



## Introduction

1. Human rights online are critically endangered in Turkey. The rights to privacy, freedom of opinion and expression, freedom of the press and freedom of information are inextricably intertwined with all fundamental freedoms. It is imperative these issues are represented in the recommendations made to Turkey during the third cycle of the Universal Periodic Review in January 2020 to ensure the human rights of all Turkish citizens are protected.
2. In the second cycle of the UPR, Turkey supported 74.6% (215) of 288 recommendations received from 108 UN member states. Of these recommendations, 24 addressed the rights to privacy, freedom of opinion and expression, freedom of the press and freedom of information generally, and a further fourteen explicitly referenced the urgent need to protect the expression and enjoyment of these rights online as well as offline. Turkey supported 60.5% of the 38 recommendations concerning these rights.
3. Internet penetration in Turkey continues to rise, particularly through the expansion of mobile broadband, and the government is actively pursuing measures to expand its reach. Data from the International Telecommunications Union (ITU) 2017 report shows 65% of Turkish citizens are using the internet.<sup>1</sup> While these figures are commendable, the government of Turkey must urgently address its obligations to protect and uphold the fundamental rights of its citizens.
4. Turkey is a State party to all major international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Freedom of expression is guaranteed by Article 10 ECHR, by Articles 17 and 19 ICCPR and by Article 19 of the Universal Declaration of Human Rights.

## Updates since the previous UPR Review

5. In Turkey's second cycle review session, significant attention was given to human rights online. Six recommendations called for amendments to Law No. 5651, "Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication", commonly referred to as the 'Internet Law' (2007).
6. The 'Internet Law' is one of a host of broadly and arbitrarily applied legal frameworks with limited opportunities for appeal or recourse. The current climate in Turkey is highly sensitised, and human rights defenders, media workers, and journalists are increasingly resorting to self-censorship in both online and offline media.
7. In 2016, Turkey was ranked "Not Free" on Freedom House's Freedom on the Net index. It has retained this score in subsequent reports issued in 2017 and 2018. From 2009 to 2015, Turkey received a score of 'Partly Free' on Freedom House's Freedom on the Net ranking index, a

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<sup>1</sup> "Statistics - ITU." <https://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>. Accessed 18 Jul. 2019.



ranking that it held until a decline in the state of human rights online in 2016.

8. After the 2016 coup attempt, more than 50,000 Turkish citizens were placed in arbitrary detention for their alleged use of ByLock, an encrypted communications app. The authorities detected use of the app by tracking users' IP addresses. It was later discovered that several other popular applications shared IP addresses with ByLock and many of those who had been detained were released.
9. A report from Turkey Blocks noted that on 11 September 2016, landline, mobile phone, and internet services were suspended in 10 cities for six hours, affecting around 12 million residents. These service restrictions were put in place at the same time as 28 Kurdish mayors were being removed from their posts.<sup>2</sup>
10. In October 2016, the government suspended mobile and internet services in 11 cities for several days, leaving 6 million citizens offline, in a shutdown that coincided with mass protests sparked by the detention of a number of local Kurdish politicians, including the two co-mayors of Diyarbakır.<sup>3</sup>
11. Partial and complete network shutdowns have decreased, but Turkey remains capable of enacting them without notice or due process. TNET, a subsidiary of the partly state-owned company Türk Telekom, controls Turkey's internet infrastructure. Türk Telekom owns 256,000 km of fiber-optic infrastructure, which is nearly four times the total combined fiber length of all other operators.
12. In March 2018, the Turkish parliament approved a bill that requires streaming platforms, including foreign-based online media platforms such as Netflix, to obtain broadcast licenses. The bill also provides for Radio and Television Supreme Council (RTÜK) to demand content removal from or restrict access to these platforms.
13. In February 2019, 49 MEPs and 14 press freedom and free expression organisations supported a Resolution on Ineffective Domestic Legal Remedy for Turkey's Journalists, which urged Turkey to "ensure that journalists' right to freedom of expression; their right to engage in critical, well-founded reporting in the public interest; and their right to disseminate the news are protected in order to restore the plurality of voices and alternative news sources for the people of Turkey."<sup>4</sup> CPJ's year-end prison census data for 2018 reports that 68 journalists are currently detained in Turkey.<sup>5</sup>

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<sup>2</sup> Turkey Blocks, "New internet shutdown in Turkey's Southeast: 8% of country now offline amidst Diyarbakir unrest", 27/10/2016, <http://bit.ly/2XV2ZeX>

<sup>3</sup> *Ibid*

<sup>4</sup> "Turkey: Resolution on ineffective domestic legal remedy for journalists ...." 14 Feb. 2019, <https://www.article19.org/resources/turkey-resolution-on-ineffective-domestic-legal-remedy-for-journalists/>. Accessed 18 Jul. 2019.

<sup>5</sup> "Explore CPJ's database of attacks on the press - Committee to Protect ...." [https://cpj.org/data/imprisoned/2018/?status=Imprisoned&cc\\_fips%5B%5D=TU&start\\_year=2018&end\\_year=2018&group\\_by=location](https://cpj.org/data/imprisoned/2018/?status=Imprisoned&cc_fips%5B%5D=TU&start_year=2018&end_year=2018&group_by=location). Accessed 18 Jul. 2019.



## Freedom of Expression and Opinion

14. Article 26 of the Turkish Constitution broadly protects freedom of expression, stating: “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.”
15. Turkey acceded to the International Covenant on Civil and Political Rights (ICCPR) on 23 September 2003. Article 19 of the ICCPR guarantees the right to freedom of expression and freedom of opinion.
16. As it is a Council of Europe member state, Turkish legislation and court judgments are subject to the European Convention on Human Rights and bound by the decisions of the European Court of Human Rights.
17. Turkey has been the subject of more European Court of Human Rights judgements than any other Council of Europe member state. Turkey has been found in breach of Article 10 of the ECHR by the European Court of Human Rights several times.
18. 281 of the 700 judgements in which the European Court of Human Rights found a violation of freedom of expression under Article 10 of the European Convention on Human Rights involved Turkey as a respondent state.<sup>6</sup>
19. Turkey has introduced some amendments as a result of its obligation to recognise the case law of the European Court of Human Rights, however there remain concerns about the Turkish courts’ approach to implementing the standards of the ECHR.
20. Domestically, various laws and regulations restrict freedom of expression, the most significant of which for the purposes of this stakeholder submission is Law No. 5651, more commonly known as the Internet Law. Signed into law in May 2007, and subsequently revised and amended, Law No. 5651 has notable legal and procedural deficiencies, according to findings from a report published by the Organization for Security and Co-operation in Europe.<sup>7</sup>
21. As noted in Paragraphs 9 and 10 above, internet shutdowns were deployed on a number of occasions during 2016 to support a crackdown on political opponents, including a large number of Kurdish political figures.<sup>8</sup>

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<sup>6</sup> Akdeniz, Yaman & Kerem Altıparmak. "Turkey: Freedom of Expression in Jeopardy - English PEN." 15 Mar. 2018, <https://www.englishpen.org/wp-content/uploads/2018/03/Turkey-Freedom-of-Expression-in-Jeopardy-ENG.pdf>. Accessed 18 Jul. 2019.

<sup>7</sup> "OSCE RFOM Report on the Turkish Internet Law." <https://www.osce.org/fom/41091?download=true>. Accessed 18 Jul. 2019.

<sup>8</sup> Turkey Blocks, "New internet shutdown in Turkey's Southeast: 8% of country now offline amidst Diyarbakir unrest", 27/10/2016, <http://bit.ly/2XV2ZeX>



## Freedom of information and censorship of content

22. Access to information is heavily controlled and regulated in Turkey, and an increasing number of local, regional, and international websites are blocked. Notably, Wikipedia has been completely blocked in Turkey since 2017, and the use of VPNs and circumvention censorship technology is not permitted.<sup>9</sup>
23. Content blocking and takedown requests in Turkey are regulated under Article 8 of Law No. 5651, the 'Internet Law'. This law contravenes the European Convention on Human Rights, and Turkey has been directed by the European Court of Human Rights to revise and amend it.
24. Three subsequent amendments to Law No. 5651 in 2014 and 2015 served only to broaden the circumstances in which censorship is permissible under national law and to increase the powers of the Presidency of Telecommunication and the number of alternative procedures for blocking access to online content.
25. Under Article 8(1), access can only be blocked if there is "sufficient suspicion" that one of eight specific crimes are being committed on a particular website. The eight applicable crimes are: encouragement of and incitement to suicide, sexual exploitation and abuse of children, facilitation of the use of drugs, provision of substances dangerous to health, obscenity, gambling, and crimes committed against Atatürk.
26. Article 8 does not specifically provide that the crimes must be committed on the website, nor does it clarify or establish the definition of "sufficient suspicion".
27. In Recommendation CM/Rec(2016)5 on Internet Freedom, the Committee of Ministers of the Council of Europe stipulates that "before restrictive measures to Internet access are applied, a court or independent administrative authority determines that disconnection from the Internet is the least restrictive measure for achieving the legitimate aim."<sup>10</sup>
28. Law No. 5651 provides only the measure of blocking access or removing content, which is the most severe measure. The law does not provide for any other measure that is less intrusive, and therefore is in direct contravention of Turkey's international human rights obligations.
29. The vast majority of content blocking and takedown requests have been issued by the Information and Communication Technologies Authority (BTK) rather than by the courts, and the procedures surrounding decisions to block or take down content are not transparent. The independence of the Information and Communication Technologies Authority (BTK) is questionable, as it is run by government appointees. There is no clearly delineated process for

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<sup>9</sup> Turkey Blocks, "Wikipedia blocked in Turkey", 29/4/2017, <https://turkeyblocks.org/2017/04/29/wikipedia-blocked-turkey/>

<sup>10</sup> "Recommendation CM/Rec(2016)5 of the ... - Council of Europe." [https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset\\_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-5-of-the-committee-of-ministers-to-member-states-on-internet-freedom?\\_101\\_INSTANCE\\_aDXmrol0vvsU\\_viewMode=view/](https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-5-of-the-committee-of-ministers-to-member-states-on-internet-freedom?_101_INSTANCE_aDXmrol0vvsU_viewMode=view/). Accessed 18 Jul. 2019.



those who wish to appeal decisions.<sup>11</sup>

30. The European Parliamentary Assembly adopted Resolution 2035 (2015) on the Protection of the Safety of Journalists and of Media Freedom in Europe in January 2015. This resolution considers “the generalised blocking by public authorities of websites or web services as a serious violation of media freedom, which deprives a high and indiscriminate number of Internet users of their right to Internet access”.<sup>12</sup>
31. According to a report by EngelliWeb, a nongovernmental organization monitoring Internet censorship in Turkey, only 5% of nearly 250,000 blocked websites and URLs and been censored by court decisions. In 2018 alone, public access to 54,903 URLs was blocked, with court order being cited in just 2% of cases.<sup>13</sup>
32. Turkey consistently ranks among the countries with the highest number of content removal requests sent to Twitter. In the period from July to December 2017, Turkey was accountable for 65% of all requests sent to Twitter. Twitter removed at least some content in 3% of the nearly 4,300 removal requests it received from Turkey during this period. Twitter filed legal objections in response to all court orders involving journalists and news outlets, none of which were ultimately successful.<sup>14</sup> Facebook and Google also report receiving high numbers of content takedown requests from the Turkish authorities.

## Right to data protection and privacy on the Internet

33. The Constitution of the Republic of Turkey includes provisions that cover the right to privacy, including Article 22, which states “Everyone has the freedom of communication. Privacy of communication is fundamental.”
34. Subsequent articles limit this protection, providing for interception of communications to be allowable “on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law in cases where

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<sup>11</sup> "Turkey Country Report | Freedom on the Net 2018 - Freedom House."

<https://freedomhouse.org/report/freedom-net/2018/turkey>. Accessed 18 Jul. 2019.

<sup>12</sup> "Recommendation 2062 (2015) and Resolution 2035 (2015) Protection ...."

[https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset\\_publisher/3EiBXIMCQhRS/content/recommendation-2062-2015-and-resolution-2035-2015-protection-of-the-safety-of-journalists-and-of-media-freedom-in-europe?inheritRedirect=false](https://www.coe.int/en/web/freedom-expression/parliamentary-assembly-adopted-texts/-/asset_publisher/3EiBXIMCQhRS/content/recommendation-2062-2015-and-resolution-2035-2015-protection-of-the-safety-of-journalists-and-of-media-freedom-in-europe?inheritRedirect=false). Accessed 18 Jul. 2019.

<sup>13</sup> "Turkey censors more than 245,000 websites since 2014, including ...."

<https://turkeypurge.com/turkey-censors-more-than-245000-websites-since-2014-including-turkeypurge-com>. Accessed 18 Jul. 2019.

<sup>14</sup> "Twitter software helps find, ban users advocating violence - Reuters." 21 Mar. 2017,

<https://www.reuters.com/article/us-twitter-extremism/twitter-software-helps-find-ban-users-advocating-violence-idUSKBN16S1Z4>. Accessed 18 Jul. 2019.



delay is prejudicial.”<sup>15</sup>

35. These caveats provided a vehicle for the government of President Recep Tayyip Erdoğan to intensify and scale up its surveillance operations following the failed 2016 coup attempt,<sup>16</sup> although the legislative underpinnings for conducting surveillance at scale and without oversight were already in place.
36. In 2014, Law No. 6532 on Amending the Law on State Intelligence Services and the National Intelligence Organization was adopted, granting intelligence agents unfettered access to communications data without a court order.
37. Law No. 6532 compels public and private bodies (including, but not limited to banks, archives, private companies, and professional organisations such as bar associations) to provide the Turkish National Intelligence Organisation with any data, documents, or information it requests regarding certain crimes, including crimes against the state security, national security, state secrets, and espionage. Failure to comply can result in imprisonment.
38. Turkish MP Barış Yarkadaş claimed in January 2017 that almost 70,000 social media accounts had been placed under surveillance in the six months following the 2016 coup attempt.<sup>17</sup>
39. Judicial approval is required for wiretapping and other forms of technical surveillance under the Penal Procedural Law. The 2015 Homeland Security Act further provides for intelligence services to engage in wiretaps for 48 hours without judicial approval, providing they notify their superiors.
40. Turkey introduced a new comprehensive Data Protection Law in 2016 to bring its data protection regulations into closer alignment with European Union standards. While this effort should be commended, it remains the case that broad limitations are imposed on these new data protections, including with regard to data that is “processed within the context of intelligence activities and to maintain national defense, national security, public order, public security or economic security.”<sup>18</sup>

## Proposed Recommendations

41. Urgently amend Law No. 5651 to ensure that content cannot be blocked without judicial authorisation and to further bring it in line with international and European standards, including the case law of the European Court of Human Rights, to protect the right to freedom

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<sup>15</sup> Constitution of the Republic of Turkey, [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf)

<sup>16</sup> “Özgün E. Topak, “The Making of a Totalitarian Surveillance Machine: Surveillance in Turkey Under AKP Rule”, *Surveillance and Society* 15.3/4, <http://bit.ly/200sXhC>

<sup>17</sup> Birguün, “Over 68K social media accounts under police surveillance in Turkey”, 14/1/2017, <http://bit.ly/2Y3d0Lx>

<sup>18</sup> Inside Privacy, “Turkey’s First Comprehensive Data Protection Law Comes Into Force”, 8/4/2016, <http://bit.ly/2XL2r06>



of expression and the right to privacy online.

- 42.** Pursuant to Recommendation CM/Rec(2016)5 on Internet freedom, Turkey is encouraged to conduct a full evaluation of the internet freedom environment, with the participation of diverse stakeholders from public and private sectors and including NGOs and academics, to ensure the necessary legal, economic and political conditions are in place for internet freedom to exist and develop and that the country's legislation is brought into line with its international obligations and international human rights standards.
- 43.** Ensure that all online content restrictions and obstacles to access are exercised strictly in line with international and European standards, and that proper judicial oversight is implemented in adherence with the principles of proportionality and necessity.
- 44.** Guarantee citizens' rights to free expression and free assembly both online and offline, and cease the practice of disrupting or limiting citizens' access to the internet.