criminal investigation was subsequently initiated. In March 2013, it was reported that she was called to provide her statement by the office of the public prosecutor, which is investigating the allegation.⁵⁶

Even Turkish citizens living outside of the country can be targeted by state authorities. The owner of the 5posta.org website, mentioned above, was prosecuted for publishing obscene materials online. Among other topics, the author writes about issues of sexuality, the sex industry, and internet censorship from his residence in Sweden. An Ankara court acquitted him of the charges in January 2013.⁵⁷

The case that received the most media attention over the last year relates to the composer and pianist Fazil Say. In June 2012, Say was charged with offending Muslims over posts he made on Twitter, including an April 2012 tweet in which he joked about a call to prayer lasting only 22 seconds. Say was charged in June 2012 with inciting hatred and public enmity, as well as insulting "religious values" under Section 216(3) of the criminal code.⁵⁸ He received a suspended sentence of 10 months in prison, meaning that his sentence will not come into force unless he commits another offense within five years.⁵⁹ However, subsequent to an appeal by his lawyers to annul the sentence, a retrial was ordered in April 2013.⁶⁰ Furthermore, in January 2013, the office of Istanbul's Public Prosecutor initiated a criminal investigation against the board of PEN Turkey, a division of the global writers association PEN International, related to a June 2012 article on its website in which it protested against Say's prosecution.⁶¹ The board members were charged with insulting state authorities under the controversial Article 301 of the Turkish Penal Code.⁶²

In another case related to blasphemy, Turkish-Armenian linguist and former columnist Sevan Nişanyan was sentenced to 13 months imprisonment in April 2013 for "publicly insulting the religious values of part of the population." The allegations related to a blog entry he authored in 2012 about the "Innocence of Muslims" video which sparked protests across the Arab world.⁶³

⁵⁶ "Liseli İrem Aksoy savcılıkta ifade verdi" [High schooler İrem Aksoy testifies], *Aydinlik*, March 6, 2013, <http://www.aydinligazete.com/mansetler/19772-liseli-irem-aksoy-savcilikta-ifade-verdi.html>.

⁵⁷ Ankara 7th Criminal Court of First Instance, Decision no 2013/7, 21.02.2013

⁵⁸ The Guardian, Turkish pianist Fazil Say on trial for 'insulting Islam' on Twitter, 18 October 2012 at <http://www.guardian.co.uk/world/2012/oct/18/turkish-pianist-fazil-say-islam>.

⁵⁹ Sebnem Arsu, "Pianist's Post on Twitter Spur Penalty From Turkey," *New York Times*, April 5, 2013, http://www.nytimes.com/2013/04/16/world/middleeast/turkish-pianist-sentenced-for-twitter-postings.html?_r=0.

⁶⁰ *Hürriyet Daily News*, "Turkish pianist Fazil Say to be retried on blasphemy charges," 26 April 2013, at <http://www.hurriyettailynews.com/turkish-pianist-fazil-say-to-be-retried-on-blasphemy-charges.aspx?pageID=238&nID=45718&NewsCatID=341>.

⁶¹ The article in question refers to "fascist developments" in Turkey. See PEN International condemns investigation against PEN Turkey for criticising the State, at <http://www.pen-international.org/newsitems/pen-international-condemns-investigation-against-pen-turkey-for-criticising-the-state/>.

⁶² "Amendment Law Nr. 5759 of April 30, 2008 (Turkish)," April 30, 2008, <http://www.tbmm.gov.tr/kanunlar/k5759.html>.

⁶³ See "Living by the 'de jure' sword," *Hürriyet Daily News*, 24 May 2013 at <http://www.hurriyettailynews.com/living-by-the-de-jure-sword.aspx?pageID=238&nID=47499&NewsCatID=398> See further Sevan Nisanyan: Turkish-Armenian blogger jailed for blasphemy, <http://www.globalpost.com/dispatch/news/regions/europe/turkey/130523/sevan-nisanyan-turkish-armenian-blogger-jailed-blasphemy>.

The constitution states that “secrecy of communication is fundamental,” and users are allowed to post anonymously online. However, the anonymous purchase of mobile phones is not allowed and buyers need to provide official identification. Turkey has yet to adopt a data protection law, though the September 2010 amendments to the Turkish Constitution included data protection provisions. In 2011, the use of encryption hardware and software became subjected to regulations introduced by the BTK. Suppliers are now required to provide encryption keys to state authorities before they can offer their products or services to individuals or companies within Turkey. Failure to comply can result in administrative fines and, in cases related to national security, prison sentences.

The constitution specifies that any action that could potentially interfere with freedom of communication or the right to privacy must be authorized by the judiciary. For example, judicial permission is required for technical surveillance under the Penal Procedural Law. Despite constitutional guarantees, most forms of telecommunication continue to be tapped and intercepted.⁶⁴ Between 2008 and 2009, several surveillance scandals received widespread media attention, and it is suspected that all communications are subject to interception by various law enforcement and security agencies, including the Gendarmerie (military police). Some reports indicate that every day, up to 50,000 phones—both mobile and land-line—are legally tapped, and 150,000 to 200,000 interception requests are made each year. During 2012, bugging related stories continued to hit the headlines and even the Prime Minister claimed that bugging devices were found in his home.

These surveillance practices have been challenged in court on at least one occasion. In 2008, responding to complaints lodged by the TIB, the Supreme Court of Appeals overruled a lower court’s decision to grant both the Gendarmerie and the National Intelligence Agency (MIT) the authority to view countrywide data traffic retained by service providers.⁶⁵ Nonetheless, similar powers to access and monitor data traffic have been granted to the MIT and the National Police Department. Faced with criticism on the issue, in 2008 the parliament launched a major inquiry into illegal surveillance and interception of communications, though the inquiry concluded in January 2009 without finding any “legal deficiencies” in the interception regime. In January 2013, a new parliamentary commission was set up with a similar goal and, during its initial investigation, revealed that the Turkish Gendarmerie had intercepted the communications of 470,102 people subject to 75,478 court orders during the last 10 years.⁶⁶ The commission is expected to conclude its work later in 2013.

While government surveillance is an issue in Turkey, ISPs are not required to monitor the information that goes through their networks, nor do they have a general obligation to seek out

⁶⁴ For a history of interception of communications, see: Faruk Bildirici, *Gizli Kulaklar Ulkesi* [The Country of Hidden Ears] (Istanbul: Iletisim, 1999); Enis Coskun, *Kuresel Gozalti: Elektronik Gizli Dinleme ve Goruntuleme* [Global Custody: Electronic Interception of Communications and Surveillance] (Ankara: Umit Yayıncılık, 2000).

⁶⁵ The court stated that “no institution can be granted such authority across the entire country, viewing all people living in the Republic of Turkey as suspects, regardless of what the purpose of such access might be.” See, “Supreme Court of Appeals Overrules Gendarmerie Call Detail Access,” *Today’s Zaman*, June 6, 2008, <http://www.todayszaman.com/tz-web/news-144038-supreme-court-of-appeals-overrules-gendarmerie-call-detail-access.html>.

⁶⁶ See the Bianet article (in Turkish) at <http://www.bianet.org/bianet/insan-haklari/145087-jandarma-10-yilda-470-bin-kisiyi-dinledi>.

illegal activity. However, all access providers, including cybercafe operators, are required to retain all communications (traffic) data for one year. Administrative fines of TRY 10,000 to 50,000 (\$6,400 to \$32,200) can be imposed on access providers if they fail to comply, but no ISP or other provider has been prosecuted to date.

Although physical attacks in retribution for online posts are generally rare, technical attacks are becoming increasingly common, particularly those targeting government websites. During 2011 and in early 2012, the international hacktivist collective known as Anonymous launched a successful distributed denial-of-service (DDoS) attack against the Turkish government, taking down several official government websites, including those of the TIB⁶⁷ and Turkish Social Security Institution (SGK).⁶⁸ Furthermore, Anonymous hacked a consumer complaints website run by the BTK in February 2012 and data relating to a considerable number of users was circulated through numerous websites.⁶⁹ During 2012, the Marxist-Socialist Redhack group infiltrated several government websites and leaked confidential information. The group has over 675,000 followers on Twitter and hacked into the servers of the Ministry of Foreign Affairs, Ministry of Finance, and the Turkish Higher Education Authority, among others, during 2012 and early 2013.⁷⁰

⁶⁷ www.tib.gov.tr

⁶⁸ www.sgk.gov.tr

⁶⁹ "Anonymous Hacked BTK Database," Bianet, February 15, 2012, <http://www.bianet.org/english/world/136178-anonymous-hacked-btk-database>.

⁷⁰ See among others <http://redhack.tumblr.com/post/40121086113/press-release-council-of-higher-education-of-turkey> and extensive media coverage of Redhack's activities through <http://redhack.tumblr.com/archive>.