



İFADE ÖZGÜRLÜĞÜ DERNEĞİ

**Report and Recommendations for the
UN Universal Periodic Review on Turkey**

By

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

November 2019

An independent non-governmental organization specialized in defending and promoting freedom of expression

Introduction

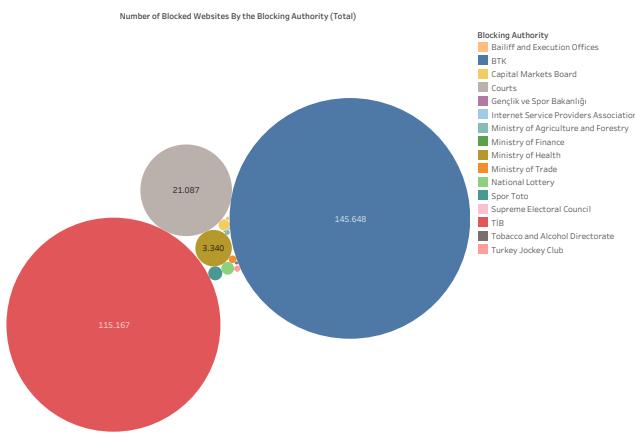
1. İfade Özgürlüğü Derneği (İFÖD) established on 08.08.2017 in Istanbul, Turkey, has been set up to protect and foster the right to freedom of opinion and expression. The Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.
2. İFÖD has extensive knowledge and experience in relation to Internet blocking practices and legal practice in Turkey. The Association, in July 2019 published a report entitled **EngelliWeb 2018: An Assessment Report on Blocked Websites, News Articles and Social Media Content from Turkey** at https://ifade.org.tr/reports/EngelliWeb_2018_Eng.pdf which also includes detailed assessment on the blocking practices of Law No. 5651 in addition to the actual number of blocked URLs and websites as of end of 2018. This report was prepared within the scope of a project funded by the Human Rights Programme of the Government of the Netherlands and the up-to-date data provided in this current UPR Recommendations are obtained from that project.
3. It should be recalled that several UN member states recommended Turkey to amend or revise its Internet Law No. 5651 to **bring to an end the restrictions on Internet access**, to ensure that **the Telecommunications Authority cannot block websites without judicial authorization** and **to ensure the right to seek, receive, and impart information** in the exercise of freedom of opinion and expression.¹
4. Therefore, İFÖD submission will concentrate on **Internet freedom of expression related issues**, in particular with regards to the application of Law No. 5651 which is **predominantly used to block access to websites, news articles as well as social media content** from Turkey. İFÖD submission will concentrate on the 2015-2019 period by taking into account the UPR recommendations made in **January 2015**.

Power to Block Access To Websites Have Been Extended To Numerous Bodies Since 2015

5. While the power and legal authority to block access from Turkey is provided primarily to judicial organs under various legal provisions,² numerous administrative bodies are also authorized **since 2015 to issue or request blocking orders** pursuant to several legal provisions. The Association of Access Providers, the Turkish Medicine and Medical Devices Agency of the Ministry of Health, the Capital Markets Board, the Directorate of Tobacco and Alcohol established under the Ministry of Agriculture and Forestry, the Directorate General of National Lottery Administration, the Jockey Club of Turkey, the Directorate of Spor Toto Organization, the Department of Games of Chance, High Board of Religious Affairs of the Directorate of Religious Affairs and the Radio and Television Supreme Council are all authorized under various laws and regulations to block access to websites in addition to the criminal judgeships of peace and the Information and Communication Technologies Authority (“ICTA”).

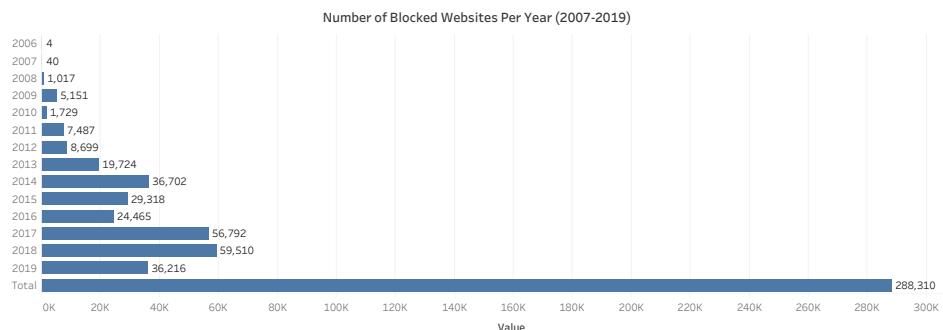
¹ See in particular recommendations A - 148.14 (**Latvia**); A - 148.116 (**Luxembourg**); A - 148.117 (**USA**); A - 148.118 (**Austria**); A - 148.123 (**Costa Rica**); A - 149.10 (**Hungary**); N - 150.14 (**Canada**); A - 150.16 (**Republic of Korea**); N - 150.17 (**Spain**); N - 150.20 (**Iceland**); N - 150.21 (**Czech Republic**); N - 150.42 (**Estonia**); N - 150.52 (**Netherlands**).

² Criminal judgeships of peace are authorized to issue access blocking orders under Articles 8, 8/A, 9 and 9/A of Law No. 5651. the Information and Communication Technologies Authority is also authorized under articles 8, 8/A and 9/A of the Law No. 5651 to block access with the provision of judicial approval in case of administrative blocking orders imposed in accordance with articles 8/A and 9/A.

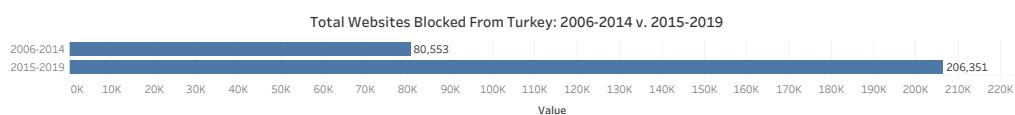


The Number of Websites Blocked From Turkey Has Exponentially Risen Since 2015

- While as of beginning of 2015, access to **80.553** websites were blocked from Turkey, as of end of 2018 the number of blocked websites has risen to **245.825**. As of end of October, 2019, access to a total of **288.310** websites are currently blocked from Turkey.³ Therefore, compared to when the UPR 2015 recommendations were made, the number of blocked websites has risen exponentially by **358%**.

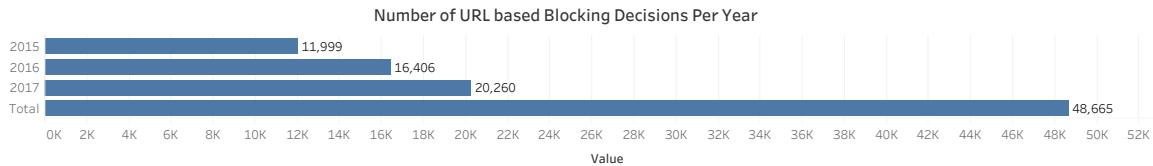


- As can be seen from the table below, the total number of websites blocked from Turkey until 2015 was 80.553, while since 2015 and until this report was drafted in October 2019 a further 206.351 websites were blocked.

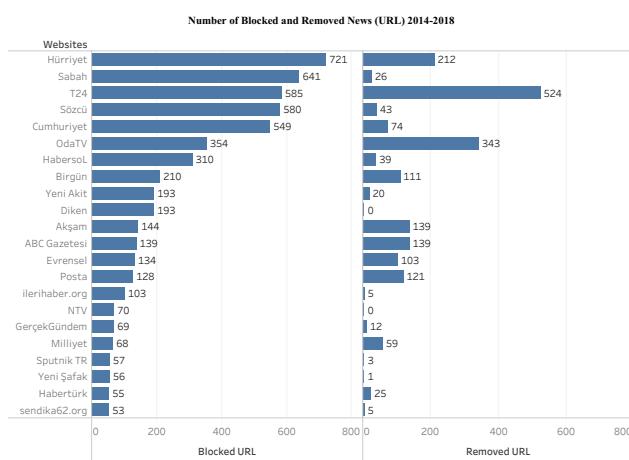


- Furthermore, over 48.000 URL based blocking orders were issued since 2014 resulting with over 150.000 URLs blocked from Turkey to protect individual rights such as reputation.

³ 115.167 were blocked by TIB before it was closed down, 145.648 were blocked by BTK subsequently, 21,087 were blocked by criminal judgeships of peace, public prosecutor's offices and by the courts, 3340 were blocked by the Turkish Medicines and Medical Devices Agency of the Ministry of Health, 412 were blocked by the Directorate General of National Lottery Administration, 495 were blocked by the Directorate of Spor Toto Organization, 315 were blocked by the Capital Markets Board, 150 were blocked by the Ministry of Trade, 96 were blocked by the Jockey Club of Turkey, 8 were blocked by the Association of Access Providers, 5 were blocked by Turkish Tax Inspection Board of the Ministry of Finance and 5 were blocked by the Supreme Election Council.



9. Since the personal rights violations related URL-based access blocking measure came into force in February 2014 with the amendment of Article 9 of Law No. 5651, as of 31 December 2018, it was determined by İFÖD that **a total of 7334 news articles** (URL-based) were blocked. These URLs were blocked by 2129 separate orders issued by 287 separate criminal judgeships of peace. Majority of these blocking decisions involve news which is critical of political leaders, the government and the governmental institutions of Turkey with claims of defamation which are not pursued further in criminal or civil courts of law. Therefore, access blocking is used as a permanent measure to silence critical news and content.



Article 8/A of Law No 5651 was Introduced to Protect National Security and Public Order

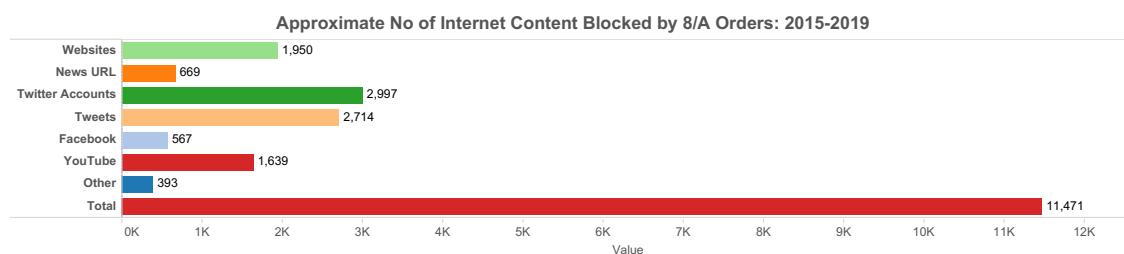
10. Although a number of UN member states recommended Turkey to amend its Internet Law No. 5651 to bring it “in line with International and European standards, including case law of the European Court of Human Rights on the rights to freedom of expression and to privacy”,⁴ Turkey extended further its Internet blocking regime in March 2015 with the introduction of a new Article 8/A to Law No. 5651, with the title of **“Removing content and/or blocking access in circumstances where delay would entail risk”**. By virtue of this new Article 8/A, power to remove content and/or block access to an Internet site vests primarily with judges in order to protect **the right to life or security of life and property, national security and protection of public order, prevention of crimes or for the protection of public health**. Additionally, in circumstances where delay would entail risk, removal or blocking of such Internet content in order to protect the right to life or security of life and property, national security and protection of public order, prevention of crimes or for the protection of public health may also be requested by the President of Turkey from the President of BTK.⁵ The “relevant ministries” are also authorized to request from the President of BTK to block access to Internet content for the

⁴ Recommendation N - 150.42 (Estonia).

⁵ Originally, the text of the Law referred to the “Prime Minister of Turkey” between the dates of 27 March 2015 until 2 July 2018.

purposes of national security and protection of public order, prevention of crimes or for the protection of public health.

11. Article 8A based orders usually target Kurdish and left-wing news websites as well as several social media accounts and content associated with Kurdish journalists, dissidents and activists. Between 22 July 2015 and as of now 363 separate 8/A decision were issued by 10 different Ankara based criminal judgeships of peace blocking access to over 11.000 Internet addresses among which approximately 2000 websites, 3000 Twitter accounts, 2200 tweets and 660 news articles. With these decisions, websites such as Dicle News Agency, Azadiya Welat, Özgür Gündem, Rudaw, RojNews, ANF, Jin News are regularly and repeatedly blocked access to from Turkey together with government opponent news websites such as Sendika.Org⁶ and SiyasiHaber.Org. Similarly, article 8/A is regularly used to block access to news and content related to Turkey's military operations.

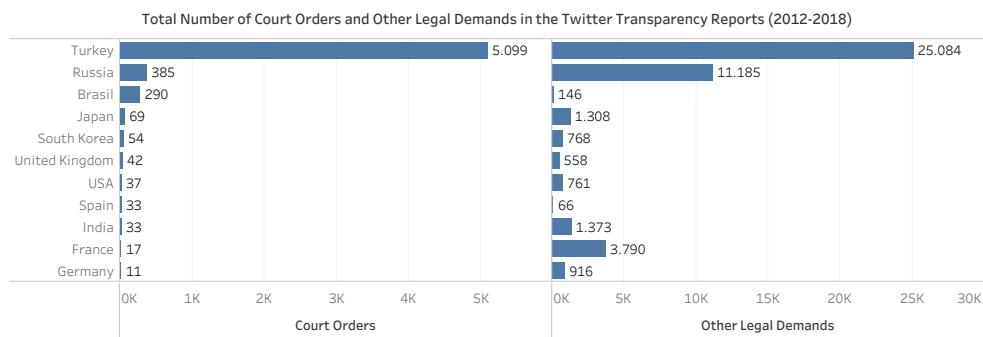


12. It should be noted that the popular online free encyclopaedia Wikipedia platform (wikipedia.org) is also among the websites blocked from Turkey with an article 8/A decision since 29.04.2017. The order issued by the Ankara 1st Criminal Judgeship of Peace was issued upon the request of the Office of Prime Minister. It is stated in the reasoning of this order that two articles published on the Wikipedia platform contains terror-related content, including incitement to violence and crime and content threatening public order and national security. Appeals by Wikipedia as well as by the users of the platform were rejected and applications were made both at the Constitutional Court as well as at the European Court of Human Rights levels.

Conclusion and Overall Evaluation

13. In conclusion the rise in censorship in Turkey has reached to an astonishing level. This is also evident in the annual transparency reports published by social media platforms. The ranking of Turkey is strikingly worrying especially in Twitter Transparency Reports when compared with other countries. Since Twitter is more commonly used for political debate and expressions in Turkey compared to other social media platforms, the total number of removal and withdrawal requests in terms of accounts and tweets is much higher than Russia and France, its immediate followers in the rankings.

⁶ Sendika.Org was blocked 62 times between 2015-2017 by the orders of 7 separate Ankara criminal judgeships of peace under Article 8/A.



14. While hundreds of blocking orders are issued systematically, the approach of the Constitutional Court of Turkey towards the blocking orders also needs to be addressed. It is observed that, since 2014, the Constitutional Court has given three leading judgments in terms of legal principles involving the Internet. The Constitutional Court in relation to blocking access to social media platforms Twitter (no. 2014/3986, 02/4/2014) and YouTube (no. no. 2014/4705, 28/5/2014) decided that access blocking violated gravely freedom of expression of the users of these platforms. However, same approach is yet to be adopted by the Court with regards to the Wikipedia related applications.
15. Regarding URL blocking and personal rights violations, the Constitutional Court in the Ali Kidik judgment (no. 2014/5552, 26/10/2017) adopted the principle of *prima facie* violation in order to prevent violations of rights to freedom of expression and freedom of the press in relation to Article 9 based blocking orders. The Constitutional Court highlighted the complications resulting from the systematic implementation of Article 9 and the violation of the right to a fair trial with the practices of the criminal judgeships of peace.
16. The Court also stressed that the procedure for blocking access provided under Article 9 of Law No. 5651 has only been foreseen as an exceptional measure rather than to be used against any kind of news articles or expressions. In this regard, the Constitutional Court stated that the “*prima facie*” violation principle (“doctrine of violation at first sight”) must be applied in order to overcome the structural problem of Article 9 of Law No. 5651. According to the *prima facie* violation principle, if and when it is obvious at first sight that the specific publication violates personal rights, the exceptional procedure provided by Article 9 of Law No. 5651 could be applied. The Court adopted the same approach in subsequent 11 decisions. The Constitutional Court also adopted the “*prima facie*” violation principle with regards to Article 8/A related blocking decisions in the case of Birgün İletişim ve Yayıncılık Ticaret A.Ş (no. 2015/18936, 20.05.2019).
17. However, as of today, the criminal judgeships of peace continue to systematically ignore the decisions of the Constitutional Court while issuing their carbon copy blocking decisions on a daily basis. Both article 8/A and article 9 provisions of the Law No. 5651 are used to silence political speech and criticism of the political leaders and the government.
18. The crisis of freedom of expression, which emerges as a part of the silencing policy in Turkey, is closely intertwined with the crisis faced by the judiciary. Although this crisis manifests in a multitude of ways, it primarily arises from the complete erosion of the rule of law. This is also evident in relation to the Government’s aggressive blocking policy with regards to Internet content. In brief, during the 13th anniversary of the Law No. 5651, the complex Internet Censorship Mechanism of the state is alive and kicking and evolving actively and vigorously as never before disregarding any recommendations made at the UN UPR process in 2015.

Recommendations for the Universal Periodic Review Process

19. Bring the restrictions on Internet access to global platforms such as Wikipedia to an end;
20. Bring the Internet Law in line with international and European standards, including with the case law of the European Court of Human Rights on the right to freedom of expression;
21. Revise the Internet related law and regulations to ensure blocking decisions are issued only by the courts or judges rather than by a wide range of administrative authorities;
22. Ensure that the blocking decisions are only issued with regards to the specific content (“URL”) rather than to domain names and full websites and ensure that blocking decisions are only issued for a limited period of time rather than indefinitely;
23. Repeal Law No. 5651 blocking provisions to ensure the right to seek, receive, and impart information in the exercise of freedom of opinion and expression.