

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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TÜRKİYE'S "DISINFORMATION LAW" TIGHTENS GOVERNMENT CONTROL AND CURTAILS FREEDOM OF EXPRESSION

Amnesty International is concerned that a package of amendments together known as the "disinformation law" could set the stage for any person to be sentenced to up to three years in prison if they retweet, like or share information that the Turkish courts deem "untrue and intended to create panic" on subjects related to national security, public order, or public health. In the context of the upcoming legislative and presidential elections in 2023, this legislation poses a new threat that will clearly restrict the space for public debate.

On 26 May 2022, the ruling Justice, and Development Party (AKP) and the Nationalist Action Party (MHP) submitted the Draft Law on Amendments to the Press Law and Certain Laws to the Turkish Parliament. The bill was then passed with minor changes by the Committee on Digital Media and the Justice Committee and was approved by the Parliament on 13 October 2022.

The proponents of the law assert in the General Justification section of the law that it is meant to counter disinformation and "make sure that innocent people are not misled by such content". However, among the various amendments, the legislation will criminalise people for "publicly disseminating misleading information" by adding a clause to Article 217 under the section on "Offences against Public Peace" in the Turkish Penal Code. The overly broad and vague wording of this amendment and other measures contained in the law represents a significant threat to the exercise of the right to freedom of expression in the country. To address disinformation, instead of criminalising or otherwise silencing people, the Turkish government should proactively ensure that credible, reliable, objective, and accessible information is disseminated to all.

The law also targets social media platforms by making them liable for the content posted by their users, further reducing the space for people to freely express their ideas and opinions. The amendments to the law would give more power to authorities to block access to content and fine social media companies, potentially extending the government's control over the media. According to Reporters Without Borders,¹ the Turkish government already controls 90 per cent of the country's national media, while outlets that are critical of the authorities are facing undue financial and judicial pressure.

Under international human rights law and standards, restrictions on the right to freedom of expression that impose blanket prohibitions on the dissemination of information, including those based on vague and ambiguous concepts such as "untrue information" or "panic", are impermissible. The law's stringent penalties also risk having a chilling effect on the general population and the media, leading to self-censorship out of fear of reprisals. Amnesty International therefore urges Türkiye to repeal the legislation and ensure that all laws regulating the right to freedom of expression, including those intended to address disinformation, are brought in line with Türkiye's obligations under international law.

LACK OF CLEAR DEFINITION OF THE CRIME

Article 29 of the law adds a new criminal offence to the Turkish Penal Code. Under this article, "Any person who publicly disseminates untrue information concerning the internal and external security, public order and public health of the country with the sole intention of creating anxiety, fear or panic among the public, and in a manner likely to disturb public peace, shall be sentenced to imprisonment from one year to three years. If the offence is committed by concealing the true identity of the perpetrator or within the framework of an organisation's activities, the punishment mentioned above is increased by one-half."

¹ Reporters Without Borders. Turkey – press freedom in figures. RSF. <https://rsf.org/en/turkey-press-freedom-figures> , (accessed on 6 October 2022)

However, the law does not clearly define what is understood as "untrue information" nor does it specify what information could be deemed to pose a threat to "the internal and external security, public order and public health of the country". The law also fails to clarify what the authorities will consider to be information that makes people anxious or afraid, leaving the door open to its arbitrary application. Under international human rights law, expression which falls short of the definition of advocacy of hatred even if it is shocking, offensive or disturbing, should not be subject to criminal punishment.

The law also fails to distinguish between those who create the content and those who simply redistribute or promote it, meaning that individuals can be held liable for sharing information they did not create or author and have not modified. As a result, the law does not protect individuals against liability for merely redistributing or promoting content as required by international law.²

States have an obligation to ensure that any restriction on the right to freedom of expression is provided by clear and accessible legislation to allow people to regulate their conduct accordingly. Restrictions on the right to freedom of expression must also be demonstrably necessary and proportionate for the protection of one of the limited legitimate interests recognised under international law.³ This requires states to consider the least restrictive measure to achieve the specified purpose. According to international law and standards, blanket bans that prevent expressions, including of an erroneous opinion or incorrect interpretations of events, are impermissible.⁴

Blanket prohibitions on the dissemination of information have been frequently put in place as a pretext for silencing critical voices or to conceal inconvenient facts to the authorities in Türkiye. Similar prohibitions on the dissemination of information have been used by many governments to close down independent media outlets, censor social media platforms and prosecute opposition politicians, journalists and human rights defenders. According to Twitter, Türkiye is already one of the top countries legally requesting content removal from the platform,⁵ making the amendments even more concerning as it could also be used to further silence dissenting voices and stifle freedom of expression.

LACK OF GUIDANCE FOR THE ADEQUATE APPLICATION OF THE LAW

International human rights law and standards require states to ensure that laws restricting the right to freedom of expression provide sufficient guidance to those charged with their application to allow them to ascertain what sorts of expressions are restricted to avoid the arbitrary and the discretionary application of the law.⁶ Yet, the ambiguous and undefined language in the law opens its application to arbitrariness and leaves the courts with the ultimate discretion to determine what information is considered 'untrue'.

In a context in which the Turkish authorities have consistently undermined the independence of the judiciary, the lack of guidance to the courts on the adequate application of the law is of further concern.⁷ Without such guidance to the courts, the executive will be enabled with even more powers to unduly interfere in judicial processes and influence the interpretation of whether a social media post constitutes a criminal offence irrespective of its status as protected speech under international law.

Several decisions by the European Court of Human Rights⁸ (ECHR) and Türkiye's Constitutional Court⁹ have found violations of the exercise of the right to freedom of expression and called into question the reliability of Turkish courts

² Joint Declaration on freedom of expression and "fake news", disinformation and propaganda. UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, Special Rapporteur on Freedom of Expression of the Inter-American Commission on Human Rights, and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, 2017, para. 1.e.

³ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 2011, para. 33-34.

⁴ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 2011, para. 49.

⁵ Twitter Transparency Center. "Removal Requests," December 2021. <https://transparency.twitter.com/en/reports/removal-requests.html#2021-jul-dec>.

⁶ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 2011, para. 25.

⁷ Council of Europe. Turkish authorities must restore judicial independence and stop targeting and silencing human rights defenders, 19 February 2020, https://www.coe.int/en/web/commissioner/news-2020/-/asset_publisher/Arb4fRK3o8Cf/content/turkish-authorities-must-restore-judicial-independence-and-stop-targeting-and-silencing-human-rights-defenders?_101_INSTANCE_Arb4fRK3o8Cf_viewMode=view/

⁸ See European Court of Human Rights cases including *Altuğ Taner Akçam v. Turkey* – 27520/07 Judgment 25.10.2011; *Selahattin Demirtaş v. Turkey* (No. 2) (14305/17); *Işıkırık v. Turkey* 14.11.2017 (41226/09); *İmret v. Turkey* (No. 2) (57316/10)

⁹ See Turkish Constitutional Court decision *Application by Keskin Kalem Yayıncılık ve Ticaret A.Ş. and others* (2018/14884)

when protecting this right. Separately, Venice Commission pointed out that the laws regulating the Council of Judges and Prosecutors (HSK), the main self-governing body of the judiciary, would “seriously endanger the independence of the judiciary.”¹⁰ Amnesty International has documented over the years how individuals with dissenting opinions or critical of the authorities are often targeted in criminal investigations and prosecutions because of their real or perceived criticism of the government.¹¹ This law will further aggravate the already concerning legal framework that has been used to target, harass and silence critical voices.

According to statistics of the Ministry of Justice,¹² hundreds of thousands of social media users have been prosecuted¹³ over the last decade under unduly restrictive laws, including laws criminalizing defamation and article 299 of the Turkish Penal Code that criminalises ‘insulting the President’. Indictments of journalists, human rights defenders, academics, politicians, and other members of the public, including for alleged terrorism-related offences, frequently include as evidence posts from social media as the sole proof to back up criminal charges.

The Venice Commission¹⁴ of the Council of Europe and the Parliamentary Assembly of the Council of Europe¹⁵ both condemned the draft law for its negative impact on human rights and called for its withdrawal. The Venice Commission expressed further concerns over the confusion around the English language translations provided by the Turkish Parliament, which adds to the lack of clarity about the scope of the law.

INCREASED CONTROL OVER SOCIAL MEDIA PLATFORMS

Media outlets that contain criticism of the government are facing heavy financial and judicial pressure. The new law targets social and online media, further reducing the space for free expression and potentially extending this control over media in the country.

Multiple articles of the legislation include provisions that could have far-reaching negative consequences for human rights in Türkiye. This is especially the case when the amendments are seen in conjunction with Article 29, analysed above, as well as the concerns over judicial independence in the country. This Public Statement is not exhaustive and will not give a comprehensive analysis of all the other problematic articles. However, Amnesty International would like to draw attention to articles amending Law no 5651 which regulates online publications. The amendments grant the authorities greater power over social media firms and online content.

As specified in Article 34, the individual designated to represent an international social media company in Türkiye must be a Turkish citizen and resident of Türkiye. Amnesty International is concerned that this proposed provision would violate Article 48 of the Turkish Constitution, which regulates freedom of workers to choose their employment and negotiate their own terms of work. This could also make social media companies more vulnerable to judicial pressure if they host content deemed critical of the Turkish government.

Social media companies are required, by the amendments to the Law no,5651, to provide the information necessary to find and prosecute the creators or disseminators of internet content that violates specific articles of Turkish law, including the newly introduced controversial offence of “publicly spreading false information” (Article 217/A of the Turkish Penal Code).

¹⁰ Venice Commission: Council of Europe, On The Amendments To The Constitution Adopted By The Grand National Assembly On 21 January 2017 And To Be Submitted To A National Referendum on 16 April 2017, 13 March 2017, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e)

¹¹ Amnesty International. *Turkey: Amendments to Law on Social Media Pose Grave Threat to Freedom of Expression Online*, (Index: EUR 44/2794/2020) July 26, 2020. <https://www.amnesty.org/en/documents/eur44/2794/2020/en/>.

¹² Judicial Statistics 2020, Justice Ministry of Türkiye, September 2021, https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1692021162011adalet_ist-2020.pdf

¹³ Human Rights Watch. “Turkey: Crackdown on Social Media Posts.” Human Rights Watch, March 27, 2018. <https://www.hrw.org/news/2018/03/27/turkey-crackdown-social-media-posts>.

¹⁴ Venice Commission: Council of Europe, 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 On “False or Misleading Information”, 7 October 2022, <https://www.venice.coe.int/webforms/events/?id=3402>

¹⁵ Parliamentary Assembly of Council of Europe. The honouring of obligations and commitments by Türkiye, Doc. 15618: Compendium of Written Amendments (Final Version),” October 11, 2022. <https://pace.coe.int/en/files/30242/compendium>.

The amendments further stipulate that "If the social network provider discovers content that endangers the security of life and property of persons and the delay is inconvenient, it shall share this content and information on the creator of the content with the authorised law enforcement units." (Article 34/16 of the amendments)

This is especially worrying when coupled with the lack of judicial independence from undue interference by the executive branch in Turkey. The amendments state that social networking service providers might receive financial penalties of up to 3% of the social media company's global revenue (Article 34/20) as well as a reduction in bandwidth by 95% (Article 38/17).

HUMAN RIGHTS APPROACH TO TACKLE MISINFORMATION

False and misleading information cannot be easily censored or simply expunged, particularly in the age of social media. Restricting information and the free expression of opinions and ideas through censorship and punitive laws to go after journalists, human rights defenders and others expressing their views is not only in contravention of international human rights law but is also an ineffective approach that does not tackle the root causes of why the public remains vulnerable to misinformation.

Instead of punishment and censorship, human rights offer a different path which States should take in order to minimize the impact of false and misleading information. By upholding the right to freedom of expression, States would ensure that individuals and groups, including journalists and other civil society actors, can exchange information, air, and debate diverse opinions, discuss effective ways of tackling social problems, hold governments accountable, defend human rights, debunk false information and challenge propaganda.

Instead of censoring media outlets and silencing critical voices, the Turkish government should build up a reliable and prompt system of accurate information that leads to increased trust by the general public. In order for the public to have that trust, they need to have access to all relevant and available information. Thus, the authorities should step up their efforts to ensure that the Turkish authorities disseminate reliable, accessible, and trustworthy information, which is crucial to counter false and misleading information.

The authorities should take further measures to ensure an enabling environment for freedom of expression and encourage media diversity. A free and diverse media can facilitate public debates and the open confrontation of ideas, as well as acting as a watchdog of government and others in power.

The Turkish authorities should also consider other tools to equip individuals with the critical thinking tools to distinguish between verifiable and unverifiable information, such as promoting media and digital literacy and incorporating these topics into the standard school curriculum and working with civil society and other stakeholders to raise awareness about them. The government could also inclusively engage with the media and journalists as needed to support mechanisms that will effectively regulate the industry or particular publications (such as press complaints bodies, ombudspersons or public editors).

The new legislation poses a significant threat to the right to freedom of expression in Türkiye. Censorship and punishment will not address the challenges posed by misinformation and will instead create an environment of fear and repression where misinformation can further spread. In line with Türkiye's obligations under international human rights law, the authorities must urgently repeal the new provisions including the introduction of criminal liability for disseminating 'untrue' information, the increased restrictions on social media platforms and additionally take action to ensure people can exercise their right to freedom of expression without fear of reprisals.