

Would Freedom of Expression Become a National Threat: Youtube, Twitter and Wikipedia Problems in Turkey

İbrahim Sena ARVAS, Bolu Abant İzzet Baysal University, Communication Faculty, Faculty Member, PhD.

ibrahimarvas@hotmail.com, <https://orcid.org/0000-0002-5558-6913>

ABSTRACT *Authority to impose sanction on the contents published on the Internet brings along a significant complexity of authorization due to the cross-border structure of the Internet. In the study, it is seen that access blocking decisions of Turkey regarding numerous contents on the Internet both harm the prestige of the country and limit the freedoms of expression and communication of its citizens. For example, not removing the contents regarded criminal by Turkish jurisdiction from the sites lies at the bottom of the problems Turkey had with YouTube and Twitter. In consequence of not being able to block these contents on URL basis and remove them, Turkey was forced into taking decisions that violate freedom of expression. The contents on Wikipedia, which emphasize that Turkey is supporting terrorist organizations are only personal opinions and they cannot be edited or deleted by some reason. Access to Wikipedia is still blocked due to these contents and Turkey is violating the rights to freedom of communication and expression once again. However, the reasons of Turkey's being forced to violate these freedoms have never been discussed adequately for some reason. It is seen that Turkey cannot defend itself sufficiently in international arena in this respect.*

Keywords : *freedom of expression, Youtube, Twitter, Wikipedia*

İfade Özgürlüğü Ulusal Bir Tehdit Olabilir mi: Türkiye’de Youtube, Twitter ve Wikipedia Sorunları

ÖZ *İnternet içerikleri üzerindeki yaptırım yetkisi, internetin ülke sınırlarının aşan yapısı nedeniyle ciddi bir yetki karmaşasını beraberinde getirmektedir. Çalışmada, Türkiye'nin internette yer alan birçok içerik konusunda erişim engeli kararı vererek hem ülke saygınlığına zarar vermek hem de vatandaşlarının ifade ve iletişim özgürlüğünü kısıtlamak zorunda kaldığından bahsedilmektedir. Örneğin; Türkiye'nin Youtube ve Twitter ile yaşadığı sorunların temelinde, Türk yargısı tarafından suç teşkil ettiği belirlenen içeriklerin kaldırılamaması yatmaktadır. Bu içeriklerin URL temelli engellenememesi ve kaldırılamaması sonucunda Türkiye ifade özgürlüğü ihlaline neden olan kararlar vermek zorunda kalmıştır. Wikipedia’da yer alan ve Türkiye'nin terör örgütlerine destek olduğunu vurgulayan içerikler ise kişisel görüşlerden ibaret ve her nedense editlenemeyen ve silinemeyen içerikler olarak durmaktadır. Bu içerikler nedeniyle Wikipedia’ya erişim halen engellidir ve Türkiye yine iletişim ve ifade özgürlüğü haklarını ihlal eden ülke konumundadır. Ancak her nedense, Türkiye'nin bu ihlalleri yapmak zorunda kalmasının sebepleri yeterince tartışılmamıştır. Görülmektedir ki Türkiye’de bu konuda kendisini uluslararası arenada yeterince savunmamaktadır.*

Anahtar Kelimeler : ifade özgürlüğü, Youtube, Twitter, Wikipedia

Introduction

The Constitution of the Republic of Turkey secures the freedom of communication, freedom of thought and freedom of expression with articles 22, 25 and 26 respectively. Each one of these freedoms is the prerequisite of one another. While freedom of communication is a requisite for generation of thoughts, freedom of expression is necessary to propagate thoughts. Every element included in this cycle is the basis of another. In this context, first of all, freedoms of communication and thought should be ensured to talk about freedom of expression. Freedom of expression is one of the indispensable and primary rights for western democracies. The legal basis of freedom of expression, foundations of which were laid by the reform movements in 16th century, was formed in conjunction with Bill of Rights in England, in 1689 (Hunt, 1917). Freedom of expression is one of the indispensable norms in Europe today. However, while the frame of this right specified in the first article of the Constitution of the United States is defined as limitless as possible, when it comes to Europe, it is somehow restricted by the concept of national security. Despite the fact that its definition may be comprehensive, the Supreme Court of the United States also takes some restrictions similar to those in Europe into consideration when it renders a judgment. It follows from this that freedom of expression is not granted as an unlimited right even in countries regarded as most developed with regard to their democratic structure. In conjunction with the development of technology and correspondingly mass media, limitations of the freedom of expression are consistently updated. Resolutions related to securing or limiting the freedom of expression vary from one country to another in conjunction with the Internet technology which was developed and became widespread especially during last two decades. The fast and uncontrolled development of technology has caught the legal infrastructure of many countries unprepared. Turkey has always been the focus of debates regarding the freedom of expression for long years and consequently, it is now one of the countries which could not develop the legal basis to protect and set the limits of this freedom along with proliferation of Internet. When it comes to Internet, international public opinion is that the freedom of expression has been frequently violated in Turkey in recent years. To a large extent, this perception is caused by the disputes that Turkey had with social media platforms such as YouTube and Twitter in the past and with Wikipedia today. Ultimately, the ban imposed on accessing these platforms in Turkey has led to questions regarding the boundaries of the freedom of expression in Turkey.

This study aims at examining the said developments which are hard to pass objective judgment on. Within the scope of the study, first the boundaries of the freedom of expression in Turkey will be summed up within the context of international documents and the Turkish Constitution Law No. 5651 on Regulating Broadcasting in the Internet and Fighting against Crimes Committed through Internet Broadcasting, which is also known as the Internet Law will be referred to in this summary. However, as this study will be centered on freedom of expression, all of these legislative regulations will be addressed in the context of freedom of expression. In brief, the topics which lie outside the scope of freedom of expression such as cybercrimes which concern the Internet closely are outside the restrictions of this study. Following this summary, blocking YouTube, Twitter and Wikipedia in Turkey will be

addressed in turn. As they have been brought into the agenda at the most both by international press and in Turkey, only the block of these three platforms are included in the study. The developments leading to these blocks, latest developments and court orders will be discussed. In the conclusion section of the study, whether the national and international justified decisions to which the Turkish jurisdiction attributes these blocks are in compliance with the concept of freedom of expression defined by Turkish laws and universal law, or not will be discussed. Accordingly, the primary goal of the study is discussing the compliance of said decisions to block access to these platforms pursuant to the domestic law of Turkey and international conventions to which Turkey is a party and in the context of freedom of expression. The data used in this study have been collected with literature and archive review and the study is expected to provide opinions regarding how the freedom of expression in Turkey works on the Internet.

Freedom of Expression and Its Limitations in Turkey

Undoubtedly, the most prominent legal debate regarding usage of social media is related to freedom of expression and the limits to it. Freedom of expression is among the fundamental rights and freedoms such as right to life, equality before the law and right to fair trial and this fact lies at the bottom of the relationship between the mass communication law and freedom of expression. In this context, Turkey is one of the countries which put signature under international documents which are accepted as the international basis of freedom of expression. The first one of these documents is the United Nations Universal Declaration of Human Rights which was announced in 1948. Hence the name, it is just a declaration. It refers to some rights and freedoms but does not specify how they will be actualized and maintained (Arvas, 2016). Article 19 of the declaration about the freedom of expression is as follows: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” (Güriz, 1998). As can be understood from the phrase of “any media”, all kinds of mass communication media is included in the scope of Article 19 of the Universal Declaration of Human Rights (Arvas, 2016). The Declaration defines the freedom of expression but it specifies no restriction regarding freedom. As the United Nations which has opened the Universal Declaration of Human Rights for signature does not have a judicial body in this respect, expressions to be regarded as principles are preferred instead of statements that require sanctions to be imposed.

The United Nations Universal Declaration of Human Rights is not the only document defining the freedom of expression. Another covenant that Turkey has acceded to under this multinational roof is the International Covenant on Civil and Political Rights, also known as Twin Conventions, which regulates the rights included in the Universal Declaration of Human Rights in detail and adopted by the United Nations General Assembly in 1966. Paragraphs 1 and 2 of Article 19 of the convention which includes a long list of civil and political rights regulate the freedom of expression. According to these paragraphs (cited by Arvas, 2016 from Cankaya and Yamaner, 2012): “Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this

right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” The main difference between this covenant and the Universal Declaration of Human Rights is that it includes some restrictions in respect of freedom of expression. Paragraph 3 of the above Article 19 of covenant states that exercise of freedom of expression requires responsibility and includes two restrictions. These restrictions includes the following (United Nations Human Rights Office of High Commissioner, 1976):

A. For respect of the rights or reputations of others;

B. For the protection of national security or of public order (ordre public), or of public health or morals.

As can be understood from both statements, freedom of expression is limited when rights of others, national security or public order are at stake.

Apart from the documents of the United Nations, Turkey has also ratified the European Convention on Human Rights in 1954, which was issued by the European Council of which Turkey is a charter member and came into force in 1953. Turkey has recognized the mandatory judiciary power of the court which is the judicial body of the convention in 1987. The convention is above the laws in domestic legal order (cited by Arvas, 2016 from Cankaya and Yamaner, 2012). The convention regulates freedom of expression in Article 10, Section 1. First paragraph of this article defining and securing the freedom of expression is as follows: (European Convention on Human Rights, 2010): “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.” While Article 10 of the European Convention on Human Rights defines freedom of expression in paragraph 1, paragraph 2 states in what circumstances this freedom would be legally restricted (Arvas, 2016): “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

As is seen, the European Convention on Human Rights specifies when the freedom of expression will be restricted in detail. The number of unrestricted rights is rather few in European Convention on Human Rights and freedom of expression is not defined in this context. The European Convention on Human Rights first defines the rights and then enumerates the reasons for intervention of public force to the exercise of these rights. Article 10 is written out similarly. Restrictions imposed on the freedom of expression are related to the exercise of this freedom. The content of freedom of expression cannot be interfered (Akgül, 2012).

In the Constitution of the Republic of Turkey, on the other hand, freedom of communication and freedom of thought and opinion are secured under articles 22 and 25 respectively, before defining and determining the limits of freedom of expression (Constitution of the Republic of

Turkey). It is not possible to impose any restriction on the freedom of thought and opinion but the law maker has imposed some restrictions on freedom of communication. Pursuant thereto, Article 22 is as follows: “Everyone has the freedom of communication. Privacy of communication is fundamental. Unless there exists a decision duly given by a judge 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 delay is prejudicial, again on the abovementioned grounds, communication shall not be impeded nor its privacy be violated. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall be automatically lifted. Public institutions and agencies where exceptions may be applied are prescribed in law.” The aforementioned restrictions related to national security and public order undoubtedly apply to all mass communication media active in Turkey. The Constitution of the Republic of Turkey secures the freedom of expression in Article 26, under the title of Freedom of Expression and Dissemination of Thought. The first paragraph of the article is as follows (The Constitution of the Republic of Turkey): “Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.” The Constitution which secures the freedom of expression in the first paragraph of this article, restricts this freedom in the second paragraph as follows: “The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented. The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.” The provisions stated in the last two sentences of this paragraph which marks out the freedom of expression in detail were added to the Constitution in 2001. Although the boundaries are defined in detail, when Article 26 of the Constitution of the Republic of Turkey is examined as a whole, it is seen that it doesn’t contradict with Article 10 of the European Convention on Human Rights which regulates freedom of expression in principle. As it is seen, both international conventions to which Turkey is a party and its own constitution particularly underline public order, national security and individual violations in respect of the boundaries of freedom of expression. No privileges are granted to mass communication media with respect to implementation of this frame. In the context of these legislative regulations, it can be said that boundaries of freedom of expression apply to all communication media as this freedom applies the same (Arvas, 2016).

Freedom of Expression and Legal Order of Internet in Turkey

The Internet sites which allowed the users to produce only unilateral content within the scope of Web 1.0 technology so to say establish a linear communication with users; now have a new functionality with Web 2.0 technology. In conjunction with Web 2.0, the circular communication in which the users are active has made the Internet an indispensable communication tool for people (Arvas, 2018a). By virtue of Web 2.0 technology, key elements of freedom of expression are completed and users had the opportunity to exercise both freedom of information and freedom of expression efficiently. Synchronization of separate systems has led to dissemination of knowledge with multiplier effect. Due to the development of social media networks such as YouTube, Facebook and Twitter being in the lead and their synchronization with each other, freedom of expression has become available in the broadest sense. Thus, users have participated in the processes of creation and dissemination of knowledge.

According to the 2018 Global Digital Report for a UK-based company, We are Social, 53% of the world's population is using the Internet. At this rate, the number of people who use the Internet has exceeded four billion people. More than three billion of these four billion people are active social media users. According to the report's data on Turkey, 63% of the total population, 51 million people, actively uses social media (We are Social, 2019). As can be seen from the data above, both throughout the world and in Turkey, the use of the Internet and social media is rapidly increasing every single day. In line with this increase, users transfer activities which were normally carried out by classical communication tools to social media (Arvas, 2018a). Usage of social media by a considerable part of the population of Turkey has made the Internet one of the most important media in respect of freedom of expression. So, when it comes to freedom of expression in Turkey, international conventions and regulations related to the Internet apart from the Constitution should be taken into consideration. The Law No 5651 is accepted as the most prominent legislation which was specially drawn up in respect of the legal order of the Internet.

The Law No. 5651 on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting was enacted on May 04, 2007 and entered into force after it is published in the Official Gazette No. 26530 dated May 23, 2007. The aim and scope of the law is specified in Article 1 as follows; "The subject, aim and scope of this Law is to regulate the responsibilities and liabilities of content providers, hosting providers, access providers and public use providers, and the principles and practices applicable to efforts to combat, through the agency of content, hosting and access providers, certain offences committed in the internet environment." (Arvas, 2018b).

This law also states in what circumstances Internet access will be blocked, authorizes the institutions or organizations responsible for blocking and specifies when the Internet access decision will be applied. The offences causing access blocking are enumerated in Article 8 of the Law No.5651. Any of the following offences under the Turkish Criminal Code, Statute 5237, dated 26.9.2004 leads to Internet access block: Incitement to commit suicide (article 84), Sexual exploitation of children (article 103, first paragraph), Facilitating the use of narcotic or stimulant substances (article 190), Supply of substances which are dangerous to health

(article 194), Obscenity (article 226), Prostitution (article 227), Providing premises or facilities for gambling (article 228) and any of the offences under the Law on Offences against Atatürk, Statute 5816, dated 25.7.1951 (Arvas, 2018b). Blocking Internet access due to the offenses specified here can be classified as access blocking due to committing a offence.

The article that most debated about is Article 8/A. Article 8/A was added to the law subsequently and it has 5 paragraphs. Article 8/A was added to the Law No.5651 in March 2015 as a result of disputes arisen between Turkey and numerous Internet platforms. In the first paragraph of this article it is stated that a judge may take a decision to remove content from or block access to the Internet on one or more of the following grounds: to protect the right of life or security of life and property, to protect national security and public order, to prevent the commission of a crime, or to protect public health. The reason why this article is frequently a matter of debate is its second paragraph. This paragraph states that in circumstances where a delay presents a risk, access blocking is possible pursuant to a request by the Presidency or relevant ministries without waiting for an adjudication. However, the same paragraph states that such an administrative sanction should be submitted within 24 hours to a judge of criminal courts of peace for approval and the judge must announce his/her decision within 48 hours; otherwise the decision of access blocking will automatically lapse. Paragraph 3 of Article 8/A is such as to explain the technical reason of access blockings that have occurred in Turkey. Hereunder, the decisions taken on the basis of the above provisions will be “in the form of a block imposed on access to the relevant publication, section, or part in which the offence was committed (in the form of the URL etc.). However, but in circumstances where it is technically not possible to prevent the access to the offending content or blocking access will not prevent the violation, a decision may be made to completely deny access to the Internet site.

The Presidency of Telecommunication and Communication (TİB) is authorized to perform the Internet related tasks specified in Law No.5651. However, authorization of TİB to take a decision to block access by imposing an administrative sanction in addition to implementing legal sanctions has led to serious debates in Turkey. TİB was shut down pursuant to a legislative decree published within the scope of the State of Emergency declared following the coup attempt on July 15, 2016 in Turkey. Upon shut down of TİB, the parts including the term “TİB” in the Law No.5651 were replaced with Information and Communication Technologies Authority (BTK).

Following the entry of the Law No.5651 into force, the most known site to which the access was blocked is the video sharing site, YouTube. There are three reasons due to which access to YouTube was blocked; insulting Atatürk and sacred values, expressions containing violence and obstruction of criminal procedure (Canata, 2016). Following the entry of the law into force, YouTube has remained to be the most popular site to which the access was blocked. After blocking access to YouTube, Turkey had some serious disputes with Twitter in 2014 and with Wikipedia recently, both of which have resulted in blocking access to these sites.

Disputes between Turkey and Youtube

On March 06, 2007, the users who tried to access the www.youtube.com address from Turkey have seen this warning: "Access to www.youtube.com site has been suspended in accordance with decision no: 2007/384 dated 06.03.2007 of İstanbul First Criminal Peace Court." A video insulting Mustafa Kemal Atatürk, founder of the Republic of Turkey, was uploaded to video sharing site, YouTube. This video has come to the fore across the country in a short time. Thereupon, Ms. Nurten Altınok, the Press Prosecutor of Chief Public Prosecutor's Office of İstanbul has instructed the Security Branch Office under İstanbul Security Directorate and requested the video in question. After watching the evidentiary CD, Prosecutor Altınok has requested blocking access to the site and İstanbul 1st Criminal Court of Peace on Duty has taken the decision to block access to YouTube (Hürriyet Newspaper, 2007, March 07).

In the period of this development, there was no law regarding the Internet in Turkish State, yet. Therefore the said decision was taken pursuant to the Law on Offences Committed Against Atatürk, No. 5816 and Turkish Penal Code. The court has finalized the case on March, 6 2007 and rendered the following judgment (No: 2007/384); "It is understood that degrading swear words in English are inscribed on Mustafa Kemal Atatürk's picture and on Turkish Flag and the claim is recognized". Upon notification of the said judgment of İstanbul 1st Criminal Court of Peace on Duty to Türk Telekom, the legal consultancy department of the company has initiated the necessary actions. Officials of Türk Telekom have consulted with Ms. Nurten Altınok, the Press Prosecutor of Chief Public Prosecutor's Office of İstanbul if the access ban would be lifted in case the site removes the insults published on the site or not. Accordingly Prosecutor Nurten Altınok has applied to İstanbul 1st Criminal Court of Peace to lift the access ban if the insults on the site are removed. The court has decided that the ban to access YouTube will be lifted if the insults are removed from the site. Following the international media coverage of access ban, YouTube removed the illegal video clip from its servers, and the initial access ban which was issued on 06 March, 2007 was lifted on 09 March, 2007 lasting only 3 days (Akdeniz & Altıparmak, 2008). Subsequent to this development, works related to preparation of an Internet law in Turkey were accelerated and as can be seen above, the way was paved for including a restriction referring to Law No.5816 in this new law.

Following this development, YouTube has made an announcement. "As YouTube, we show ultimate attention to such sensitive matters. Such problems become more complicated because the Internet is now an international phenomenon. While technology provides access to all kinds of knowledge across the world, it also leads to emergence of cultural differences. We try to create an environment where people all around the world would share the videos they make safely and in accordance with the rules. We believe that the legal authorities in Turkey are aware of our efforts to remove all copies of the video in question from YouTube and we do everything to prevent this video to be shared again." (Hürriyet Newspaper, 2007, March 07).

This access block has accelerated preparation and entry into force of the Law No.5651 on Regulating Broadcasting in the Internet and Fighting against Crimes Committed through Internet Broadcasting. Upon entry into force of the Law No.5651 on May 4, 2007, related regulations were published. The Prime Ministry prepared and published three related by-laws to coincide with the law coming into force. On October 24, 2007 the government

published the Regulations governing the access and hosting providers which includes the principals and procedures for assigning activity certificates for such providers “Regulations 1” (Official Gazette, 2007, November 01). An amended version of these Regulations was published on 01 March, 2008. On November 01, 2007 the government published the Regulations governing the mass use providers, the so called Internet cafes “Regulations 2”. (Official Gazette, 2007, October 24), (Akdeniz & Altıparmak, 2008). In November 2007, the government published the Regulations Governing the Publications on the Internet which included the detailed principals and procedural matters with regards to the application of Law No. 5651 “Regulations 3” (Official Gazette, 2007, November 30). These Three Regulations were prepared subject to article 11 (1) of Law No. 5651 and The Ministry of Transportation, Ministry of Interior Affairs and Ministry of Justice were all consulted during the drafting stage (Akdeniz & Altıparmak, 2008).

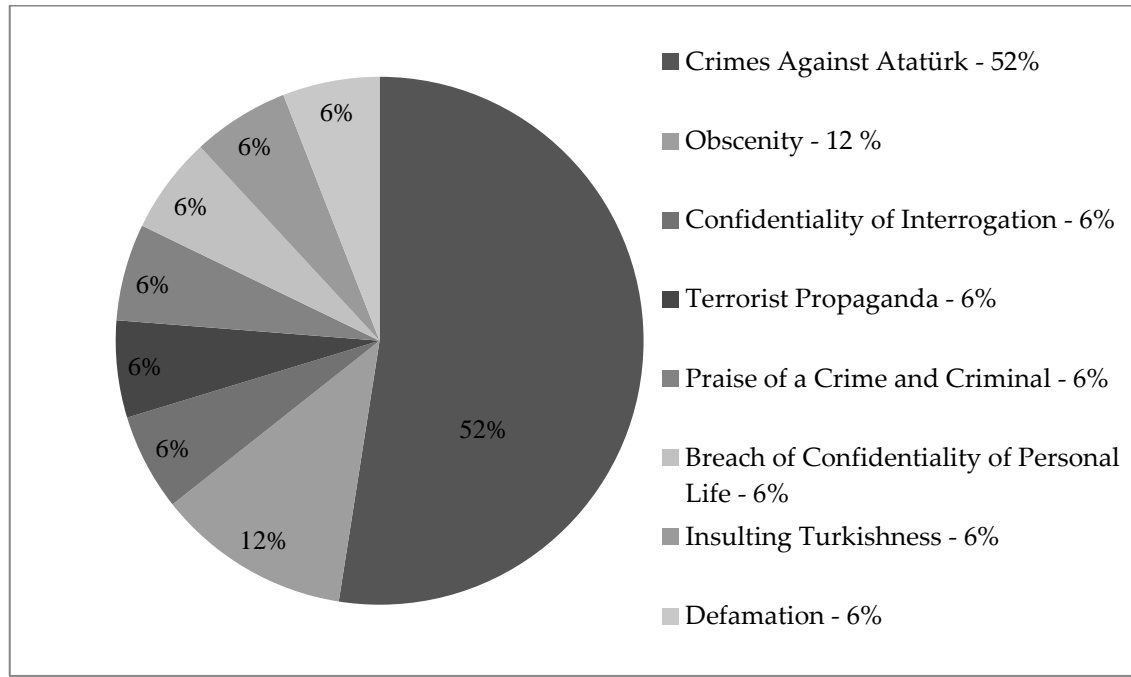
After these, another Atatürk related blocking order was issued in October 2007 by the Ankara 5th Criminal Court of Peace with regard to 66 video clips involving defamatory statements about Atatürk, the Turkish Army, the Prime Minister and the President of Turkey. The court blocking order required a complete Access ban to YouTube (Akdeniz & Altıparmak, 2008).

The grounds of the second blocking decision in 2007 were the Law No.5651 which was entered into force in that period. The reason of the said blocking was videos including insults and swear words against Turkish Nation and Atatürk. The blocking was made upon the judgment of Ankara 12th Criminal Court of Peace No.2008/55 dated January 17, 2008 (HaberTürk Newspaper, 2008, January 19). This blocking was followed by another one based on the decision of Ankara 1st Criminal Court of Peace on March 13, 2008 due to the insulting images at Atatürk (Milliyet Newspaper, 2008, May 06). Access to YouTube was blocked one more time by the decision of Ankara 11th Criminal Court of Peace dated April 24, 2008 and by the decision of Ankara 5th Criminal Court of Peace dated April 30, 2008 on May 5, 2008 (Hürriyet Newspaper, 2008, May 06). This was the longest access blocking for YouTube. Even though YouTube has removed the related videos from its data base, this blocking was not lifted. Access to YouTube was blocked for almost 2.5 years. While this blocking continues, a workshop was organized in Bolu province in Turkey titled Blocking Access to Sites Pursuant to Law No.5651 and Relevant Legislation. Along with public officials like Head of the Internet Department of Telecommunication Institution, Press Prosecutors under Ankara Public Prosecution Office, Head of IT Department of the Ministry of Justice and Head of IT Department of Ankara Security Directorate, representatives of various Internet sites attended the workshop. In this workshop, the Press Prosecutor of Ankara Public Prosecution Office, Nadi Türkaslan made a speech and said that the videos on YouTube are removed only from Turkish database and the block on the site will not be lifted unless they are also removed from the site’s world database and a certificate of authority is not obtained from Turkey (Hürriyet Newspaper, 2008, June 18).

With the latest blocking orders of May 2008 YouTube was blocked at both DNS and IP level in Turkey for over two years. According to the provisional article 1 (3) of Regulations 2, hosting companies must get their activity certificate through an application made to the Presidency within 9 months from the Regulations’ entry into force. Hosting companies’ websites that fail to obtain this license shall be blocked by the Presidency. This licensing

period for hosting companies came to an end on 24 July, 2008. Despite calls for a license application YouTube has not made such an application and decided not to be subject to Turkish law (Akdeniz & Altıparmak, 2008).

Figure 1- YouTube Blocking Orders March 2007 - June 2008 (Akdeniz & Altıparmak, 2008: 53)



As can be seen above, the majority of the blocking orders issued by courts involved crimes committed against Atatürk (52%). However, there were also video clips allegedly involving terrorist propaganda, defamation and obscenity which resulted in YouTube being blocked in Turkey. An assessment of these decisions is provided here (Akdeniz & Altıparmak, 2008).

By October 2010, access to YouTube had been blocked for almost 2.5 years. The dispute between YouTube and Turkey was not settled for a long time. YouTube has removed 6 out of 10 videos which have caused the access blocking decision and blocked access to remaining 4 videos from Turkey. The problem became a bigger one as YouTube did not pay income tax on the revenue it generated in Turkey and did not obtain the said certificate of authorization. An interesting solution was found to this problem. A German company has purchased the copyrights of the 4 videos in question. This company named International Licensing Service has applied to YouTube after purchasing the copyrights of 4 videos and removed the videos by way of automatic copyright complaint (Sabah Newspaper, 2010, October 31). Following the removal of these videos from YouTube, Press Offenses Investigation Office of Ankara Chief Public Prosecutor's Office has confirmed the removal of the videos and access to YouTube was allowed before the end of October 2010.

In October 2010, when access to YouTube was allowed again, private images which were alleged to be of Deniz Baykal, a well-known Turkish politician were broadcasted on YouTube. Upon application of Deniz Baykal's lawyers, Ankara 11th Criminal Court of Peace has taken a decision to block access to YouTube, where the images alleged to be of Deniz Baykal were broadcasted. The court requested from the Presidency of Telecommunication and Communication (TİB) to take necessary action to block access. Thereupon, officials of

TİB consulted with YouTube with regard to court’s decision and violation of the right (HaberTürk Newspaper, 2010, November 02). YouTube removed the said videos almost immediately after this negotiation and the decision of access blocking was not implemented.

The agreement reached between Turkish officials and YouTube lasted for almost 3.5 years. However the Internet users who wanted to access YouTube from Turkey on March 27, 2014 saw the following message: "An administrative measure is imposed on this Internet site by the Presidency of Telecommunication and Communication pursuant to Clause b of Paragraph 1 and Paragraph 4 of Article 8 of the Law No.5651" (CNNTürk, 2014, April 10). Turkey’s agenda was changed with a video posted on YouTube on March 27, 2014. The video included the voice record and deciphered inscription of a confidential meeting alleged to be attended by the Minister of Foreign Affairs of the time, Ahmet Davutoğlu, Undersecretary of the National Intelligence Organization, Hakan Fidan, Undersecretary of the Ministry of Foreign Affairs, Feridun Sinirlioğlu and Deputy Chief of the Turkish General Staff, Full General Yaşar Güler. It was alleged that the said video was illegally recorded during a confidential meeting of the top government officials of Turkey about Turkish foreign policy. When the said video was broadcasted on YouTube, Chief Public Prosecutor’s Office of Gölbaşı, Ankara applied to the Criminal Court of Peace for blocking access only to the IP addresses which broadcasted the videos. The Prosecutor’s Office requested to have a talk with YouTube first and, requested that access would be blocked till the videos were completely removed if YouTube did not block access through relevant IP addresses and domain names. Thereupon, Gölbaşı Criminal Court of Peace took a decision (2014/358) for blocking access to 15 Internet addresses on YouTube on the grounds that they published confidential dialogues related to the security of the state. YouTube didn’t remove the related contents and access to the site was completely blocked. Union of Turkish Bar Associations made an objection against the court’s decision on April 02, 2014. This objection was acknowledged to be right by the decision numbered 2014/381 of Gölbaşı Criminal Court of Peace. In its reasoned decision, the court referred to Handyside/United Kingdom case of the European Court of Human Rights and Article 10 of the European Convention on Human Rights and regarded complete blocking of access to YouTube as violation of freedom of expression. It was adjudged on April 04, 2014 that access blocking to 15 YouTube links would continue but the blocking to YouTube would be lifted. Even if the implementation of this decision was delayed due to the objection of Prosecutor’s Office, access blocking to YouTube was lifted on April 09, 2014 on condition that URL based access blocking to 15 YouTube links would continue. This access blocking lasted for 13 days. Even though court decisions changed during this period, TİB lifted access blocking to YouTube by way of administrative measure.

Another decision to block access to YouTube was implemented on April 6, 2015. The incident causing access blocking was initiated with Public Prosecutor Mehmet Selim Kiraz’s being taken as a hostage and killed by the Revolutionary People’s Liberation Party-Front (DHKP-C) on March 31, 2015. The attack was recorded by the terrorists. Upon broadcast of these images in social media and consequently on YouTube, Istanbul 1st Criminal Court of Peace took a decision on April 3, 2015 to block access to Internet sites where images, dialogues and videos about the investigation of the killing of Public Prosecutor Mehmet Selim Kiraz were published upon request of the Bureau for Investigating Terror and Organized Crimes made

in the same day (BBC, 2015, April 06). This decision numbered 2015/1664 D. has included the contents shared on social media pursuant to the new Internet law No.5651. On April 4, the day after the decision, the Access Providers Association (ESB) was notified about the content blocking decision and on April 6, and Office of İstanbul Chief Prosecutor notified ESB about the nonremoved contents on Facebook, Twitter and YouTube and requested for the said contents to be removed till 12:00 o'clock. Since Facebook, Twitter and YouTube could not interfere with these contents till 12:00 o'clock, ESB has requested blocking all of these sites instead of blocking every single sharing one-by-one (Hürriyet Newspaper, 2015, April 07). The related contents were removed on the basis of URL or blocked. Facebook was opened to access immediately and YouTube and Twitter were opened 8 hours after the decision.

The decision of blocking access to YouTube because of the videos insulting Atatürk, which was implemented on May 5, 2008 was brought to trial in European Court of Human Rights by Serkan Cengiz, Yaman Akdeniz and Kerem Altıparmak (applications nos. 48226/10 and 14027/11). In its decision regarding (the registered name of the case Cengiz and Others v. Turkey) ECHR has adjudged that blocking of access to YouTube is a violation of Article 10 (freedom of expression) of the European Convention on Human Rights by Turkey. This adjudgment was served upon on December 1, 2015.

The only problem between Turkey and YouTube was not access blocking before and after the entry into force of the Law No.5651. Apart from the aforementioned access blocking incidents, Turkey applied to YouTube several times to remove some contents. As is seen, YouTube and Turkish Jurisdiction and government agencies faced off against each other many times between the years of 2007 and 2015. Justifications of the said blocking decisions and their harmony with freedom of expression will be discussed in the conclusion section of the study.

Disputes between Turkey and Twitter

Twitter's past in Turkey does not go long way back as YouTube. It can be said that Turkish social media users discovered Twitter rather late. This might be because of Twitter's offering Turkish language support together with Russian language support on April 26, 2011. Twitter was founded in 2006 but the most significant increase in the number of Twitter users was seen in May 2013, during Gezi Park protests. According to the data of Somemto, a social media research analysis tool, the number of active [Twitter] users sharply increased in 2013. While the number of active Turkish users was around 1 million 800 thousand on May 29, 2013, it reached 9.500.000 on June 10, 2013 (Taneri, 2014). The State of the Republic of Turkey had disputes with Twitter, similar to those it had with YouTube. However, Transparency Reports published by Twitter between 2012 and the second half of 2015 reveal that access to Twitter from Turkey was not blocked during Gezi Park protests and within the following 6 months (Arvas, 2016). Table of Transparency Report is given below:

Table 1 – Table of Twitter transparency report – Turkey (Twitter, 2019, January 12)

Report	Removal requests	Removal requests (government)	Accounts reported	Accounts withheld	Tweets withheld
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	(court orders)	agency, police...)			
Jan – Jun 2018	508	8480	13843	425	1464
Jul – Dec 2017	466	3828	6544	148	322
Jan – Jun 2017	715	1995	9289	204	497
Jul – Dec 2016	844	2232	8417	290	489
Jan – Jun 2016	712	1781	14953	222	1571
Jul – Dec 2015	450	1716	8092	414	3003
Jan – Jun 2015	408	310	1978	125	1667
Jul – Dec 2014	328	149	2642	62	1820
Jan – Jun 2014	65	121	304	17	183
Jul – Dec 2013	2	0	2	0	0
Jan – Jun 2013	3	4	30	0	0
Jul – Dec 2012	0	6	9	0	0
Jan – Jun 2012	1	0	7	0	0

Content removal requests show a significant increase in parallel with information requests in all of the 7 reports issued between 2012 and second half of 2015. The number of content removal requests made to Twitter from Turkey showed a sevenfold or eightfold increase in the second half of 2014, as compared the total number of requests made in previous years. While this increase does not show parallelism with Gezi Park protests in Turkey, it is seen that content removal requests made to Twitter was increased after the judiciary operations against the government between the dates of December 17 and 25, 2013. It can be said that this increase in the number of requests was caused by the increase in the number of bank accounts of the illegal organization that organized the operations and voice records published on social media, which were alleged to be eavesdropping of cabinet members.

Twitter also had its share of access blockings imposed on YouTube in March 2014. As a matter of fact, access blocking for Twitter was implemented before YouTube. Almost all social media platforms were used in actions aimed at overthrowing the government on December 17 and 25. This caused the state impose serious sanctions on social media during the first half of 2014.

Access to Twitter was first blocked on March 20, 2014. Access to Twitter was blocked by the Presidency of Telecommunication and Communication (TİB) with a protection measure decision with reference to decisions of the Chief Public Prosecutor’s Office in Istanbul (dated March 7, 2014 and numbered 2011/762), Samsun 2nd Criminal Court of Peace Samsun (dated March 4, 2014 and numbered 2014/181) and İstanbul 14th Anatolian Criminal Court of First Instance (dated February 3, 2014 and numbered 2011/795). TİB has detected that users were accessing the twitter.com address by changing their DNS settings and blocked access to Google DNS addresses (Arvas, 2016). TİB’s announcement regarding this blocking was as follows (Official Gazette, 2014, April): “Presidency of Telecommunication and Communication carries out its activities pursuant to the provisions of Law No.5651 and other relevant Legislation. Upon complaints of our citizens, courts of the Republic of Turkey have decided that access to Twitter should be blocked due to the violation of personal rights and privacy. These decisions were received by the Presidency of Telecommunication and Communication and our Presidency requested from Twitter to remove the related contents.

However, in spite of our well-meant efforts in respect of implementing the court decisions, Twitter has remained insensitive to these decisions and derecognized the court decisions. The said Internet site located abroad has disregarded the decisions taken by the courts of the Republic of Turkey. Consequently, the measure of blocking access to Twitter is implemented to prevent the irreparable victimization of our citizens in the future as there was no other option. The Presidency of Telecommunication and Communication is obliged to implement court decisions in accordance with the principles of the state of law. If the said Internet site located abroad removes the unlawful contents by complying with the decisions of Turkish courts, the precautionary access blocking will be revoked.”

The said access blocking decision was brought to trial by Turkish citizens named Mustafa Sezgin Tanrikulu, Yaman Akdeniz and Kerem Altıparmak before the Constitutional Court, the superior judicial authority in Turkey. According to the decision text based on the application dated April 2, 2014 and numbered 2014/3986 the justification of this objection was explained as follows; Decisions of the mentioned courts regarding Twitter are only related to some certain contents and accordingly, the decisions of judges should only be implemented for the part subject to this violation and complete blocking of access to Twitter is contrary to both the decisions of said courts and articles 26, 27, 40 and 67 of Turkish Constitution which includes the freedom of expression. In addition, the applicants have argued that completely blocking access to Twitter is contrary to law and arbitrary, significantly limits the possibility to reach the information and the right to disseminate information, this implementation does not only prevent access to available information on the site in question but also to the information to be shared on these social networks in the future, it makes censorship possible even though it is absolutely banned in the Constitution and the said action is contrary to the principles adopted by European Court of Human Rights with respect to the freedom of expression secured by Article 10 of European Convention on Human Rights. The Constitutional Court stated the justification in the decision text based on the application dated April 2, 2014 and numbered 2014/3986 as the freedom of expression is one of the foundations of a democratic society and among the indispensable conditions for social and individual development. It was stated in the decision that social pluralism can only be reached in a free-discussion environment where every idea can be freely expressed. The decision also referred to Article 26 of the Constitution of the Republic of Turkey which is one of the articles regulating freedom of expression and it was adjudged that the related article was violated and consequences of this violation should be abolished (Arvas, 2016).

Information and Communication Technologies Authority (BTK) made a public statement on April 3, 2014 and announced that access blocking to twitter.com is revoked. Access blocking to Twitter has lasted 13 days and ended with this announcement. BTK also announced that Twitter has designated a representative in Turkey and negotiations were conducted with the company. During the first negotiation with Twitter on March 22, 2014, the parties came to a mutual agreement regarding the implementation of 4 of the current court decisions. In the second negotiation conducted on April 1, 2014, it was requested from Twitter to do what is necessary with regard to blocking requests based on individual applications of Twitter users in Turkey and other court decisions as of January 1, 2014. In this period, the process of

establishment of a contact mechanism was accelerated as part of the negotiations conducted with Twitter.

Although these developments in 2014 led to reconciliation between Turkey and Twitter, access to Twitter was blocked once again a year later. Public Prosecutor Mehmet Selim Kiraz’s being taken as a hostage and killed by the Revolutionary People’s Liberation Party-Front (DHKP-C) on March 31, 2015 led to blocking access to Twitter, YouTube and Facebook as mentioned above. URL based access to 166 Internet addresses was blocked with the decision No.2015/1664 of Istanbul 1st Criminal Court of Peace detailed above. In the said decision, first the addresses to be blocked are listed and then the reasons are explained as follows; protection of national security and public order, prevention of criminal intent, prevention of unjust treatment towards public officials and citizens due to illegal contents on Internet, prevention of the same from damages and preserve their rights and freedoms (Arvas, 2016). The court adjudged that access to these sites shall be completely blocked unless the said contents were removed. As mentioned earlier, Twitter did not remove the contents related to Prosecutor Kiraz’s being killed and access to Twitter was completely blocked. However, the law office with which Twitter signed an agreement during the time of previous blocking accelerated Twitter’s opening to access. For the first time, Turkey found an addressee related to Twitter (Arvas 2016). Following the negotiations conducted with the legal representative of Twitter in Turkey, the parties came to a mutual agreement and the decision of access blocking to Twitter was revoked.

Another access blocking decision regarding Twitter was taken following the suicide attack in Suruç County of Şanlıurfa. After the attack carried out by the terrorist organization ISIS in Suruç, a broadcast ban imposed by the decision no.2015/335 of Suruç Criminal Court of Peace. The decision was based on the request of Suruç Chief Public Prosecutor’s Office to impose a broadcast ban on printed, visual and audio media organs with regard to images of the explosion pursuant to Articles 26 and 27 of the Constitution and Article 25 of the Law No.5187, and block access to specified URL addresses. Suruç Criminal Court of Peace separately referred to the definition of freedom of expression under Paragraph 1, Article 10 of ECHR and boundaries of freedom of expression stipulated under Paragraph 2 of the same article. It was explained in detail in the decision text which also referred to judicial decisions of ECHR regarding freedom of expression and that the said access blocking was not subject to Article 10 of ECHR. 104 out of 173 URL specified in the access blocking decision belonged to Twitter. In the URL based access blocking decision, it was stated that the Internet site would be blocked completely if it was not possible to block access to contents. Upon receipt of the said decision of Suruç Criminal Court of Peace by Access Providers Association (ESB), decision regarding YouTube and Facebook was implemented but Twitter did not implement the decision as before and access to Twitter was completely blocked by ESB. According to the statement made by ESB, representatives of Twitter, YouTube and Facebook were informed around 10:30 PM. Representatives of YouTube and Facebook sent confirmation letters and notified that they implemented the court decision. However, representative of Twitter did not confirm that they implemented the decision. Access providing businesses blocked access to twitter.com site in line with the court decision following the expiry of the period specified in the Law No.5651. Later on, Twitter came to an agreement and access blocking was

revoked by the decision No.2015/2415 of Şanlıurfa 2nd Criminal Court of Peace (Arvas, 2016).

In all three access blocking decisions, it is seen that Turkish courts requested removal of URL based contents but access to Twitter was completely blocked as Twitter did not remove the said contents.

Deadlock between Turkey and Wikipedia

When users tried to access the Wikipedia Internet site from Turkey on April 29, 2017, they read this explanation; “After technical analysis and legal consideration based on the Law No.5651, ADMINISTRATION MEASURE has been taken for this website (Wikipedia 2017, April 29). according to Decision N0. 490.05.01.2017.-182198 dated 29.04.2017 implemented by Information and Communication Technologies Authority.” There was no mention of any court decision in the explanation. The news about this access blocking had a broad repercussion in media organs and the reason of the said blocking was understood only a day later. The court decision on access blocking was upheld by the decision No.2017/2956 of Ankara 1st Criminal Court of Peace dated 29.04.2017.

It was understood that the access blocking was caused by the parts of the news in Wikipedia related to Turkey under the titles of Turkish occupation of northern Syria, Foreign involvement in the Syrian Civil War and State-sponsored terrorism. It was stated in English versions of the articles that Turkey was providing arms aid to terror organizations.

The Ministry of Transportation, Maritime Affairs and Communications has announced that the blocking was imposed because of articles and comments on the site which implied that Turkey was in collaboration with various terrorist groups. The Ministry stated that Wikipedia was warned to remove the said contents. The officials asserted that the communication channels with Wikipedia were kept open but the site persistently did not remove such contents. The Ministry also stated that instead of collaborating against terror, Wikipedia became a source of information which acted in unison with circles conducting a smear campaign against Turkey in international arena (Hürriyet Newspaper, 2017, May 12).

Another statement in this respect was made on BTK’s Twitter account, @BTKbasin. The statement made on April 29, 2017 enumerated 5 bullets:

1. Contents asserting that Turkey supports terrorist organizations are not removed from Wikipedia to the contrary of all attempts.
2. We are not allowed to revise these contents with true information.
3. It has been impossible to block only the related contents as the site uses https protocol.
4. Therefore the measure has been imposed on the site in whole.
5. Wikipedia editors should do what is necessary with regard to such contents.

Wikipedia and Prof. Dr. Yaman Akdeniz, faculty member of the Faculty of Law, Istanbul Bilgi University and Assistant Professor Kerem Altıparmak, faculty member of the Faculty of Political Sciences, Ankara University in their capacity of users objected against the access blocking decision of the Criminal Court of Peace. In these objections, it was stated that blocking access to Wikipedia would disable millions of users of this platform to have access

to information on this platform, both posted before access blocking and posted and shared after the date of access blocking, 29.04.2017. Akdeniz and Altıparmak alleged in their petition that the access blocking decision taken by Ankara 1st Criminal Court of Peace was contrary to procedure and law, and there was no causal link between the contents requested to be removed from Wikipedia Platform and Article 8/A (Article 8/A which was subsequently added to the Law No.5651), and requested their objection to be regarded as “privileged” because [the decision] was a continuing violation of freedom of information and freedom of expression. Ankara 1st Criminal Court of Peace overruled the objection with its decision no.2017/3150, dated 04.05.2017 and decided that there was no need to correct the decision no.2017/2956, dated 29.04.2017. The court listed the “basic law texts related to the issue”, stated that a state of emergency was declared on July 20, 2016, referred to Article 15/ of ECHR and concluded that the freedom of expression protected by Article 10 of the Convention is a “suspensive right”. Case file was sent to Ankara 2nd Criminal Court of Peace pursuant to Article 268 of the Code of Criminal Procedure No.5271. Ankara 2nd Criminal Court of Peace has overruled the objections on 07.05.2017 with decision no.2017/3172. It is merely stated in the unjustified decision that “the objection is overruled as there is nothing wrong with the decision no.2017/3150 of Ankara 1st Criminal Court of Peace” (Akdeniz & Altıparmak, 2017). Since this one-sentence decision was a definitive judgment, both Wikipedia and Akdeniz & Altıparmak as users have filed individual applications to the Constitutional Court.

In November 2018 Onursal Adıgüzel, Vice President of Republican People’s Party and Parliament Member from Istanbul submitted a parliamentary question to the Grand National Assembly of Turkey to be answered by the Minister of Transportation and Infrastructure, Mehmet Cahit Turhan, and asked if any step would be taken to open access to Wikipedia. The Minister Turhan replied the parliamentary question as follows (Wikipedia, 2019, February 24); “The unlawful contents notified to Wikipedia which constitute the basis for access blocking are periodically controlled and shared with competent authorities. The last controls have revealed that the contents showing our country among the countries supporting terrorism are not changed enough. The Presidency of Information Technologies and Communications Authority studiously follow the process but discretion regarding revocation of access blocking decision is up to independent judicial authorities. It is anticipated that necessary steps might be taken by competent authorities upon removal of the contents defaming Turkey.”

Regardless of these developments, the contents caused access blocking to Wikipedia are still on the site under the same titles as of March 2019. Access to Wikipedia from Turkey is still blocked.

Conclusion

As a result of the popularity of Internet which has become a medium used 24/7 by billions of people, virtual and real worlds have interlaced. Becoming an indispensable part of daily life, this technology is always one of the main topics in the agenda due to the conveniences it provides and new problems it leads to. Daily life practices of people are adapted to Internet

but law orders of some countries have not kept pace with this new technology, yet. The leading countries in Internet technology have a say in how to manage and direct this technology today. However, societies and states which are only consumers of the Internet are caught unprepared to expansion of this technology without boundaries. Snowballing and expanding after 2000s, the Internet has taken the lawmakers by surprise as the phrase goes. In particular, how to restrict the fundamental and rather sensitive right to freedom of expression on a global network like the Internet and in which circumstances has become a serious problem. National boundaries have no significance on this gigantic network and consequently, how to protect the rights legally secured such as national security, personal and public interests, public health and morality, and which authority will be responsible for this protection are questions which are not accurately and sufficiently answered yet.

Turkey's problems related to freedom of expression on the Internet first came to existence in 2007 with blocking access to YouTube. Broadcasting of contents insulting the founding president of the Republic of Turkey, Mustafa Kemal Atatürk on YouTube caused a serious problem. Atatürk is an extremely sensitive symbol for Turkish nation and state and his sentimental value is incontestable. Although they were foreign-based, inclusion of videos insulting Atatürk on a platform broadcasting to Turkey through the Internet prompted the State of the Republic of Turkey. The spiritual personality of Atatürk is protected with a special law in Turkey and when he was insulted on the Internet, Turkey became at a loss as there was no special institution dealing with the Internet until then. Requesting removal of the said videos from YouTube was useless and complete access blocking was commenced. In such and similar cases, it was requested from the related Internet sites to remove the contents but when these requests were rejected, the courts began to take decisions to block access to relevant sites. The issue that was mostly debated over in this respect is whether blocking access to Internet site which does not remove the related content in despite of the decision of a national court will limit the freedom of expression of users who publish and reach other contents or not. It is obvious that divesting millions of users of countless contents because of a content that a national court decides to be removed limits the freedom of expression. Therefore the main question here is not whether this is contrary to freedom of expression or not. The main question is different; who is responsible for this violation of freedom of expression? The Republic of Turkey which requests removal of the content by the decision of a national court and blocks access to the Internet site when it doesn't comply with this request? Or administrators of the site who consider removal of the contents as a violation of freedom of expression and keep them on their site?

Therefore, the debate of whether access blocking is a violation of freedom of expression or not is aged now and the answer is obvious. All parties causing access blocking should be equally questioned by moving away from all kinds of ideological belonging and subjectivity. The State of the Republic of Turkey was found unjust for the first time by its superior judicial body, the Constitutional Court, due to access blockings to various Internet sites. The issue brought to trial before the Constitutional Court was the developments that led to blocking access to Twitter in March 2014. The decision of the Constitutional Court dated April 2, 2014 based on the application no.2014/3986 referred to ECHR's decisions regarding the cases of Handyside/UK in 1976 and Axel Springer AG/Germany and Van Hannover/Germany in

2012, Article 10 of ECHR and articles 13, 26, 28 and 32 of the Constitution. According to this decision, access blocking decision of Turkey violated the freedom of expression.

After the decision of the Constitutional Court, ECHR announced its decision regarding the case of Cengiz and Others/Turkey (application nos. 48226/10 and 14027/11) on December 1, 2015. ECHR adjudged that by blocking access to YouTube due to the videos insulting Atatürk, Turkey violated Article 10 of ECHR which regulates the Freedom of Expression.

Accordingly, Turkey needs to reconsider Article 8/A which was subsequently added to the Law No.5651 as this article makes Turkey to take controversial decisions and this really harms Turkey’s international prestige and revise the article in compliance with the international qualification of freedom of expression. It is seen that the concepts of national security, public order and prevention of criminal intent included in Article 8/A are de facto expressions. This article allows implementation of access blocking by request of the Presidency or related Ministries but it also allows the Internet sites found objectionable by the Presidency or related Ministries to be blocked by the jurisdiction. It is possible for one or more internet site(s) requested to be blocked by the Presidency pursuant to Article 8/A to create pressure on jurisdiction. Whereas, a decision regarding each Internet site requested to be blocked for access should base on concrete reasons for the avoidance of doubt and they should be taken solely by the jurisdiction and free from all kinds of political pressure.

In the past, both the Constitutional Court and ECHR adjudged that access blocking decisions of Turkey regarding Twitter and YouTube were violation of freedom of expression. In order to prevent access blocking and remove only the criminal contents, Turkey negotiated with the executives of the related Internet sites recurrently and requested them to be represented in Turkey by opening an office here. Besides, negotiations and works regarding payment of income tax by internet sites which derive a profit over the users in Turkey have been continuing for many years.

Authority to impose sanction on the contents published on the Internet brings along a significant complexity of authorization due to the cross-border structure of the Internet. In the study, it is seen that access blocking decisions of Turkey regarding numerous contents on the Internet both harm the prestige of the country and limit the freedoms of expression and communication of its citizens. The main question to be asked here is how the problem related to the contents which are adjudged by Turkish jurisdiction as constituting a crime will be ultimately solved and whether URL based blocking is technically possible or not? What would be Turkey’s response when the Internet platform that Turkey deals with considers the content found transgressive by Turkish jurisdiction within the scope of *freedom of expression*? No concrete solution is recommended to Turkey regarding said contents in decisions of the Constitutional Court and ECHR.

For example; What should Turkey do regarding the confidential and illegal voice recording alleged to be the dialogues between the Minister of Foreign Affairs of the time, Ahmet Davutoğlu, Undersecretary of MIT, Hakan Fidan, Undersecretary of the Ministry of Foreign Affairs, Feridun Sinirlioğlu and Deputy Chief of the Turkish General Staff, Full General Yaşar Güler published on YouTube on March 27, 2014? Because of Turkey’s efforts, the said voice recording is blocked on Turkish version of YouTube. What kind of measures should Turkey take with regard to this confidential voice recording about Syrian policy of Turkey

which is still available on YouTube’s international version on the addresses of “<https://www.youtube.com/watch?v=5oiCStmRfgU&t=457s>” and “<https://www.youtube.com/watch?v=LHk07LvxczE>” as of March 27, 2014? As mentioned earlier, royalty of 4 videos including insults to Atatürk was purchased by a German company named International Licensing Service. These videos have been removed from YouTube on the grounds that they violate royalty. Well then, who owns the royalty of the voice recording obtained secretly and illegally and still being published? Who is the owner of this confidential and illegal voice recording by law? To those who have recorded it or Turkish officials whose voices are recorded? Does the European Convention on Human Rights or US Laws consider publication of confidential voice recording obtained illegally within the context of freedom of expression?

Consequently, not removing the contents regarded criminal by Turkish jurisdiction from the sites lies at the bottom of the problems Turkey had with YouTube and Twitter. In consequence of not being able to block these contents on URL basis and remove them, Turkey was forced into taking decisions that violate freedom of expression. The contents on Wikipedia, which emphasize that Turkey is supporting terrorist organizations are only personal opinions and they cannot be edited or deleted by some reason. Access to Wikipedia is still blocked due to these contents and Turkey is violating the rights to freedom of communication and expression once again. It was numerously stated on many national and international academic, social and legal platforms that Turkey violates its citizens’ freedoms of communication, information and expression with these decisions. This is one of the conclusions of this study. However, the reasons of Turkey’s being forced to violate these freedoms have never been discussed adequately for some reason. It is seen that Turkey cannot defend itself sufficiently in international arena in this respect. Even though an illegal voice recording related to Turkey’s national security is still being broadcasted, Turkish officials did not do anything other than blocking access to related site. For example, Central Council of Jews in Germany brought an action against YouTube for broadcasting anti-Semitic videos and Google, the owner of the site in 2008. It is necessary for Turkey to find solutions other than the sanction of access blocking with regard to such issues without further delay. It is obvious that implementing access blocking for an Internet platform used by millions of people on the whole harms both Turkey and Internet users in Turkey. If Turkey is harmed because of a content which constitutes a crime in an international sense, the only remedy cannot be blocking access to the related site. Court decisions that find Turkey unjust due to these decisions are evident. By all means, there should be a court to judge the companies or associations which commercially own YouTube, Twitter and Wikipedia. Turkey may not be a flawless state but Internet is not a god either.

References

1. Akdeniz, Y. & Altıparmak, K. (2008). *Internet: Restricted Access, A Critical Assessment of Internet Content Regulation and Censorship in Turkey*. Ankara, Tukey: Imaj Publishing.
2. Akdeniz, Y. & Altıparmak, K. (2017). *Godot’yu Beklerken: Bilgi Medeniyeti Türkiye Terör Destekçisi Wikipedia’ya Karşı*. *Güncel Hukuk Journal*, 164, 18-23.3.

3. Akgül, M.E. (2012). History of Freedom of Expression and Restriction of Freedom of Expression on Account of National Security. Ankara Üniversitesi Hukuk Fakültesi Dergisi, 61 (1), 1-42.
4. Arvas, İ.S. (2016). İfade Özgürlüğü Bağlamında Türkiye’de Twitter. Sosyal Medya Araştırmaları 3, Gözetlenen Toplumdan Gözetlenen Bireye, A.M. Kırık and A. Büyükaslan, eds. Konya, Turkey: Çizgi Publications.
5. Arvas, İ.S. (2018a). Feedback Rates of Presidential Candidates According to Types of Content in Their Twitter Accounts. Full Text Book of International Conference on Multidisciplinary Sciences, icomus (pp.451-464). Turkey, Istanbul: Istanbul Medipol University.
6. Arvas, İ.S. (2018b). Gazetecilik Uygulamaları Bakımından Türkiye’de İnternetin Yasal Düzeni. İnternet Haberciliği: Kuram Uygulama ve Eleştiri, K. Duman, ed. Istanbul, Turkey: Beta Publishing.
7. BBC (2015, April 06). Türkiye’de Twitter ve Youtube’a erişim engellendi. Retrieved from https://www.bbc.com/turkce/haberler/2015/04/150406_sosyal_medya_erisim_engeli
8. Canata, F. (2016). A Review on Freedom of Thought-Expression and Internet Regulation under the Law No. 5651. Türk Kütüphaneciliği, 30 (2), 185-20.
9. Cankaya, Ö. & Yamaner, M.B. (2012). Kitle İletişim Özgürlüğü. Turkey. Istanbul: Beta Publishing.
10. CNNTurk (2014, April 10). YouTube Yine Kapatıldı. Retrieved from <https://www.cnnurk.com/haber/turkiye/youtube-yine-kapatildi>
11. Constitution of the Republic of Turkey (2003). Retrieved From https://global.tbmm.gov.tr/docs/constitution_en.pdf
12. European Convention on Human Rights (2010). European Court of Human Rights Council of Europe F-67075, Strasbourg. Retrieved From https://www.echr.coe.int/Documents/Convention_ENG.pdf
13. Güriz, A. (1998). İfade Özgürlüğünün Sınırları. Düşünce Özgürlüğü, H. Ökçesiz, ed. İstanbul, Turkey: AFA Publishing.
14. HaberTürk Newspaper (2008, January 19). YouTube Erişimi Engellendi. Retrieved from <https://www.haberturk.com/ekonomi/medya/haber/51956-youtubea-erisim-engellendi>
15. HabeTürk Newspaper (2010, November 02). YouTube Mahkemece Yeniden Yasaklandı. Retrieved from <https://www.haberturk.com/ekonomi/teknoloji/haber/567657-youtube-mahkemece-yeniden-yasaklandi>
16. Hunt, G. (1917). The Virginia Declaration of Rights and Cardinal Bellarmine. The Catholic Historical Review, 3 (3), 276-289.
17. Hürriyet Newspaper (2007, March 07). Youtube, Atatürk’e Hakaret Edilen Video Görüntülerini Kaldırdı. Retrieved from <http://www.hurriyet.com.tr/gundem/youtube-aturke-hakaret-video-goruntuleri-siteden-kaldirildi-6074765>
18. Hürriyet Newspaper (2007, March 07). Görüntüler Gidecek YouTube’a Yasak Kalkacak. Retrieved from <http://www.hurriyet.com.tr/gundem/goruntuler-gidecek-youtubea-yasak-kalkacak-6080881>
19. Hürriyet Newspaper (2008, June 18). YouTube’u kapattıran savcı konuştu. Retrieved from <http://www.hurriyet.com.tr/gundem/youtubeu-kapattiran-savci-konustu-9215062>
20. Hürriyet Newspaper (2008, May 06). Youtube erişimi yine engellendi. Retrieved from <http://www.hurriyet.com.tr/gundem/youtube-a-erisim-yine-engellendi-8867578>

21. Hürriyet Newspaper (2015, April 07). Twitter, YouTube ve Facebook'a Erişim Engeli. Retrieved from <http://www.hurriyet.com.tr/ekonomi/twitter-youtube-ve-facebook-a-erisim-engeli-28665837>
22. Hürriyet Newspaper (2017, May 12). Ulaştırma Bakanı: Wikipedia Doğru Bilgiyi Koysun, Yayına İzin Verelim. Retrieved from <http://www.hurriyet.com.tr/teknoloji/ulastirma-bakani-wikipedia-dogru-bilgiyi-koysun-yayina-izin-verelim-40455285>
23. Milliyet Newspaper (2008, May 6). İtinayla Erişim Engellenir. Retrieved from <http://www.milliyet.com.tr/itinayla-erisim-engellenir--internet-haber-886431/>
24. Official Gazette, Turkey (2007, October 24). Telekomünikasyon Kurumu Tarafından Erişim Sağlayıcılara ve Yer Sağlayıcılara Faaliyet Belgesi Verilmesine İlişkin Usul ve Esaslar Hakkında Yönetmelik, 26680.
25. Official Gazette, Turkey (2007, November 01). İnternet Toplu Kullanım Sağlayıcıları Hakkında Yönetmelik, 26687.
26. Official Gazette, Turkey (2007, November 30). İnternet Ortamında Yapılan Yayınların Düzenlenmesine Dair Usul ve Esaslar Hakkında Yönetmelik, 26716.
27. Official Gazette, Turkey (2014, April). Anayasa Mahkemesi Başkanlığından İkinci Bölüm Karar. Retrieved from <http://www.resmigazete.gov.tr/eskiler/2014/04/20140403-18.pdf>
28. Sabah Newspaper (2010, October 31). Toutube'a 2.5 yıl sonra özgürlük. Retrieved from https://www.sabah.com.tr/ekonomi/2010/10/31/youtubea_25_yil_sonra_ozgurluk
29. Twitter (2019, January 12). Twitter transparency report. Retrieved from <https://transparency.twitter.com/en/countries/tr.html>
30. Taneri, İ. (2014). Yeni Direniş ve İletişim Biçimlerinde sosyal medyanın Rolü: Gezi Parkı Direnişi Örneği. [Unpublished master's thesis], Ege University Social Science Institute.
31. United Nations Human Rights Office of High Commissioner (1976). International Covenant on Civil and Political Rights. Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>
32. We are Social (2019, February 12). Global Digital Report, Essential Insights into Internet, Social Media, Mobile and Ecommerce Use Around the World. Retrieved from <https://digitalreport.wearesocial.com/>
33. Wikipedia (2017, April 29). Retrieved from <https://www.wikipedia.org>
34. Wikipedia (2019, February 24). Vikipedi'ye Türkiye'den erişimin engellenmesi. Retrieved from https://tr.wikipedia.org/wiki/Vikipedi%27ye_T%C3%BCrkiye%27den_eri%C5%9Fimin_engellenmesi