

# Internet Censorship in Turkey: Stop Legalized Cyber Murder

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**Abstract:** Banning or eliminating the websites is a “sheer cyber murder” of data, which resembles to the case with Galileo. As his ideas contradicted with the authorities, he was sentenced to imprisonment punishment for life, which is more or less the same with recent banning and elimination attempts. In a way, the current situation is the contemporary version of medieval experience. Without questioning whether they are true or wrong according to “our” mind, it should be remembered that there are people with different ideas and preferences. Otherwise, there comes out the infringement of human rights, right to think, right to communicate. It is necessary to take action against the ongoing “intervention to sexual preferences, thoughts, and fundamental human rights” and against the existing legalized “cyber murder”.

**Key Words:** Internet Banning, Cyber-Murder, Censorship, Filtering, Turkey.

## 1. Introduction

On the grounds of the fact that the history of startlingly-growing internet throughout the world dates back to late 1980s, the problems with it have recently come into prominence. Since then, with the introduction of internet in our daily lives, it has had some impacts on the culture, customs and regular habits. Basically the previous case with the source centres has drastically changed in parallel to the strides taken in internet world, though there are exceptions. In the past, the source of information used to be the libraries, books, schools, educational or training units, but today with the invention of internet, another dimension has taken over the control in most aspects of the life. The trend that has become more and more effective for on close thirty years has cracked people’s brain wide open and reflected it to virtual world; therefore anyone with computer literate skills has turned out to be the source of information.

Inasmuch as it is pretty easy, in some of the sites, to upload any item to the website with any content for an owner and as there is not a

Big Brother monitoring the steps, the variety as well as number of these sources has increased remarkably over the years. Another new practice in the virtual world has contributed to this case much. In other words, it is not necessary to have a personal or commercial website to disclose whatever one has or thinks to share them with the others via internet; because internet membership is a real asset at this very point. While some of such sites enable their members have their own personal sites with their names and give them an access to virtual depth to upload whatever they wish such as BlogSpot, Webnode, Webs, etc, without charging; on the other hand, some of them just allow them to have only membership by subscription such as YouTube, MySpace, and most websites.

Inexistence of a Big Brother and the commercial concern has caused an increase in the number of sites with sexual elements, even abuse of such elements in these sites. The problem has turned out to be so significant that it needs taking some counteractions; for instance, according to an online news site, the noted YouTube has had an effort in this way to remove fetish and pornographic videos. The news says

“Following Think & Ask’s investigation into freely available fetish and pornographic videos on YouTube, the website has made an effort to clean-up...<sup>1</sup> The company’s policy bans pornography...” However, despite their effort, they do not have any resources to control people post therein.

Furthermore, the aforementioned free-of-charge internet site ownership opportunity has encouraged people to have their own sites and design their domains with their interests and items from which they can get benefit. In this way, the level of individual inclusion into the virtual world has hit the ceiling. Thus, the disclosure of individual creativities, ideologies, and new trends as well as mutual openings of records, documents, and products has affected the society deeply with its pros and cons. The terms of “pros and cons” are of importance, because they have to be present where the human being is involved. What is meant by inclusion of individuals is the variety of thoughts, ideas, preferences and the extreme points between good and bad, decent and indecent, or right and wrong, etc. These are the sine qua non and have to be present where human beings think, and in the virtual world too. Yet, this statement should not be misinterpreted and comprehended in a way as though it were advocating the presence of inconvenient sites; so it is necessary to draw a line between availability and existence of these contents.

Since its emergence, internet has served for a great number of views including commerce, entertainment, art, communications, etc, but within this limited time period, it must be accepted that “virtual pollution”<sup>2</sup> has arisen. Accordingly, this virtual pollution and harmful contents, as they are called so, have left the public and competent authorities no choice but do something to avoid their influence on society. The idea of cleaning up this virtual pollution and the question of taking actions against the sites with inconvenient content has become

a current issue of the authorities. However, the practice of such intention turns out to be the actual problem instead. Because the major measure that the authorities has taken against the sites which are unacceptable and inconvenient according to their values and beliefs is the ban of notorious sites. For sure, there are some reasons of resorting to this action and it depends upon the countries and their certain characteristics. It is necessary to have an overview to the internet censorship case throughout the world.

## **2. Internet Censorship in the World**

With the purpose of taking the notorious and marked sites under control and suppress their access, competent authorities of the states resort to censorship and banning which is in effect within the borders of their own countries. This practice is not only peculiar to underdeveloped or developing states, but also in effect in the developed ones, but the reasons and excuses for putting such a thing into practice vary according to political, religious, cultural or moral values and beliefs of the states in question.<sup>3</sup> Provided that the activities and the items of such site contents contradict the economic, social, political or religious values of that country, then the censorship or banning may be in effect.<sup>4</sup> To illustrate, some of the states putting censorship or banning into practice are People’s Republic of China, Islamic Republic of Iran, South Korea, Tunisia, Denmark, Italy, Australia, United Arab Emirates, Finland, Norway, Israel, the Netherlands, the United Kingdom, The United States of America, France, Canada, etc.<sup>5</sup> As it is clear from the aforecited states, the case with censorship or banning is present in both developing and developed countries, but as far as the excuses that lies behind them depends. To comprehend the differences, it is required to have a brief look at several examples both from the developing and the developed states. The United States of America, the European states, Russian Federation, People’s Republic of China and Iran may

be elaborated to have a better vision with regard to the controversial case.

## **2.1 The United States of America**

In the United States of America, well known for her title of the “Land of Freedoms” is one of the developed countries where internet filtering on certain websites is applied officially.<sup>6</sup> While the States is at the nominal level according to the organisation Reporters without Borders<sup>7</sup> (RSF), she is not on the list of internet enemies.<sup>8</sup> Communication Decency Act passed in the year 1996 is the first attempt by the United States Congress to bring a regulation on pornographic material released in internet and the regulation is for the indecency and obscenity in cyberspaces.<sup>9</sup> Subsequently in the year 2000, another bill of law named Children’s Internet Protection Act<sup>10</sup> passed the US Congress with the aim of blocking or filtering the internet access in certain places to the publications or releases which are obscene, child pornography or harmful to minors. However, the most controversial banning is for the internet gambling for sure. The Internet Gambling Prohibition Act of 1999 (IGPA)<sup>11</sup> passed the US Senate and took action to protect the online gamblers from crime and exploitation. As it may be understood from the acts adopted so far in the States, the internet censorship has been predominantly focusing on obscenity, child pornography and online gambling; further, not any filtering on the religious, political, ideological or scientific issues has been brought up to the agenda of the country. The main idea that lies behind these acts it to keep the vulnerable individuals of the society, the minors, away from the detrimental effects of internet via which it is possible to abuse the minors for pornography and for other purposes, and to misdirect them easily. The government minds not only the minors but also the adults. Likewise, with the aim of protecting the reputation of certain governmental and private agencies, such as the Lottery Commission, and of not letting her citizens be abused by online games of chance, and of impeding

the trade disputes with the other countries that arise due to the adoption of Unlawful Internet Gambling Enforcement Act,<sup>12</sup> the government developed some measures to protect the adults in the same way as well.

## **2.2 European States**

With regard to filtering on the European continent, it is possible to state that there is not a consensus between the states; while some of them have passed some acts against it in their parliaments, some have not, yet. Both on the continent and in the European Union itself, there are for and against ideas concerning the case.<sup>13</sup> There are two groups of states where filtering is and is not in practice. For instance, Austria, Belgium, Greece, Ireland and Spain are some of the EU states where not any law regarding internet banning has been adopted; likewise, some of the non-EU states such as Switzerland, Iceland and Lichtenstein have not passed any act regarding internet filtering so far, either. On the other hand, Denmark, France, Finland, Italy, the Netherlands and the United Kingdom are some of the EU states where some acts for internet censorship have been adopted and put into force; as for the non-EU states, Norway and Sweden have such internet censorship laws. As far as the reasons for the adoption of such laws are concerned, the benefit of the Union and the society is the leading cause. In the fall of 2007, EU considered ban on using internet to release bomb-making instructions which was the idea of Mr. Franco Frattini, the former European Union Justice, Freedom & Security Commissioner. According to former Commissioner Frattini:

“You can find detailed instructions on all kinds of terrorist tactics, including the production of explosives, on the Internet. These forms of behaviour will be made punishable across the EU. The Commission’s main intention is to ensure that each Member State collects the PNR records, processes them and, where appropriate, exchanges them with others. The Commission

thinks the time has come to change focus and devote resources to the security of the Union. The Union is at least as much a potential target of a terrorist attack as the United States.”<sup>14</sup>

Another reason for the internet banning is the internet pirates, against which Sweden opposed; however, the French Parliament passed the bill with an overwhelming majority to ban the pirates from the internet, although the European Union rejected a similar proposal considering the fact that such a bill of law would have influence on “civil liberties and human rights” in general.<sup>15</sup> Bearing in mind such a discrepancy within the union, it is important to note that national decisions contradicts with those of supranational body, which is proved by the French law filtering internet pirates. Racism and racial agitation is a cause for censorship in Sweden, albeit not in Germany. Swedish Parliament enacted the Act (1998:112) on Responsibility for Electronic Bulletin Boards in the year 1998,<sup>16</sup> and tried to inhibit racial agitation on internet; however, the German government’s security chief stated that it was unrealistic to try to shield the Germans from foreign Web sites bearing content with Nazi and Neo-Nazi policies or child pornography.<sup>17</sup> As for the child pornography, most of the states applying online filtering have a consensus on this issue, because these states much attention to the protection of children on internet and to prevent their abuse illegally. Child Exploitation and Online Protection (CEOP) Agency in the UK and National Bureau of Investigation (NBI) of Finland, and other authorities in the other states have spent efforts to ban the access to the sites with any material regarding child pornography on internet with the aim of protecting the minors and the public. Even though there is some opposition to such measures claiming that such actions will have serious effects on the freedom to communicate, Europe has made moves towards internet filtering despite the disputes. While some of the reasons of censorship base on political and racial problems, some favours

the wellness of the minors. Germany accepted that it would be for vain in practice to ban the internet access to foreign-based sites favouring for the racist activities and gave it up, but on the other hand it is strictly forbidden to have race hate propaganda by laws,<sup>18</sup> which reflects a discrepancy and incoherency within a body. It is obvious that the EU and non-EU states need further discussion and consideration about this case, because of the fact that the problem is in its infancy, not a coherent action is available despite the binding supranational authority they have in power and there is discrepancy between what the states have in practice and what they consider in theory.

### **2.3 Russian Federation**

The case in Russia seems to be much more different than those in the States and most of them base on political reasons. Initially the action started with the monitoring decision of Mr. Vladimir Putin on media, and he “strengthened the rights of the secret services and granted them extensive monitoring powers over media, including internet”.<sup>19</sup> Subsequently, the further step was taken and the six Russian internet providers blocked internet access to opposition aggregate news website with the excuse of testing content filters. Currently, five of these companies continue their blockage and the rest keep on showing the testing is working. According to Privacy International, a London-based human rights group formed in 1990 as a watchdog on surveillance and privacy invasions by governments and corporations:

“... This was an attempt to ban all information that “contains expressions that aim at impeding a counter-terrorist operation, advocating and/or justifying resistance to a counter-terrorist operation. This vague definition could include a wide spectrum of materials, for example, interviews with terrorists, anti-war slogans, and the facts relating to human rights violations in Chechnya.”<sup>20</sup>

According another discussion, the dimension of the limitation on internet is as follows: "It is not allowed to publish literary works and forum postings on the Web-resources of Russian National Literary Web concerning the following subjects: special military operations of Russian troops in Chechnya (since 1991 up until 2004), terrorist acts against citizens of the Russian Federation as well as resistance of separate groups of Russian citizens in regards to various laws of the Russian Federation and president's decrees."<sup>21</sup>

The idea of the Russian Federation is to limit the "extremists", but the interpretation of extremist depends. Provided that the existing anti-extremist laws are extended to internet, this would cause much more trouble. For example, the problem with Mr. Sawa Terentyev is rather worrisome; "although several philological experts' examinations of the text denied the accusations"<sup>22</sup> he is accused of provoking antagonism between the ethnic groups just because of his commentary in a blog website that criticizes the police forces. Another attempt of Russian Federation on this issue is against the Kavgaz.Center<sup>23</sup> Russian pressure on Lithuanian and Estonian authorities to shutter the website became a political and diplomatic concern<sup>24</sup> as well. The nature of the censorship in Russian Federation is different than the one in the Netherlands or in the States; mostly, it concentrates on the political basis, which contradicts with the human rights and right to communicate or freedom of speech according the International Covenant on Civil and Political Rights.<sup>25</sup>

## **2.4 People's Republic of China**

The state of internet censorship in the People's Republic of China is the most threatening of all according to the measures that have been taken so far. More or less, the nature of the censorship resembles the one experienced in the Russian Federation, but the China model seems to be a little bit tougher and stricter considering the mindset at the basis. The reasons of web block-

ing base on not only obscenity or pornography but also political, religious and diplomatic disputes as well as educational releases.<sup>26</sup>

"The Chinese government has invested tens of millions of dollars on internet filtering and surveillance equipment in order to build a sophisticated firewall to limit and control the availability of online information in China. Reporters without Borders, a nongovernmental organization that fights against censorship, lists China among one of its top 13 internet enemies and describes a number of techniques used by the Chinese government to block and filter information ordinarily available via the internet."<sup>27</sup>

With the idea of keeping her population away from the western influence via media internet, the Chinese government has blocked a number of news websites that are mostly foreign-based. Particularly the US-based sites were filtered and it was impossible to have an access to cnn.com previously. With the fear of being affected by the capitalistic nature of the western mentality, Chinese government banned most of the sites cherishing capitalism and this ideology; further, the websites with the content of any counter-idea advocating the overthrow of communism have been among the banned ones.

Another reason of censorship in China model is the diplomatic relations and disputes between the autonomous states. So far, the internet sites that have contents on democracy and democratic process have been blocked by the government; most of these blocked sites are the Tibet and Taiwan ones. Because of the fact that China has been experiencing some internal crises with Taiwan and Tibet for a long time, the authorities no longer let any commentary be made regarding these problems, which causes ethnic and national separatism according to the government. So as to prevent people from accessing the national and international websites including information on these internal issues, the Chinese government has taken some measures as follows:

“The top 10 Google results using the key words “Tibet,” “Taiwan China” and “equality” were all blocked, as were eight of the top 10 results using “democracy China” and “dissident China.” Seven of the top 10 were blocked using “Taiwan” alone and “revolution.” China has been trying to combat independence movements in Tibet and considers Taiwan its territory. Democracy and human rights have also been politically sensitive topics for the communist government.”<sup>28</sup>

Basically this picture demonstrates how much Universal Declaration of Human Rights is in practice and reflects the extension of freedom in terms of speech, political view, information and democracy. On the condition that even the terms of “democracy” and “equality” are banned on internet, would it be wiser to expect good practice of democracy or equality in both administrative and public spheres? Baldly, would it be wiser to expect good practice of human rights?

Religion is another case of concern in the country. The Chinese government charged that a spiritual movement called Falun Gong “fully abandoned national pride, threw themselves into the arms of overseas anti-China forces and were willingly used by international hostile forces as tools to interfere in China’s internal affairs.”<sup>29</sup> This spiritual movement has been the target of Chinese authority and become a popular spiritual movement, persecuted for its religious freedoms. However, this case is an infringement because it is against the fundamental freedoms and contradicts with the Article 2 and Article 18 of the Universal Declaration on Human Rights.<sup>30</sup> Provided that thousands of people are jailed just for their religious practices and their books are destroyed with the same reason, and that their releases are censored on Internet, it poses risks for the human rights, which is rather worrisome. Falun Gong is not the only spiritual movement which is banned on internet, there is another movement called Xiantianism.<sup>31</sup>

Blockage of educational institutions’ websites is also another question in China. The websites of several noted universities in the United States of America such as Columbia University and the Massachusetts Institute of Technology have been censored by the Chinese government.

## **2.5 Islamic Republic of Iran**

As for the filtering experienced in Islamic Republic of Iran that is on the internet enemy list, the government has been imposing tough restrictions regarding World Wide Web. In general, the websites including contents critical of the Iranian government have been censored because the population is not allowed to have access to political releases. International Herald Tribune says “In the past, the authorities have occasionally closed down some of the hundreds of private Web sites that comment on Iranian news and politics.”<sup>32</sup> Depending upon the claim of an advisor to Iran Prosecutor General Abdolsamad Khoram Abadi that “the enemies seek to assault our religious identity by exploiting the internet”, a great many websites have been blackened so far, even the number of these sites ranges up to five million.<sup>33</sup> Furthermore, it is clear that the political functioning is not in order, as the websites of some of the political parties in Iran have been banned which is against the Article 2 of the Universal Covenant on Civil and Political Rights. A comprehensive Country Study on Islamic Republic of Iran says that:

“We located a number of blocked sites within this general category, including sites of various political parties. Significant political opposition sites linked to reformist parties that we found blocked include Rouydad (Happening) at [www.rooydad.com](http://www.rooydad.com) and Bamdad (Dawn) at [bamdad.blogspot.com/](http://bamdad.blogspot.com/).”<sup>34</sup>

The Iranian government does not let the websites seeking for women’s rights; such sites have been blocked by the competent authorities with the goal of not letting their women



ing against the Crimes Committed via These Releases/ Publications, which was adopted on May 4, 2007. Within this Law, the scope of censorship on internet is drawn up and the possible reasons for the censorship are given by means of referring the other relevant Laws; according to the Law in question, the criminal types that are subjected to filtering are as follows:

“The article 8/1 of the law provides that it is possible to prevent the access to the publications on internet which create sufficient suspicion that these publications may be considered as provocation for suicide as per the article 84 of Turkish Criminal Code (TCC), sexual abuse of the children as per the article 130/1 of TCC, facilitation of the use of narcotics as per the article 190 of TCC, provision of substances harmful to the health as per the article 194 of TCC, obscenity as per the article 226 of TCC, prostitution as per the article 227 of TCC, facilitation of gambling as per the article 228 of TCC and the crimes against Atatürk per the law numbered 5816.”<sup>35</sup>

Furthermore, Dr. Tayfun Acarer, the Head of Turkish Telecommunications Authority, reported that the competent authorities had been working on including “personal libels” and “zombie” to the scope of the relevant Law, which is going to facilitate the filtering of any web site including libel and slanders against any person or committing theft via a type of hacker called “zombie”.<sup>36</sup> However, as far as the criminal types defined in the relevant Law and the actual case in practice are considered, there is discrepancy in theory and practice, since some of the web sites to which access is banned have nothing to do with the conditions listed in the Law No 5156 indeed. So as to elaborate a bit more on this issue, initially it is necessary to elaborate on the filtering cases corresponding to the items defined in the Law and to state the others ones that do not.

**3.1.1 Provocation for suicide as per the article 84 of Turkish Criminal Code:** Any web-

site including content that bears provocation for suicide or any social network site that lets the release of videos/ images about suicide provocation are banned officially in Turkey. The website of [www.justin.tv](http://www.justin.tv) is an example for this item: it is marked and filtered by the competent authorities -but no detail with regard to the court verdict is available on the site-, since a boy at the age of 19, named Abraham K. Biggs, from the States committed suicide online on Justin.tv and died, which was watched by thousands of people.<sup>37</sup> The nature of this crime type is for the benefit of society and aims at preventing those psychologically vulnerable to commit suicide; therefore it is possible to consider that it serves for the good of people briefly.

**3.1.2 Sexual abuse of the children as per the article 130/1 of Turkish Criminal Code:** It is

probable to say that there is consensus among the nations regarding this item: child pornography. So as to prevent the children from sexual abuse, such as action is taken and access to any site including videos or images of child pornography is also officially banned in Turkey. Recently, there has been an upward trend in sexual abuse on minors and the demand for child pornography has increased remarkably over the years thanks to easy-accessibility of internet with a click. However, in order to impede this upward trend, the authorities have taken some measures legally and banned a great many sites with juvenile pornography content. The number of these banned sites is so high that, of 1.112 sites filtered officially, 451 of them have been censored depending upon the fact that they have contents of juvenile porn and abuse of children posing threat and risk for the minors.<sup>38</sup> The special case with this item is that the followers of such sites are monitored by the authorities and the IP addresses are recorded automatically; the next step is the judgement and punishment of such internet users. However, this process is not applied to the followers of other banned sites; namely, those entering the blocked websites by means of resorting to

Proxies such as ktunnel.com are not monitored, recorded or judged before the court.

### **3.1.3 Facilitation of the use of narcotics as per the article 190 of Turkish Criminal Code:**

On the grounds of the fact that the use, trade, advertisement, production and sale of narcotics is forbidden legally in Turkey, it is illegal to run any business depending on this products; therefore the competent authorities have banned the sites publishing any information about growing narcotic products and facilitating the use of narcotics as required by the Article 190, Turkish Criminal Code. The Dutch website elephantos.com was blocked due to the fact that it publishes some guidelines on growing and producing narcotics and magic mushroom in Turkish language, although it is a foreign-based site; so, it has been the first website to be banned for this reason. Even though Dutch model with regard to narcotics released on internet is favoured in most European states, it is not allowed in Turkey. Considering the nature of this type of banning, it is for the good of society and vulnerable minors and it aims at preventing the individuals from the harm caused by narcotics.

### **3.1.4 Provision of substances harmful to the health as per the article 194 of Turkish Criminal Code:**

Another reason for blocking the websites in Turkey is the provision of substances that are harmful to health. As it is required by the Article 194 of TCC, it is not allowed to purchase any substance such as alcoholic drinks or smoked products like tobacco by means of any multimedia means including internet, television, phone, etc. However, the enforcement of this law has been problematic; because it was decided to ban online provision/sale of substances harmful to health and the decree was put into force as of the date of January 1, 2006, but in February, the enforcement was stopped; therefore the provision of such substances is available online. Basically, the core of the law is for the good of public, but it was

not so possible to put it into effect and abstract the substances such as tobacco, alcohol from the daily lives of people completely; particularly considering the fierce competitive market of tobacco and alcoholic products industry.

### **3.1.5 Obscenity as per the article 226 of Turkish Criminal Code:**

As this item is relevant with the contents of those mentioned in 3.1.2 and 3.1.6, it is not possible to draw a strict line between these contents. Of 1,112 websites that have been banned officially, 390 of them are blocked due to obscenity.<sup>39</sup> The number of banned sites is rather high, but the question to be posed is not the number, but background of this decision. Actually, it is not definitely known who is making any decision on obscenity, and according which criteria these decisions are rendered: is there any level or limit of obscenity that the internet users have to comply with? What is the legal basis of decision-making bodies about obscenity? Are such decisions made in line with the beliefs, customs, values or traditions of the authorized persons, or is there any written or legal basis for this action? As a matter of fact, the main aim of the item is for the good of people, but it needs further clarification, elaboration and thinking, because it would not be appropriate and acceptable to go on with the decisions made by a certain group's beliefs or values.

### **3.1.6 Prostitution as per the article 227 of Turkish Criminal Code:**

The number of websites banned legally depending upon the legal basis that they include contents with prostitution is 12, which is few compared to the others.<sup>40</sup> In order to combat with white slave traffic, forced sexual exploitation or online indecent exposure, the sites with such content have been blocked in line with the Article 227.

### **3.1.7 Facilitation of gambling as per the article 228 of Turkish Criminal Code:**

Due to the fact that gambling was forbidden and the casinos were all closed several years ago, it is not allowed in Turkey to have any act of gam-

bling, particularly on internet. Thus Turkey has blocked the online gambling sites to access as the United States has done. The enforcement of the law is strict because

“As far as online gambling is concerned, most prominent was the arrest of two employees of the online sports betting website Sportingbet earlier this year, who were booked in Turkey during their vacation, as part of the government’s crack-down on Superbahis, Sportingbet’s Turkish-facing online betting business. According to reports some 37 people working for the company’s Turkish office have also been detained. Turkey passed laws in February banning “unauthorized” companies from offering gambling services to Turkish citizens, a move viewed as protectionism of the local sports betting market.”<sup>41</sup>

**3.1.8 Crimes against Atatürk as per the law numbered 5816:** Turkish nation is highly sensitive about the cases with Mr. Ataturk, the founding father of modern Turkey and does not accept any criticism or commentary against him. Courts hold the authority and right to ban web sites including any release targeting or insulting Mr. Ataturk. Further, the censorship of well-known and highly popular video-sharing sites YouTube.com and DailyMotion.com bases on this law. In March 2007, several videos were released on YouTube about Mr. Ataturk and they caused a tension between the Website authorities and Hellenic Republic.

Following the cyber-oriented tension, an Istanbul-based court rendered a verdict on banning the video-sharing site youtube.com and the Turkish Telecommunications Authority put the verdict into force because of the content which is considered to be insulting the memory of the founding father. Naturally, the verdict and the direct banning were not welcomed at international platform. “After the banning of worldwide video-sharing site YouTube and dailymotion.com, Turkey has been added to the list of “Freedom of Speech Restrictors” in which

there also exist China and Saudi Arabia.”<sup>42</sup> In addition, Reporters Sans Frontieres (RSF) considered the decision excessive and requested the authorities be moderate on such issues. However, the other courts in other cities also made similar decisions with regard to the case and rendered a verdict to ban the website totally, which led the process to a cul-de-sac. The international organisation of Reporters Sans Frontieres “condemned the obstinacy of the Turkish authorities in continuing to censor the Google-owned video-sharing website.”<sup>43</sup>

As a matter of fact, there are some alternatives for the cyber-crises caused by the videos about Mr. Ataturk; for instance it was possible for the Google authorities to block access to videos with such contents within the borders of Turkey, but Turkey chose total ban of the site, which is the best solution according to their mind even though they call it not banning but protection. In a sense, it is clear that this action aims only at banning, instead of finding a solution to a problem. On the one hand, there is foreign-based Google-owned site YouTube operated under the laws of another country who state that it is possible to block certain videos within the borders of any country provided that complaint is delivered to the authorities; but on the other hand, there stands Turkey, who expects a foreign-based website function and serve in compliance with her own laws and who resorts to total ban, which is for vain in practice, since it has been announced officially that youtube.com ranks among the top ten sites clicked in Turkey despite the fact that it remains blocked. This figure indicates that the total ban is not working effectively and there is not point in filtering the whole site just because of few videos that can be removed by diplomatic correspondence.

### **3.2 Censorship Cases Contradicting with the Law No 5651**

As it is clearly stated in the relevant Law concerning web site censorship, Law on the Regulation of Releases/Publications on Internet and

Fighting against the Crimes Committed via These Releases/ Publications, there are eight crime types subject to ban; and as elaborated supra, the reasons and legal basis for some of the actions are given. However, there are also other web sites that are banned for some reasons that are not included in the Law 5651, which needs further questioning. It is possible to classify them according to their reasons and the underlying facts in two parts: political and religious.

### 3.2.1 Political reasons

Although the number of sites banned because of political reasons is high, only some of them are going to be elaborated in this part. In general, the most outstanding cases regarding politics are as follows:

*a) Ban of one of the best-seller newspapers:* The newspaper of Vatan ranks the third largest-selling one in Turkey and, in parallel; the website of the newspaper is among the most-visited sites. However, the online component of the newspaper was banned after a complaint made by an Islamic creationist, which demonstrates that the freedom of expression is not functioning properly within the borders of Turkish Republic. The statements that caused tension are the questions posed by the newspaper regarding the delivery of anti-evolutionist book of the religious leader that is published on a highly-qualified material; because the book was delivered both to the biology and philosophy teachers and to the student free-of-charge in the schools, yet it is necessary to get permission for such delivery at the schools from relevant governmental institutions and the authorities at the ministerial level. Upon questioning the governmental connections and the supporters of such delivery, the court rendered a verdict to ban the access to the online component of the newspaper, which is a stain in the history of the Press. Such banning practices affect the image of Turkish Republic before the international platform and tarnish her credibility significantly.

*b) Ban of Eğitim-Sen:* One of the problematic decisions under the title of political reasons is the ban of the internet site of the Union of Education and Scientific Workers (Eğitim-Sen), [egitimsen.org.tr](http://egitimsen.org.tr). According to the Country Report of the US Department of States on Democracy, Human Rights and Labour “In May the High Court of Appeals ordered the closure of the teachers’ union Eğitim-Sen on the grounds that the union’s bylaws violated the constitution by advocating the right of individuals to receive education in their mother tongue”<sup>44</sup> Basically, this is the superficial explanation made for the ban of the site, but indeed the banning order was put into effect after an online release about an religious leader handing out his books free-of-charge against evolution theory. [Egitimsen.org.tr](http://Egitimsen.org.tr) questioned the financial sponsors of the book as well as the circles supporting his publication, and then the website was banned officially, which stands as a good example of infringement to Freedom of Expression and fundamental human rights.

*c) Ban of pro-Kurdish websites:* The websites of several local newspapers and news agencies are also among those banned for political reasons. The [bianet.org](http://bianet.org) says that “. There are some internet sites that are banned for supporting the Kurdish cause or simply being pro-Kurdish. For example, the internet sites of the newspapers Yeni Özgür Politika ([yeniozgurpolitika.org](http://yeniozgurpolitika.org)) and Özgür Gündem ([ozgurgundem.org](http://ozgurgundem.org)), Fırat News Agency (ANF) ([firatnews.com](http://firatnews.com)), and [rojaciwan](http://rojaciwan.com).”<sup>45</sup>

### 3.2.2 Religious reasons

Critical issue of religion stands out in web censorship, too, as it does in most aspects of life in Turkey. Likewise, it tops the agenda of censorship and stands as the cause of some filtering actions. It is possible to say that, legally, there is discrepancy between the Constitution and practices with regard to religious cases. With the purpose of comprehending what is meant by this discrepancy, it is necessary to have a look at the

recent evaluation of religious affairs. This case is put forward clearly by the International Religious Freedom Report 2008 of US Department of States released by the Bureau of Democracy, Human Rights and Labour. The Report says:

“The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion, but constitutional provisions regarding the integrity and existence of the secular state restrict these rights. The 1982 Constitution establishes the country as a secular state and provides for freedom of belief, worship, and the private dissemination of religious ideas. The Constitution prohibits discrimination on religious grounds.”<sup>46</sup>

As far as the case with internet censorship and religious affairs are considered, the aforementioned statement of International Religious Freedom Report 2008 is proved by the practices of competent authorities concerning web banning. Even though it is stipulated on written documents that religious beliefs and practices are not a reason for censoring, the following cases are relevant with this item. The actual reason of their ban bases on the fact that their content is different than their ideas and contradicting with their knowledge and belief. Otherwise, these websites do not include any releases that match the eight-criminal types defined by the Law 5156.

a) *Ban of Prof. Richard Dawkins' website*: The website of Mr. Richard Dawkins, Oxford University's Professor of the Public Understanding of Science, is one of the banned sites the reason of which is not included within the eight types of crime to ban a web. Following a claim by a Muslim non-scientist creationist about the content of the site as “defamatory” and “blasphemous”, one of the Turkish courts rendered a verdict against the scientist and banned his website. As it may be seen on the official website of Mr. Dawkins, richarddawkins.net,<sup>47</sup> not any detail is given regarding the court, number of verdict, etc; for sure, it is only possible to

see in Turkey. Is there any content about pornography, obscenity, or Atatürk or gambling? Certainly, in a scientific site, such things are not present, but what may be the reason of banning the site of a highly reputed and respected scientist? Considering the fact that British scientist is an evolutionist and there are online releases on his expertise, the very reason of this ban comes out: religion, religious thinking and belief.

No matter what the Constitution says and specific regulations on such issues stipulate or what the international conventions on various rights set forth, the trend is the same: expecting everyone to be the same, in the same faith, on the same path. In parallel to this fact, the limit of tolerance for the “others” ranges between little and less. On the condition that there is the existence of other beliefs, or that anyone states any idea different from the generally accepted notions, the next step is a counter action as the case with Mr. Dawkins is. What makes it more and more tragic is that they do not consider it as an infringement of freedom of speech or expression, but protecting the rights of people as well as preventing the insult against their belief; as the justification of the complainant party says “We are not against freedom of speech or expression but you cannot insult people.”<sup>48</sup> Depending on this justification, are all the ideas contradicting with those of others going to be considered as “insult” and is it required to ban all different beliefs?

Initially, it is crucial to draw a line between religion and positive science, and then discuss the case thoroughly. On the one hand, a religious leader considers the case through the perspective of religion and rejects the findings of positive science. It would not be acceptable to judge the thoughts and findings of a scientist as well as his expressions and publications at the court, just because of the fact that they do not comply with those of a certain belief. Moreover, it would not be wiser to ban a site with scientific content depending on the excuse that the content misdirects and misinform the people. In a

way, this case resembles to what Galileo experienced in the Medieval Era. From the years 1600 to date, it is evident not much progress has been taken regarding the relationship between religion and science: the only difference is the characters and the time. The former one was experienced on close 400 years ago and the latter one is a current event in “modern” Turkey. The current situation is the contemporary version of the medieval experience.

“The Galileo affair, in which Galileo Galilei came into conflict with the Catholic Church over his support of Copernican astronomy, is often considered a defining moment in the history of the relationship between religion and science. In reaction, many scholars attacked the theory because it seemingly contradicted several passages of Scripture. Galileo’s part in the controversies over theology, astronomy, and philosophy culminated in his trial and sentencing in 1633 on a grave suspicion of heresy. His offending Dialogue was banned; and in an action not announced at the trial, publication of any of his works was forbidden, including any he might write in the future.”<sup>49</sup>

Now that the censorship with regard to Mr. Dawkins’ case aims at removing the publications of a scientist totally, would not it be considered as an elimination, or cyber-murder of scientific data? It is worrisome, albeit real; this practice is sheer cyber-murder of reason.

As far as the case is taken into consideration in terms of European Union dimension, it naturally poses risks. One of the British newspaper, the Guardian, “points out Turkey’s restrictions on free speech are on ongoing obstacle to its attempts to join the EU and banning Dawkins’s website is unlikely to do this any favours.”<sup>50</sup> In addition, the banner at the top of the homepage of Richard Dawkins’ website that reads “Banned in Turkey” is not good for the international opinion about Turkey, as it tarnishes the reputation of Turkey at international platform.

b) *Ban of atheism.com*: Atheism has been considered as an “evil cult” and the followers of it have been ostracized from the society just because of their belief.

Belief of not believing anything has been disapproved by the public opinion and any attempt of the atheist groups has been hindered by the authorities for some reasons. The case with the ban of *ateizm.org* is the recent example to this item. According to the official website of the European Atheism, it says:

“*Ateizm.org*, the most prominent non-profit Turkish web site on atheism and religions was closed for the second time in December 2007, under orders from a Turkish court. *Ateizm.org* was established in 2000 by three young Turkish atheists who devoted themselves to the enlightenment of Turkish people. *Ateizm.org* hosts an online discussion board named *Ateistforum* (*forum.ateizm.org*), one of the busiest forums for the Turkish speaking online community over the Internet.”<sup>51</sup>

The reason of banning this website is the same again: the followers of creationist mentality. Due to the fact that their belief does not accept any theistic concept, it is considered as insult against the creationists; because any opposite idea and thought according to their creed is regarded as insult and pretext for litigation. Despite all these banning attempts, it is still claimed that these are not the violation of the freedom of speech or religion. However, as a country aiming at full-membership in the European Union, it is necessary for her to have certain freedoms and rights; just stating that required amendments have been made in the Constitution or in the relevant regulations is not enough. It is crucial to put into effect the amendments and the required actions; otherwise, they would be no more than words without meaning and sense as long as they are not in practice.

### **3.3 Censorship Cases Contradicting with the Law No 5651**

It is obvious that there are some legal gaps in the relevant laws and regulations: while some of the rights and freedoms are intended to be safeguarded in some of the laws, yet there seems to be missing points. In the special case of internet censorship by the state control in Turkey, some of the aforementioned items stand as good example for the missing points. Considering the whole items stipulated in the Law No 5651 on the Regulation of Releases/Publications on Internet and Fighting against the Crimes Committed via These Releases/Publications, only eight criminal types are defined therein; however, some of the other items that need to be included within the scope of the Law No 5651 are not present, which indicates the legal vacuum in the law in question. The reason for not including these certain items within 5651 scope is a case to be questioned. Here are some of the points to be included via Amendment:

**3.3.1 Hate propagandas (against/targeting other sexual preferences, religious and spiritual movements, ethnic groups as well as minorities; and fighting against racism, xenophobia, anti-Semitism, etc):** In spite of the fact that degrading and insulting attempts are considered to be against the laws, still there are some events that pose risk for human rights; likewise, even though some of the articles in the constitution stipulates statements disapproving such attempts, the case is different in practice. It should not be sneezed at that it is the same on internet, too. The releases targeting the other sexual preferences such as gay, lesbian groups or the religious and spiritual movements are available on the net. Unquestionably, the disseminations against the ethnic groups as well as minorities have been the current issues of the state agenda for years. Although the population is complaining that the foreign unions and nations have bias against

them, there is a growing-racist and xenophobic trend throughout the whole country. The murder of a foreign-priest in the north, the slaughter of three Christians in the east, the murder of a minority member in Istanbul is clear evidences of these claims.

Despite these event causing anxiety and agitation in terms of human rights, freedom of speech and expression, the outcomes of such events are reflected in the media means and on internet sites as heroic and bravery deeds. Furthermore, some internet users are sending mass e-mails and attachments with racist, xenophobic and anti-Semitic contents, from which many people suffer due to the cyber-pollution it causes. However, not much measure has been taken in combating against cyber-dissemination of racist and xenophobic followers. Therefore, it is required for the competent authorities to make amendments on the law, but, by means of setting the criteria so as not to encounter another vague situation as it is in "obscenity", because there is no criterion regarding obscenity, so it depends upon the values and beliefs of the decision-making figures.

**3.3.2 Pro-fascist and terrorist releases and dissemination (at both national and international basis):** The law No 5651 does not cover any content concerning pro-fascist and terrorist disseminations, yet it is necessary to make amendments in order to include this item within the scope of the law with the aim of fighting against the terrorist, separatist and fascist activities "on internet". An important point is to make this amendment in line with both national and international basis; namely, it is essential that the amendment cover those activities enlisted in the List of Specially Designated Global Terrorists under Executive Order 13224, "Blocking Property and Prohibiting Transactions with Persons Who commit, Threaten to Commit, or Support Terrorism" that covers not only the national ones but also the international ones as well.<sup>52</sup> Provided that it is conducted and defined

at national basis, it would inhibit the freedom of speech and expression of many minor groups and communities, as it is pretty easy to find any pretext or excuse to ban the thoughts and ideas of anyone else just because it is different, thus it needs a staunch legal basis and covering the national and global threats. The criteria should be set to define the fascist and terrorist activities and to draw a line whether they are really terrorist or fascist or cry for freedom or for salvation to get rid of suppression. However, it needs the cooperation of nations and supranational bodies to get a sound fruit to act cooperatively, which may be conducted under the body of United Nations.

**3.3.3 Contents with explosive and bomb-making instructions:** The proposal set forth by Mr. Frattini, the former European Union Commissioner for Justice, Freedom and Security, may be included within the scope of the relevant law. There is not any provision stipulating the ban of websites that publish and release instruction for making explosives and bomb. With the purpose of preventing people from such contents, inclusion of this item to 5651 scope may serve for the good of Turkey.

#### **4. Conclusion**

In conclusion, as it is seen in throughout the paper there are different attempts and studies on controlling internet both at home and abroad. The control over cyber-world is administered in Turkey by some competent authorities the number of which is rather few. The current law controlling internet is the one No 5156, but it is important to accept this law is not sufficient and there are still missing points that creates legal vacuum in practice. The scope of the law is confined to several items (only eight in number, See 3.1.1 - 3.1.8 supra) that do not cover the cases which are considered in most foreign-countries.

As far as the practices of foreign countries are compared to those of Turkey, there are both

similarities and differences in the measures taken in internet control. While some of them have similar considerations on certain issues such as prevention of online gambling or child pornography, some contradict with their policy; to illustrate, some governments, such as Chinese or Russian governments, impose banning on websites due to diplomatic and political disputes which is considered to be a threat according to International Covenant on civil and Political Rights and to International Declaration of Human Rights. Although such an item is not present among the eight criminal types, there are bans that are politics-oriented (See 3.2.1 supra). While some states confine the dissemination of religious and spiritual movements such as China and Iran, such an attempt is not in the agenda of others.

The censorship certainly does and will have some outcomes and reflections nationally and internationally. As long as the censorship on certain websites releasing publications about a religion or movement continues, so does the infringement of freedom of speech and expression. On the condition that the scientific websites that may include findings or idea contradicting with those of a certain group are banned, it would be impossible to welcome it. Because these elements, which target science, religions, press, human rights, etc, are tarnishing the reputation of Turkish Republic at international platform, and in the same way it will keep on doing as long as it lasts. Because the banner at the top of the homepage of a highly recognized and visited website with scientific content that reads "Banned in Turkey" in red and white colours which refers to Turkish flag and identity is not a good message to the world communities. No matter what is put forward to justify this case or even if the counter-statements are made on it, people will keep on believing what they see concrete and in practice. Further, it is going to remain as recorded in the archives, internet history and records of Turkey.

The European Union process is also jeopardized by these legalized bans on Internet. The objective and practice should be on the same path: looking forward to full-membership in the European Union as an objective and violating the freedom of speech and expression or violating the civil and political rights as practice is no more than a paradox. The ongoing restrictions on internet are inconsistent with the Copenhagen criteria, particularly the political ones as well as with the Article 10 of the European Convention on Human Rights (ECHR)<sup>53</sup> and its Five Protocols. Under these paradoxical conditions, it would not be right to think of an EU with Turkey. With the aim of overcoming this discrepancy, it is necessary for Turkey to gap the bridges in terms of legal requirements, and then she may hold the right to go ahead for the further negotiations and full-membership. Otherwise, Turkey is going to be referred as a country putting into effect some bans on science as it happened 400 years ago in Medieval Era and she is going to be considered as the contemporary reflection of Galileo case.

## Resources

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