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Turkey: President Gül: Veto restrictive internet law changes

Amnesty International calls on President Gül to use his power of veto to block changes to the internet law, no 5651 that would have a chilling effect on freedom of expression. The Turkish authorities should instead amend the law to bring it in line with international freedom of expression standards.

Internet based media and social media have provided vital platforms for expressing ideas and receiving information in the face of self-censorship practiced by large swathes of the mainstream media and threats of criminal prosecution against journalists in Turkey.

The amendments come months after the Prime Minister stated “There is a scourge called Twitter” in the context of use of social media during the Gezi Park protests. During the protests Amnesty International documented widespread human rights abuses including unnecessary and abusive force against peaceful demonstrators and also government attempts to silence and smear those speaking out against it such as doctors, lawyers and journalists. At the time the authorities pledged to bring about legal changes regulating social media to combat what they referred to as “universal crimes” including defamation. In Turkey defamation laws frequently used to unfairly prosecute criticism of the actions of politicians and other public officials, in violation of the right to freedom of expression. The Human Rights Committee, an authoritative body mandated with interpreting the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a party, has stated that imprisonment is never an appropriate remedy for defamation.¹

Examples of the Turkish authorities’ targeting of legitimate dissenting opinions expressed on the internet under existing laws include the prosecution of Fazıl Say, a pianist of international renown for tweets he made mocking religious individuals and Islamic conceptions of heaven. In September 2013 Fazıl Say received a 10-month suspended sentence for “denigration of religious values”.

In January 2014 lawyers acting on behalf of Turkey’s Prime Minister, Recep Tayyip Erdoğan made a criminal complaint against Mahir Zeynalov, a journalist working for the *Today’s Zaman* daily on the basis of two tweets. The tweets contained links to articles in the newspaper alleging refusal of “Erdoğan appointed officials” to apprehend al –Qaeda affiliated suspects. The criminal complaint alleged that the tweets defamed the Prime Minister and represented “incitement to hatred or hostility”. On 4 February the authorities issued a deportation order against the journalist, who is an Azerbaijani national, citing the tweets and justifying his deportation on the grounds that his residence in Turkey was “detrimental to public security and political and administrative requirements” under Article 19 of the law regulating the residence of foreign nationals. He left the country on 7 February.

In recent weeks the government has also sought to block content on the internet alleged to substantiate corruption allegations against senior public officials.

The legal changes, which were passed by the Parliament on 5 February, bring further powers to block content on the internet to a law that is already applied in a manner that fails to meet

¹ See paragraph 38 of the Human Rights Committee’s General Comment 34. Full text available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

international human rights standards. The Human Rights Committee has criticized generic bans on the operation of certain sites as incompatible with the requirements of the ICCPR and made clear that restrictions on the operations of websites are permissible only when they are provided by law and necessary to serve a legitimate aim under human rights law.²

Furthermore, Amnesty International is concerned that the vague and overly broad wording of the amendments leave them open to arbitrary application. Such applications have frequently been the case with the existing internet law and with provisions restricting the right to freedom of expression in Turkey more generally. Laws restricting the right to free expression which lack legal clarity or which confer unfettered discretion to those implementing the law do not satisfy the requirements of the ICCPR.³

Amnesty International is concerned that powers to block access to content on the internet are expanded under the changes. In the case of *Yıldırım vs. Turkey*⁴, the European Court of Human Rights (ECtHR) has already found an instance of the blocking of access to internet content under the existing law no. 5651 to violate Article 10 of the European Convention on Human Rights (right to freedom of expression). The amendments leave in place these provisions, part of Article 8 of the law, the application of which was found in the case examined by the ECtHR to violate the right to freedom of expression.

Under amendments to Article 9 of the law, individuals claiming that their personal rights have been violated by internet content can apply to the relevant content provider or hosting company for the material to be removed or to the competent judge for a blocking order to be issued. The judge is required to issue a decision regarding the application for a blocking order within 24 hours.

Further amendments to the law found in Article 9/A allow for administrative orders to block access to internet content in cases where a delay would “result in adverse consequences regarding privacy”. The decision to block content can then be appealed on application to the courts within seven days of a blocking order. People whose expression rights are violated by such administrative orders would thus themselves bear the burden of taking a case to court, which will likely prove an insurmountable obstacle to many web users.

Amnesty International is concerned that the law will be applied to block access to internet content on such grounds in a way incompatible with international standards on the right to freedom of expression. Amnesty International has long reported on the use of defamation provisions to prosecute legitimate dissenting opinions and criticism of public officials in violation of the right to freedom of expression. Amnesty International is concerned that the changes to the internet law would also allow the Turkish authorities, through administrative orders, to block access to legitimate dissenting opinions expressed on the internet. Blocking orders can be issued by administrative orders rather than through the courts further reducing judicial oversight over internet restrictions.

The legal changes also provide for the blocking of individual URLs in addition to the existing wholesale blocking of websites as currently provided for under the law. While this may provide for more proportional actions to be taken, Amnesty International is concerned that it may also be used to block individual accounts or posts on social media in ways that also violate free expression.

Amendments also require internet service providers and hosting providers to retain individuals' data traffic records for a period of up to two years and to provide this information to the

² See paragraph 43 of General Comment 34. Full text available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

³ See paragraph 25 of General Comment 34. Full text available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁴ See European Court of Human Rights, *Yıldırım vs. Turkey* (application no.3111/10), judgment of 18 December 2012. Available at

<http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%7B%22fulltext%22:%5B%22Yildirim%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D,%22itemid%22:%5B%22001-115705%22%5D%7D>

authorities on request without providing justification or notification to the individuals concerned. Amnesty International is concerned that the vague provisions do not contain any protections regarding how or why the information could be requested nor do they provide any data protection guarantees. Measures that interfere with the right to privacy must be strictly proportionate to a legitimate aim, and subject to rigorous and independent oversight by judicial authorities.

Amnesty International calls on President Gül to use his power of veto to block the current amendments which further threaten the right to freedom of expression and for the Turkish authorities to engage in consultation with civil society groups in Turkey and international expert bodies such as the OSCE to bring the country's internet laws in line with international and European standards including the case law of the European Court of Human Rights on the right to freedom of expression.

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