

ENGELLİ WEB

2018

YAMAN AKDENİZ - OZAN GÜVEN

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iFOD
FREEDOM OF EXPRESSION
ASSOCIATION

ENGELLİ WEB

2018

YAMAN AKDENİZ - OZAN GÜVEN

• RESEARCH •



Kingdom of the Netherlands

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AN ASSESMENT REPORT ON BLOCKED WEBSITES, NEWS ARTICLES AND SOCIAL MEDIA CONTENT FROM TURKEY

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Freedom of Expression Association and 2018 EngelliWeb Report

The Freedom of Expression Association (“iFÖD”), based in Istanbul, was established in August 2017. The Association focuses on the prevention and elimination of violations of the right to freedom of expression without any discrimination based on language, religion, race, gender, sexual orientation, gender identity, age, disability, political affiliation and other grounds. In this respect, the association is founded with the purpose of providing legal assistance to those whose right to freedom of expression has been violated or is at risk of being violated as well as for conducting projects including research, training, national and international cooperation and promoting solidarity for the purpose of safeguarding the right to freedom of expression of the people affected.

As a part of the activities of the Freedom of Expression Association, this report was prepared in collaboration with the EngelliWeb initiative within the scope of a project, funded by the Human Rights Programme of the Government of the Netherlands. As a civil society initiative launched in 2008, EngelliWeb shared information and statistics on blocked websites from Turkey and judicial and administrative decisions blocking these websites, to the extent detected by the initiative until 2017. As a reference resource providing concrete data on its field for many domestic and foreign media organizations as well as academic articles and parliamentary questions and as a statistical source used in every annual “Human Rights Report” of the US State Department, EngelliWeb was awarded the Honorary Freedom of Thought and Expression Award of the Turkish Publishers Association in 2015 and the BOBs – Best of Online Activism Turkish User Award of Germany’s international broadcaster Deutsche Welle in 2016.

Since the foundation of the Freedom of Expression Association, EngelliWeb has continued its activities under the roof of the Association and within that framework, this 2018 EngelliWeb Report has been prepared with regards to the ongoing Internet censorship practices in Turkey. Hereafter, the Freedom of Expression Association will continue to publish EngelliWeb reports in both English and Turkish twice a year.

The 2018 EngelliWeb Report is written by Professor **Yaman Akdeniz** (Professor, Faculty of Law, İstanbul Bilgi University) and Expert Researcher **Ozan Güven**.

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The 2018 EngelliWeb Report of the Freedom of Expression Association (“İFÖD”) includes overview of and considerations on increasing Internet censorship and access blocking practices by the end of 2018 in Turkey. This assessment is predominantly conducted by reference to the application of Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications, which was enacted about 12 years ago and other subsequent regulations in Turkey.

As a matter of fact, no statistical data on websites blocked from Turkey was published either by the former Telecommunications Communication Presidency (“TIB”) or its successor Information Technologies and Communication Board (“BTK”). Moreover, no statistical data on blocked websites, news articles (URL-based) and/or social media content has ever been published by the Association of Access Providers (“ESB”). In line with the government policy, the Minister of Transport and Infrastructure provided the following justification for non-disclosure of those statistics as a response given to a recent Turkish Parliamentary question: “*Since the figures [related with statistics on access blocking] are not officially disclosed by other countries, a false perception, an information pollution may arise internationally against our country by way of using these figures.*”¹ Similar Parliamentary questions were responded negatively during 2018.

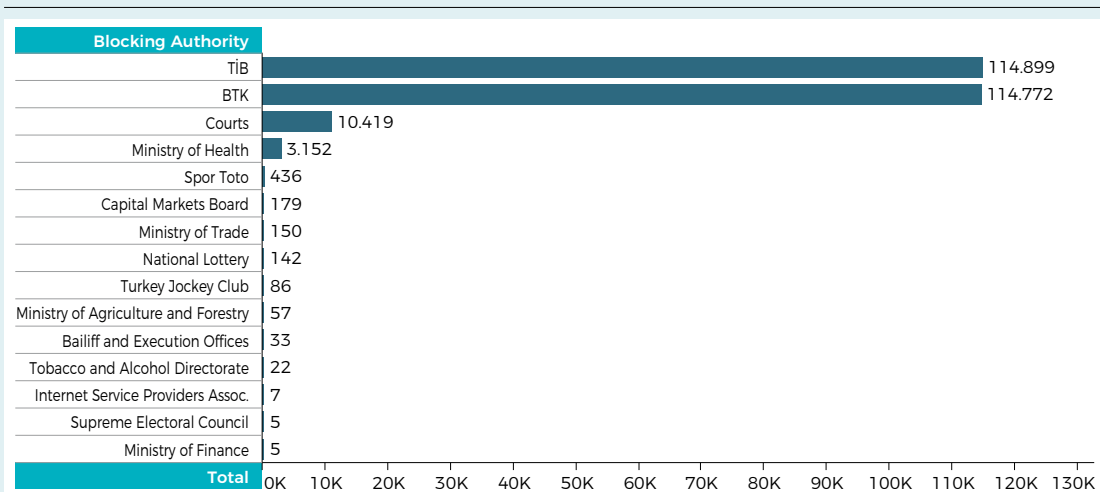
This EngelliWeb report prepared by the Freedom of Expression Association includes detailed statistical information both for the year of 2018 and also provides an overview for the 2007-2018 period on blocked websites, news articles (URL-based) and social media content. It is the intention of İFÖD to share such data and analysis with the general public on a regular basis. Therefore, further reports will be prepared and published; the first in September 2019 with regards to the first half of 2019 and a subsequent report in February 2020 as a year-end report for 2019.

¹ Response given to written Parliamentary question of Ömer Fethi Gürer (Niğde MP), no. 7/7464, 8 February, 2019, at <https://www2.tbmm.gov.tr/d27/7/7-7464sgc.pdf>

ACCESS TO 245.825 WEBSITES WAS BLOCKED FROM TURKEY BY THE END OF 2018

Prior to 2018, access to a total of 190.922 domain names and websites were blocked from Turkey pursuant to the decisions, orders and legal measures detailed below. 177.515 of these websites were blocked by TİB, and later by the Head of Information Technologies and Communication Board 9.227 domain names were blocked by criminal judgements of peace, public prosecutors' offices and by the courts. Additionally, as far as is known, prior to 2018, access to 150.000 URL addresses were blocked by criminal judgements of peace in accordance with Article 9 of the Law No. 5651, and around 50.000 new articles as well as social media content was removed by content providers and platform providers subsequent to receiving the relevant blocking orders. As will be detailed below, in the year of 2018, as far as it could be determined by our efforts under the scope of the EngelliWeb project, a further **54.903 domain names** were blocked access to from Turkey. Together with these statistics, by **the end of 2018, a total of 245.825 domain names** are blocked **from Turkey** as shown in **Figure 1** below showing details according to the blocking authority.

Figure 1: Number of Blocked Websites By the Blocking Authority (Total)



The most outrageous blocking practice which continued to be enforced during 2018 was the total access blocking of the **Wikipedia** platform with the decision of the Ankara 1st Criminal Judgeship of Peace² in April 2017. While access blocking continued throughout 2018, individual applications with priority claim submitted to the Constitutional Court in May 2017 have not even been examined by the time of the re-

² Access to Wikipedia platform was blocked by the order of Ankara 1st Criminal Judgeship of Peace dated 29 April 2017 and numbered 2017/2956 D. İŞ (Misc.) on the grounds of Turkey-related parts of two English content titled as “**Foreign involvement in the Syrian Civil War**” (https://en.wikipedia.org/wiki/Foreign_involvement_in_the_Syrian_Civil_War#Turkey) and “**State-sponsored terrorism**” (https://en.wikipedia.org/wiki/State-sponsored_terrorism#Turkey)

lease of this report.³ Likewise, access to the popular image sharing platform **Imgur** was blocked by an order of the Turkish Medicines and Medical Devices Agency (“TITCK”) of the Ministry of Health⁴ in October 2017. Access blocking to the Imgur platform continued throughout the year of 2018. A “user based” appeal against the blocking decision is still pending before the Ankara Regional Administrative Court.

THE POWER AND LEGAL AUTHORITY TO BLOCK ACCESS FROM TURKEY

While the power and legal authority to block access from Turkey is provided primarily to judicial organs under various legal provisions, numerous administrative bodies are also authorized to issue or request blocking orders pursuant to several legal provisions. Under Articles 8, 8/A, 9 and 9/A of Law No. 5651, **criminal judgeships of peace** are authorized to issue access blocking orders; while on the other hand, **public prosecutors** may decide to block access to Internet content during an investigation in circumstances where delay would entail risk pursuant to Article 8, provided that such decision be submitted to a judge within 24 hours. **Public prosecutors** are also vested with a blocking power under Supplemental Article 4(3) of the Law No. 5846 on Intellectual and Artistic Works with regards to intellectual property infringements.

As regards to the administrative bodies, from the enactment of Law No. 5651 until its closure by the Emergency Decree-Law No. 671 on Measures to be Taken Under the State of Emergency and Arrangements Made on Certain Institutions and Organizations in August 2016, the **Telecommunications Communication Presidency** and then its successor the President of the **Information Technologies and Communication Board** were 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. Consequently, blocking decisions subject to Articles 8/A and 9/A are issued by the **criminal judgeships of peace**.

The **Association of Access Providers** was established by Article 6/A which was added to the Law No. 5651 in February 2014 for the purpose of enforcing blocking decisions issued other than within the scope of Article 8 of Law No. 5651.⁵ This Association, having private entity status, is also vested under Article 9(9) with a power to issue administrative blocking decisions under certain circumstances. The Association can issue blocking decisions only when an interested person makes an application to the Association with a request to block access to the exactly same content that has been previously subject to a blocking decision issued by a criminal judgeship of peace with regards to Article 9 personal rights violation claim.

In addition to these, the **Ministry of Health** is authorized to immediately block access to the infringing websites under Article 18 of the Law No. 1262 on Pharmaceutical and Medicinal Preparations in case of online promotion and sales of “off-label or counterfeit drugs or similar medicinal preparations”. This power is exercised by the

³ Yaman Akdeniz & Kerem Altıparmak Application, Application No: 2017/22783, 12 May 2017.

⁴ Blocking order of the Turkish Medicines and Medical Devices Agency (TITCK) of the Ministry of Health numbered 61762938-000-E.205963 and dated 14 October 2017.

⁵ Added by: 6 February 2014 – Law No. 6518/Article 90.

Turkish Medicine and Medical Devices Agency established under the Ministry of Health and the decisions taken by this Agency is notified to the Information Technologies and Communication Board to be implemented pursuant to Law No. 1262. As mentioned above, this Agency blocked access to worldwide known image and photo sharing platform Imgur, while the execution of this order has been performed by the **Association of Access Providers** rather than the Information Technologies and Communication Board as required by law and is subject to legal dispute.

The **Capital Markets Board** is authorized to request access blocking under Article 99 of the Capital Markets Law No. 6362, regulating “precautionary measures applicable in unauthorized capital markets activities”. Under paragraph 3 of the referred article, the Board may apply to court pursuant to applicable laws related with access blocking if and when it is determined that unauthorized capital market activities are carried out via Internet and if the content and hosting providers are located in Turkey. If content and hosting providers are located abroad, access may be blocked by the Information Technologies and Communication Board upon the request of the Capital Markets Board. Additionally, pursuant to paragraph 4 of Article 99,⁶ in case it is found out that an amount of money was collected from public through crowdfunding platforms without the permission of the Capital Markets Board or any leveraged transactions, or derivative transactions that are subject to the same provisions as leveraged ones, were offered through Internet to residents of Turkey, the Information Technologies and Communication Board may block access to the relevant websites upon the request of the Capital Markets Board.

The **Tobacco and Alcohol Market Regulatory Authority**, which was once known as “the ghost authority”⁷ and subsequent to its closure by Article 82 of the Decree-Law No. 696,⁸ the **Ministry of Agriculture and Forestry** is authorized under sub-paragraph (k) of second paragraph of Article 8 of the Law No. 4733 on Regulation of Tobacco, Tobacco Products and Alcohol Market, regulating Penal Provisions, to block access pursuant to the procedures prescribed by Law No. 5651, in case of online sales of tobacco products or alcoholic beverages to consumers. The referred legal provisions shall be applied with regard to the relevant orders.⁹ Whereas, in practice it is observed that this power is used by the **Directorate of Tobacco and Alcohol** established under the Ministry of Agriculture and Forestry. In this context, it is also observed that blocking access is executed by the Association of Access Providers rather than the Information Technologies and Communication Board.

The **organizations and bodies** listed in sub-paragraph (ç) of the first paragraph of Article 3 of the Law No. 5602 on Regulation of Taxes, Fund Contributions and Royalties collected from the Proceeds of Games of Chance may order access blocking if and when

6 Added by: 17 March 2017 – Decree-Law No. 690/Article 67; Enacted by Amendment: 1 February 2018 – Law No. 7077/Article 57.

7 Hürriyet, “TAPDK da ‘hayalet kurul’” [“Ghost board” in TAPDK], 9 December 2017, <http://www.hurriyet.com.tr/ekonomi/tapdkda-hayalet-kurul-40673287>

8 20 November 2017 – Decree-Law No. 696/Article 82; Enacted without Amendment: 1 February 2018 – Law No. 7079/Article 77.

9 This power also included in Article 26(1) of the Regulation on Procedures and Principles of Sales and Presentations of Tobacco Products and Alcoholic Beverages (published in the Official Gazette dated 7 November 2011 and numbered 27808).

they determine that crimes and offences falling under their jurisdiction have been committed via Internet. These blocking orders are notified to the Information Technologies and Communication Board for implementation. The organizations and bodies listed in sub-paragraph (ç) of the first paragraph of Article 3 of the Law No. 5602 include the **Directorate General of National Lottery Administration**, the **Jockey Club of Turkey** (public benefit society) to which the right and power to organize pari-mutuel horse racing betting is transferred by the Ministry of Agriculture and Forestry and the **Directorate of Spor Toto Organization** to which the right and power to organize pari-mutuel football betting is transferred by the General Directorate of Youth and Sports.

Pursuant to Article 7 of the Regulation on Online Games of Chance,¹⁰ regulating “Application to Administrative and Judicial Authorities”, the **Department of Games of Chance, Directorate General of National Lottery Administration** may submit immediate requests to related judicial authorities “with the request that services and broadcasts of service providers providing services to virtual platforms and/or websites related to the games of chance activities to be suspended with respect to the relevant websites and/or virtual platforms and the prohibited actions to be punished”. In accordance with Article 8 of the same Regulation, in case of any suspension decision given by related judicial authorities with respect to the said virtual platforms, the **Directorate General of National Lottery Administration** shall immediately notify the Information Technologies and Communication Board for further action of access blocking.

The **Directorate of Spor Toto Organization** is also authorized to apply the legal provisions related to access blocking under Law No. 5651 with respect to the crimes and offences falling under Article 5 of Law No. 7258¹¹ on Regulation of Betting and Chance Games in Football and Other Sports Competitions.¹²

Under the scope of Law No. 6132 on Horseracing, the Ministry of Agriculture and Forestry is authorized to organize horse-racing within the borders of Turkey and to take bets from Turkey and abroad in relation to races organized domestically and/or abroad. The Ministry of Agriculture and Forestry transferred the right and power to organize pari-mutuel horse racing betting to the **Jockey Club of Turkey**. In practice, it is observed that blocking orders taken by the Jockey Club of Turkey are executed by the **Information Technologies and Communication Board**.

High Board of Religious Affairs of the Directorate of Religious Affairs is also authorized to block access with respect to certain content published on the Internet. Pursuant to a paragraph added in 2018¹³ to Article 5, defining the function of the **High Board of Religious Affairs**, of the Law No. 633 on the Establishment and Duties of the Directorate of Religious Affairs,¹⁴ upon the request of the Directorate to the authorized body, it shall be ordered to suspend the printing and publication of, and/or confiscate and destroy the already published Quran translations, which are found by the High Board to be prejudicial in terms of the main features of Islam. In the event of on-

¹⁰ Official Gazette dated 14 March 2006 and numbered 26108.

¹¹ Amended: 12 July 2013 – Law No. 6495/Article 3.

¹² The authorization of the Directorate of Spor Toto Organization is governed by the Regulation on Duties, Authorizations and Obligations of the Directorate of Spor Toto Organization. See Official Gazette dated 21 December 2008 and numbered 27087.

¹³ Added paragraph: 2 July 2018 – Decree-Law No. 703/Article 141.

¹⁴ Amended: 1 July 2010 – Law No. 6002/Article 4.

line publications, upon the request of the Directorate, the authorized body may block access to those publications. These orders shall be submitted to the **Information Technologies and Communication Board** for execution.¹⁵

Besides, no Qurans, fascicles, translated Qurans as well as audiovisual Qurans and Qurans prepared in electronical environment can be published or broadcasted without the approval and seal of the **Board of Inspection and Recitation of the Quran** of the **Directorate of Religious Affairs**. The Qurans and fascicles, and audiovisual Qurans and Qurans prepared in electronical environment published or broadcasted without approval or seal shall be ordered to suspend the printing and publication of, and/or confiscate and destroy the already distributed ones, upon the request of the Directorate to the authorized body. In the event of online publications, upon the request of the Directorate, the authorized body may block access to those publications. These orders shall be submitted to the **Information Technologies and Communication Board** for execution.

By Article 29/A added in 2018 to the Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services,¹⁶ the **Radio and Television Supreme Council** is authorized to request blocking access in case of online broadcasting services presented without a broadcasting licence. Within this context, the media service provider organizations who have obtained temporary broadcast right and/or broadcasting licence from the Supreme Council may present their media services via Internet in accordance with the provisions of the referred Law and Law No. 5651. Media service providers requesting to present radio and television broadcasting services and on-demand media services exclusively via Internet must obtain broadcasting licence from the Supreme Council while the platform operators requesting to transmit those broadcasting services via Internet must obtain authorization for the transmission of media services from the Supreme Council.

In case it is found by the Supreme Council that the broadcasting services of the natural and legal persons who does not have any temporary broadcast right and/or broadcasting licence obtained from the Supreme Council, or whose right and/or licence was revoked are being transmitted via Internet, upon the request of the Supreme Council, **criminal judgeships of peace** may decide to remove content and/or deny access in respect of the relevant broadcasting service on the Internet. These orders shall be notified to the **Information Technologies and Communication Board** for further action. The orders given pursuant to the abovementioned article towards removing content and/or blocking access shall be governed by the third and fifth paragraphs of Article 8/A of the Law No. 5651.

Notwithstanding that content or hosting provider is located abroad, the sanction of access blocking may also apply to the transmission of the broadcasting services of the media service providers and platform operators under the jurisdiction of another country via Internet, which is determined by the Supreme Council to be broadcasting in violation of the international treaties signed and ratified by the Republic of Turkey

¹⁵ By Article 141 of the Decree-Law No. 703, dated 2 July 2018, the phrases of “civil court of peace” and “Telecommunications Communication Presidency” included in this paragraph were replaced with “the authorized body” and “Information Technologies and Communication Board” respectively.

¹⁶ Added: 21 March 2018 – Law No. 7103/Article 82.

in relation to the scope of duty of the Supreme Council as well as the provisions of the referred Law, and to the Turkish broadcasting services of the broadcasting enterprises addressing the audience in Turkey via Internet or featuring commercial communication broadcasting addressed to the audience in Turkey even though the broadcast language is not Turkish. Article 29/A is still not in force since the related regulation on its implementation has not yet been enacted and thus published in the Official Gazette.

The **Supreme Election Council** may also request that certain content to be blocked pursuant to Article 55/B of the Law No. 298 on Basic Provisions on Elections and Voter Registers, regulating “Media, communication tools and propaganda on the Internet”¹⁷ based on the provision stating that during the elections, “[i]n the ten days period before the voting date, it is forbidden by any means to make or distribute publications or broadcasts which include information that may positively or negatively affect the opinions of voters in favor or against a political party or candidate via printed, audio or visual media and/or under any names such as polls, public inquiry, estimations or mini referendums. In practice, it is observed that blocking orders based upon this authorization, which is in fact required to be applied “temporarily”, is implemented for an indefinite period of time by the Association of Access Providers.

Lastly, under Article 80 of the Law No. 6502 on Consumer Protection, related to pyramid selling schemes, the **Directorate General of Consumer Protection and Market Surveillance** of the Ministry of Trade has started to issue access blocking orders. The third paragraph of the referred article provides that “The Ministry shall be authorized to make the necessary inspections related to pyramid selling¹⁸ schemes and to take the necessary measures in cooperation with its relevant public institutions and corporations, including **ceasing access to the relevant electronic system” from Turkey**¹⁹ These orders are also notified to the Association of Access Providers for execution, despite lack of any such authorization prescribed by law.

DOMAIN NAMES, URL'S, NEWS ARTICLES AND SOCIAL MEDIA CONTENT BLOCKED IN 2018

In the year of 2018, as far as it could be determined by our efforts within the scope of EngelliWeb project, access to a total of **54.903 domain names** were blocked from Turkey.²⁰ As detailed in **Figure 2**, the vast majority of the blocking orders (95 per cent) were given with respect to **52.156 domain names** by the President of the Information

¹⁷ Added: 8 April 2010 – Law No. 5980/Article 5.

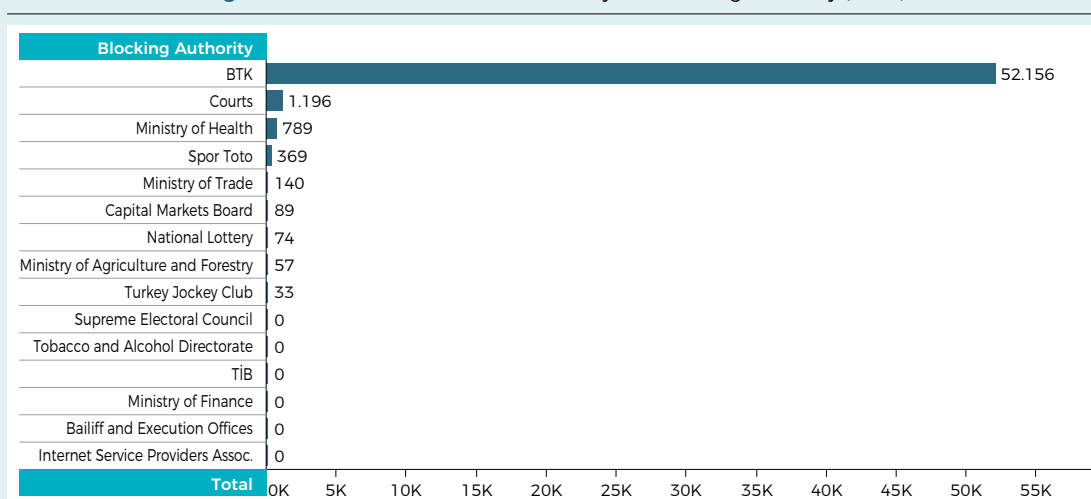
¹⁸ Pyramid sale is a gain expectation system which is unrealistic or difficult to be realized, that gives any opportunity to gain money or assets to its participants, in return for a certain amount of money or assets, provided that the participants find other participants under the same conditions and, which depends the gain of assets completely or partially on other participants' complying with the conditions as well.

¹⁹ The Directorate may file a criminal complaint under the paragraph 17 of Article 77 of the Law No. 6502 related to criminal provisions, stating that “The relevant provisions of the Penal Code of Turkey No. 5237 dated 26 September 2004 shall be applied for those initiating, organizing a pyramid sale system or distributing such through meetings, emails or methods that are suitable for obtaining the participation of many people, or for those supporting the distribution of such a system by another way for commercial purposes, contrary to Article 80 of this Law.”

²⁰ The blocking date could not be determined as regards to further 1456 domain names, which has been found out to be blocked in the year of 2018.

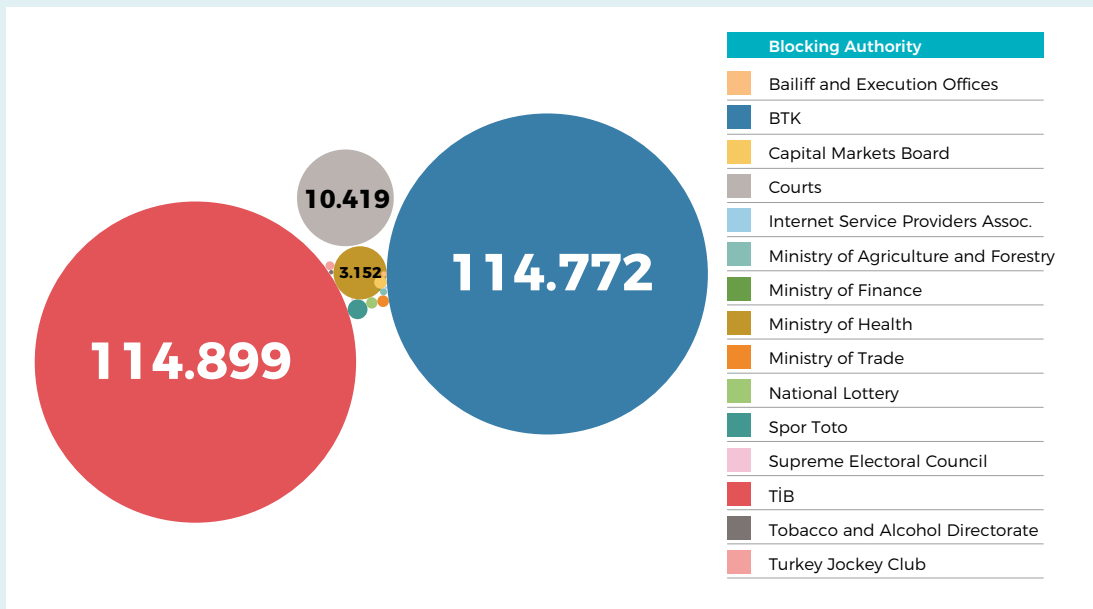
Technologies and Communication Board subject to Article 8 of Law No. 5651. It is determined that **1196** domain names were blocked by decisions issued by criminal judgements of peace, public prosecutor's offices and by the courts, **789** domain names were blocked by the Turkish Medicines and Medical Devices Agency of the Ministry of Health, **369** domain names were blocked by the Directorate of Spor Toto Organization, **140** domain names were blocked by the Ministry of Trade, **89** domain names were blocked by the Capital Markets Board, **74** domain names were blocked by the Directorate General of National Lottery Administration, **57** domain names were blocked by the Directorate of Tobacco and Alcohol, the Ministry of Agriculture and Forestry and the General Directorate of Food and Control, the Ministry of Agriculture and Forestry and **33** domain names were blocked by the Jockey Club of Turkey.

Figure 2: Number of Blocked Websites By the Blocking Authority (2018)



Together with these figures, by **the end of 2018, access to a total of 245.825 domain names** were blocked from **Turkey**. Out of these, as can be seen in **Figure 3**, **114.899** were blocked by TIB before it was closed down, **114.772** were blocked by BTK (**229.671** administrative blocking orders in total), **11.879** were blocked by criminal judgements of peace, public prosecutor's offices and by the courts, **3152** were blocked by the Turkish Medicines and Medical Devices Agency of the Ministry of Health, **436** were blocked by the Directorate of Spor Toto Organization, **179** were blocked by the Capital Markets Board, **150** were blocked by the Ministry of Trade, **142** were blocked by the Directorate General of National Lottery Administration, **86** 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.

Figure 3: Number of Blocked Websites By the Blocking Authority (Total)



DOMAIN NAMES BLOCKED UNDER ARTICLE 8 OF THE LAW NO. 5651

The Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications was enacted on 4 May 2017. Under Article 8 of the Law No. 5651, it is provided that “it shall be decided to block access for on-line content if there is sufficient suspicion that the content constitutes any of the crimes and offences listed below” by listing the following crimes and offences as defined under the Turkish Criminal Code: encouragement and incitement of suicide;²¹ sexual exploitation and abuse of children;²² facilitation of the use of drugs;²³ provision of dangerous substances for health;²⁴ obscenity;²⁵ prostitution;²⁶ gambling;²⁷ and crimes committed against Atatürk as provided under the Law No. 5816.

While access blocking orders are issued through two different methods for crimes listed under Article 8, “**Precautionary Injunction Orders**” may be given by judges during the investigation phase of a criminal investigation and by the courts during the prosecution/trial phase. Nevertheless, the blocking orders under Article 8 were mainly issued as “**Administrative Blocking Orders**” by TIB, until its closure, and then by the President of BTK, based on the provision stating that measures may be *ex officio*

²¹ Article 84 of the Turkish Penal Code.

²² Article 103(1) of the Turkish Penal Code.

²³ Article 190 of the Turkish Penal Code.

²⁴ Article 194 of the Turkish Penal Code.

²⁵ Article 226 of the Turkish Penal Code.

²⁶ Article 227 of the Turkish Penal Code.

²⁷ Article 228 of the Turkish Penal Code.

ordered by the latter if the content or hosting provider of the websites that carry content in breach of Article 8 is located abroad, or even if the content or hosting provider is domestically located, when content contains sexual abuse of children, obscenity and/or prostitution.

In the year of 2018, as far as it could be determined by our efforts, access to **52.156 domain names and websites** were blocked by **administrative blocking orders** issued by BTK. From those blocked in 2018, **12.134** domain names (approximately 22 per cent) were related to gambling and betting sites.

As detailed below, the blocking power of the President of BTK with regard to foreign-hosted websites containing obscene content was annulled by the Constitutional Court with a decision issued in February 2018.

THE ANNULMENT OF THE BLOCKING POWER OF THE PRESIDENT OF BTK WITH REGARD TO WEBSITES HOSTED ABROAD ON ACCOUNT OF THE OFFENCE OF OBSCENITY

The judgment of the Constitutional Court on the power to block access by way of administrative order which was transferred first to TIB and then to the President of BTK was published in the Official Gazette on 7 February 2018. Regarding a constitutionality review application made through the 13th Chamber of the Council of State, the Constitutional Court found by a majority vote that **the power to block access to “obscene” websites hosted outside Turkey (Article 8(1)(5)) vested with the President of BTK under Article 8(4) of the Law No. 5651 was incompatible with the Constitution and therefore the Court annulled the relevant measure.**²⁸

As stated above, the procedure and power annulled by the Constitutional Court was vested with the President of BTK by the fourth paragraph of Article 8 of the Law No. 5651; before its annulment, under the abovementioned provision, the President of BTK had *ex officio* authority to block access to websites allegedly featuring illegal content including sexual abuse of children, obscenity and/or prostitution when there is “**sufficient suspicion**”. The relevant provision prescribes as follows:

(4) The President shall issue an *ex officio* blocking order if the content or hosting provider of the publications with content which constitutes offences as specified in the first paragraph is located outside the country, or if content of publications constitutes offences mentioned in sub-clauses (2- Sexual abuse of children) and **(5- Obscenity)** and (6- Prostitution) of sub-paragraph (a) of the first paragraph of Article 8, even if the content or hosting provider is located within the country. This order shall be notified to the access provider for further action.

The Constitutional Court decided to annul the phrase included in the first sentence of paragraph 4 of Article 8 by stating that “*if the content or hosting provider of the publications with content which constitutes offences as specified in the first paragraph is lo-*

²⁸ Constitutional Court Judgment numbered E. 2015/76., K. 2017/153 and dated 15 November 2017, published in the Official Gazette dated 7 February 2018 and numbered 30325.

cated outside the country...” as regards to sub-clause 5 of sub-paragraph (a) of the first paragraph of Article 8 of the Law and the phrase stating as “[t]he President shall issue an ex officio blocking order...” as regards to the phrase of “if the content or hosting provider of the publications with content which constitutes offences as specified in the first paragraph is located outside the country” and to sub-clause 5 of sub-paragraph (a) of the first paragraph of Article 8 of the Law. In short, the power to block access to websites hosted abroad was annulled with respect to the offence of obscenity referred in sub-clause 5.

The Constitutional Court stated that the annulled power “also enables administration to block access to websites ex officio and **without need of judicial approval** in case of a publication with content constituting an offence being published in mass communication websites with the intention of not committing an offence or facilitating the commission of an offence” and emphasized the problem with this kind of ex officio orders issued by the President of BTK without any judicial approval by finding it in violation of “legal certainty”, which constitutes one of the fundamental principles of the rule of law. This principle entails that any legal regulation must be clear, precise, comprehensible, applicable and objective beyond any doubt both for public and for administration, and to prevent arbitrary use of state power by public authorities. The principle of legal certainty is related with the concept of legal security, which necessitates that individuals are be able to know which act and actions lead to which specific legal sanction or consequence and which measures may be taken by public authorities as an interference.²⁹

According to the Constitutional Court, in the contested provision is merely set forth that TIB and, as may be inferred from the new version of the provision, the President of BTK may ex officio order blocking access to content hosted abroad which may constitute the offence of obscenity; it is not specified whether access thereto would be blocked gradually as stipulated in other referred articles of the Law No. 5651. Thereby, **the administrative body is vested, by virtue of the contested provision, with a power to block access in a way that is indefinite in its scope and limits**. As the contested provision, which constitutes the basis for the blocking order, fails to meet the requirements of being clear, precise and comprehensible, it does not comply with the safeguard provided in Article 13 of the Constitution that fundamental rights and freedoms may be restricted only by law.

The Constitutional Court decided that the judgment shall enter into force one year after its publication in Official Gazette on **7 February 2018**; which makes the effective date as **7 February 2019**. Since no recent amendments were made in Law No. 5651 by **7 February 2019**, the President of BTK can no longer block access to obscene websites hosted outside Turkey by the date mentioned above in the absence of judicial review and decisions. As a consequence, blocking orders based on the offence of obscenity can now only be issued by the criminal judgeships of peace.

²⁹ Constitutional Court Judgment numbered E. 2015/72, K. 2016/44 and dated 26 May 2016, para. 7.

DOMAIN NAMES, URL'S, NEWS ARTICLES AND SOCIAL MEDIA CONTENT BLOCKED UNDER ARTICLE 8/A OF THE LAW NO. 5651

The Constitutional Court annulled paragraph 16 which was added to Article 8 of the Law No. 5651 providing further blocking powers to TIB with respect to national security and protection of public order in October 2014.³⁰ However, subsequently, on 27 March 2015 a **new Article 8/A**, with the title of “*Removing content and/or blocking access in circumstances where delay would entail risk*”, was added to the Law No. 5651.

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, under Article 8A, 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 from the President of BTK **by the Office of the Prime Minister** between the dates of 27 March 2015 until 2 July 2018, and then **by the Office of the President of Turkey** as the Prime Ministry has been closed down after the June 2018 General Elections. Also, the executive organs referred as “**the relevant ministries**” are authorized to request from the President of BTK to block access to Internet content for the purposes of national security and protection of public order, prevention of crimes or for the protection of public health.

Subsequent to a request as described above, the President of BTK may issue an order removing content and/or blocking access to the relevant Internet site upon its assessment. This order shall then immediately be notified to access providers and the relevant content and hosting providers by the President. Removal and/or blocking orders shall be executed immediately within a maximum of **four hours** as from the notification to execute the removal and/or blocking order.

According to Article 8A, when a blocking order is issued upon request, the President shall submit this administrative order for approval to a criminal judgeship of peace **within 24 hours**, and the judge shall review this submission and issue his/her decision within **48 hours**.

The blocking orders issued under this article shall be issued by way of blocking of a specific publication/section (in the form of URL etc.). However, when it is not possible for technical reasons or the violation cannot be prevented by way of blocking the relevant content, it may be decided to block access the entire website.

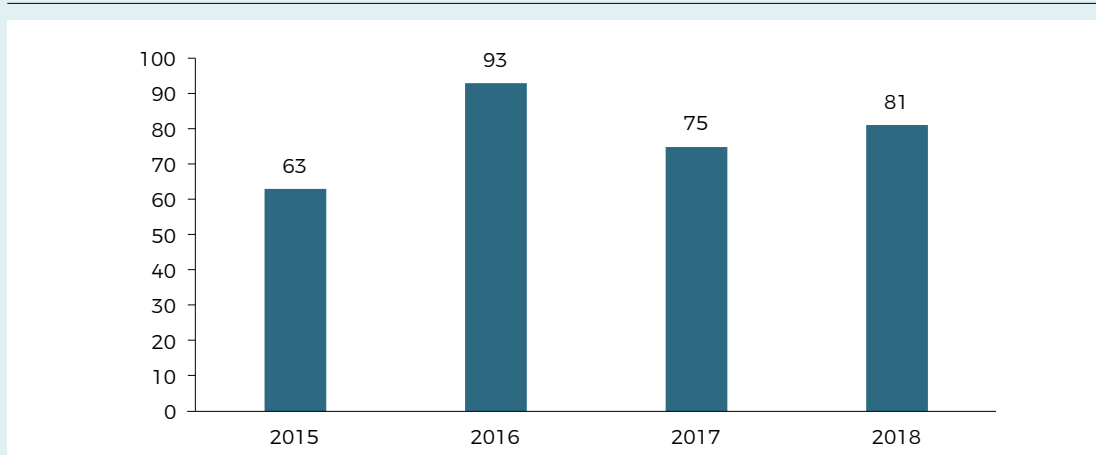
Article 8/A started to be used as a politically silencing tool especially after the general elections of **7 June 2015**. Article 8A based orders usually target Kurdish and left-wing news websites as well as several social media accounts and content associated with Kurdish journalists and activists. Between **22 July 2015** and **12 December 2016**, Gölbaşı Criminal Judgeship of Peace solely issued **143** such access-blocking orders.³¹

³⁰ Constitutional Court Judgment numbered E. 2014/149, K. 2014/151 and dated 2 October 2014.

³¹ See orders of Gölbaşı Criminal Judgeship of Peace numbered 2015/609, 2015/631, 2015/645, 2015/646, 2015/647, 2015/648, 2015/650, 2015/662, 2015/672, 2015/682, 2015/691, 2015/705, 2015/710, 2015/713, 2015/720, 2015/723,

As of **13 December 2016**, the administrative blocking orders issued upon the request of the Office of Prime Minister and relevant ministries were started to be assessed by Ankara criminal judgements of peace and until **2 July 2018**, **7 separate criminal judgements of peace** in Ankara issued another **145 blocking orders** based on Article 8/A. From the date of 2 July 2018 until 31 December 2018, as far as known, **19 requests were submitted** by the Office of the President of Turkey under Article 8/A and all of them were approved by 7 separate criminal judgements of peace.

Figure 4: 5651, 8/A Decisions: Total By Year



As can be seen from **Figure 4**, a total of **63** 8/A orders were issued in 2015, while this figure was **93** in 2016 and **75** in 2017. In **2018, 81 8/A orders were issued**³² and access to **356 domain names and numerous URL-based news addresses and social media content** were blocked by these orders. By the end of 2018, as far as known, **1680 domain names and hundreds of URL-based news addresses and social media content** were blocked by **311 separate 8/A orders**. While a few 8/A orders were also issued by İstanbul and Diyarbakır criminal judgements of peace, total number of those

2015/728, 2015/751, 2015/759, 2015/763, 2015/765, 2015/769, 2015/771, 2015/774, 2015/778, 2015/779, 2015/790, 2015/792, 2015/810, 2015/828, 2015/829, 2015/837, 2015/839, 2015/840, 2015/845, 2015/860, 2015/861, 2015/871, 2015/878, 2015/887, 2015/891, 2015/897, 2015/898, 2015/899, 2015/902, 2015/903, 2015/915, 2015/930, 2015/931, 2015/937, 2015/947, 2015/955, 2015/958, 2015/960, 2015/972, 2015/1003, 2015/1012, 2015/1015, 2015/1021, 2015/1107, 2015/1169, 2015/1197, 2016/01, 2016/02, 2016/28, 2016/53, 2016/57, 2016/65, 2016/74, 2016/129, 2016/205, 2016/219, 2016/293, 2016/311, 2016/320, 2016/328, 2016/329, 2016/354, 2016/374, 2016/442, 2016/444, 2016/445, 2016/474, 2016/492, 2016/539, 2016/553, 2016/574, 2016/574, 2016/588, 2016/614, 2016/615, 2016/693, 2016/696, 2016/701, 2016/722, 2016/726, 2016/753, 2016/775, 2016/776, 2016/781, 2016/809, 2016/826, 2016/834, 2016/846, 2016/847, 2016/849, 2016/869, 2016/875, 2016/880, 2016/896, 2016/905, 2016/908, 2016/949, 2016/957, 2016/959, 2016/972, 2016/975, 2016/987, 2016/995, 2016/1002, 2016/1036, 2016/1040, 2016/1047, 2016/1076, 2016/1084, 2016/1093, 2016/1108, 2016/1113, 2016/1127, 2016/1145, 2016/1187, 2016/1195, 2016/1223, 2016/1239, 2016/1248, 2016/1260, 2016/1286, 2016/1346, 2016/1415, 2016/1469, 2016/1500.

32 From 69 8/A blocking orders issued in 2018, 10 of them were issued by the Ankara 1st Criminal Judgement of Peace, 11 of them were issued by the Ankara 2nd Criminal Judgement of Peace, 14 of them were issued by the Ankara 3rd Criminal Judgement of Peace, 8 of them were issued by the Ankara 4th Criminal Judgement of Peace, 6 of them were issued by the Ankara 5th Criminal Judgement of Peace, 11 of them were issued by the Ankara 6th Criminal Judgement of Peace and 9 of them were issued by the Ankara 7th Criminal Judgement of Peace.

orders are not known. Unlike orders issued under Article 9 of the Law No. 5651, 8/A orders are not implemented in a transparent manner, thus it is not possible to reach the details of criminal judgements of peace blocking access to the impugned content and blocked URL addresses.

Figure 5: No of 8/A (Law 5651) Decisions By the Criminal Judgeship of Peace

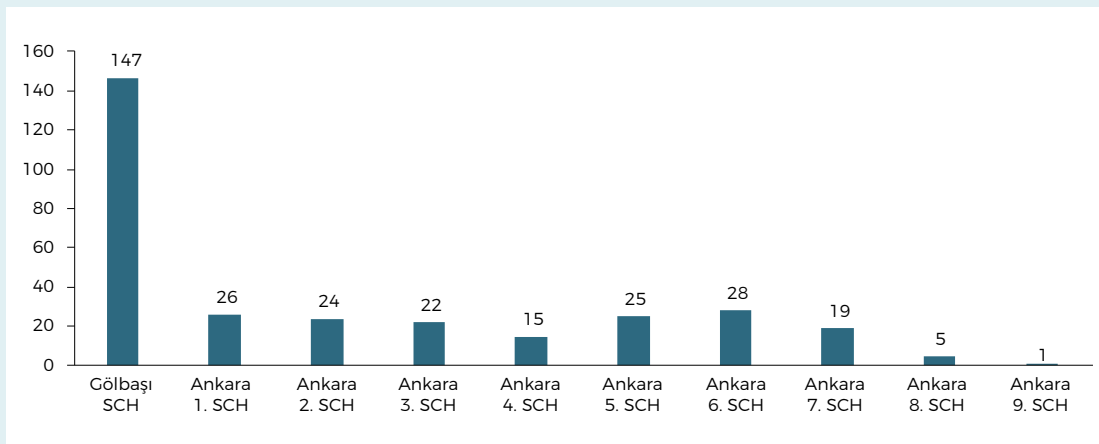


Figure 5 shows in detail the number of blocking orders issued by separate Ankara criminal judgements of peace. It is observed that by the end of 2018, from a total of 312 orders issued, 147 were issued between 13 July 2015 and 7 December 2016 by the Gölbaşı Criminal Judgement of Peace. As, prior to its closure, the Telecommunication Presidency was located at the Gölbaşı facilities and hence 147 successive orders were issued by the Gölbaşı Criminal Judgement of Peace.

Article 8/A blocking orders, to a large extent, were requested by the Office of Prime Minister before the elections of 24 June 2018. After that date, in the wake of the new presidential system, the Office of Prime Minister was closed down and the requests are now predominantly requested by the Office of the President of Turkey. Those requests were approved by the President of BTK and administrative blocking orders are issued. As a result, all criminal judgements of peace located in Ankara started to issue 8/A orders as the court of competent jurisdiction.

From a total of **165 8/A orders issued by the end of 2018**, **28** of them were issued by the Ankara 6th Criminal Judgement of Peace, **26** of them were issued by the Ankara 1st Criminal Judgement of Peace, **25** of them were issued by the Ankara 5th Criminal Judgement of Peace, **24** of them were issued by the Ankara 2nd Criminal Judgement of Peace, **22** of them were issued by the Ankara 3rd Criminal Judgement of Peace, **19** of them were issued by the Ankara 7th Criminal Judgement of Peace, **10** of them were issued by the Ankara 4th Criminal Judgement of Peace, **5** of them were issued by the Ankara 8th Criminal Judgement of Peace and **1** of them were issued by the Ankara 9th Criminal Judgement of Peace.

WIKIPEDIA AND SENDIKA.ORG WERE BLOCKED UNDER ARTICLE 8/A

Access to the popular online free encyclopaedia Wikipedia platform (wikipedia.org) having millions of visitors from Turkey and worldwide has been blocked from Turkey since 29 April 2017 by the access-blocking order of the Ankara 1st Criminal Judgeship of Peace. The order was issued upon the request of the Office of Prime Minister under Article 8/A.³³ 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. While it is obvious that blocking the Wikipedia platform would not make any contribution to counterterrorism, following the rejection of objections,³⁴ and the decision becoming final, individual applications were made to the Constitutional Court.

Likewise, Sendika.org news platform was blocked 62 times between 2015-2017 by the orders of 7 separate Ankara criminal judgeships of peace under Article 8/A. All 62 objections raised against these orders were rejected with one-line cut and paste duplicated reasonings and following the finalization of those decisions, several applications were made to the Constitutional Court in 2017. As of the date of this report, **none of the individual applications referred in this report as regards to Article 8/A were decided by the Constitutional Court.**

ACCESS BLOCKING UNDER ARTICLE 9 AND 9/A OF THE LAW NO. 5651

Following the 17-23 December 2013 corruption investigations, several amendments in relation to Law No. 5651 were included in the Omnibus Amendment Legislative Proposal. This legislative proposal was sent to the Parliamentary Plan and Budget Committee and in a very short time, the Committee merged 42 separate Law and Decree-Laws, including the amendments in relation to Law No. 5651, into a single legislation comprising of 125 articles and submitted it to the General Assembly on 16 January 2014. The draft law no. 6518 was enacted in February 2014. With the new amendments, two further access-blocking measures were included to Law No. 5651.

The recent amendments made it possible to block access to content to prevent **“violation of personal rights”** under Article 9 entitled “Removal of content from publication and blocking of access” and **“to protect confidentiality of private life”** under Article 9/A-**“Violation of Privacy Rights”**. These amendments also necessitated the establishment of the Association of Access Providers (“ESB”) subject to Article 6/A and any access-blocking order issued with regards to “violation of personal rights” should be notified directly to the Association for further action and Article 6/A states that notifications made to the Association in this context shall be deemed also to be made to the whole access providers.

³³ Order of Ankara 1st Criminal Judgeship of Peace dated 29 April 2017 and numbered 2017/2956 D. İŞ (Misc.).

³⁴ Ankara 1st Criminal Judgeship of Peace rejected the objections with its decision dated 4 May 2017 and numbered 2017/3150 D. İŞ (Misc.) by stating that there was not any consideration requiring the order dated 29 April 2017 and numbered 2017/2956 D. İŞ (Misc.) to be revised. On the other hand, Ankara 2nd Criminal Judgeship of Peace also rejected the objections with its decision dated 7 May 2017 and numbered 2017/3172 D. İŞ (Misc.). In this decision, it was merely stated that the objection was rejected “since nothing inaccurate was found to exist in the order of Ankara 1st Criminal Judgeship of Peace numbered 20173150 D. İŞ (Misc.)” without any reasoning.

DOMAIN NAMES, URL'S, NEWS ARTICLES AND SOCIAL MEDIA CONTENT BLOCKED UNDER ARTICLE 9 OF THE LAW NO. 5651

Pursuant to Article 9 of the Law No. 5651, real persons, legal entities, and institutions and organizations may apply for access blocking by asserting that their individual personal rights have been violated and these requests shall be reviewed within 24 hours by criminal judgeships of peace. The judges shall issue the orders subject to this provision mainly by access blocking to a specific publication/section (in the form of URL etc.) in relation to the claimed personal rights violation. In exceptional cases and when necessary, judges may also decide to issue a blocking order for the whole website if the URL based restriction is not sufficient to remedy the alleged individual violation. The access-blocking orders issued by the criminal judgeships of peace under Article 9 are directly notified to the Association of Access Providers for further action in accordance with Article 9(5).

The Association established in August 2014 in order to perform duties prescribed in Article 6/A of the Law No. 5651 was notified in 2015 with a total of 12.000 access-blocking orders out of which approximately 10.000 were issued under Article 9 by criminal judgeships of peace across Turkey. By these orders, **as of the end of 2015, access to 35.000 separate web addresses (URL-based) were blocked**. In 2016, a total of 16.400 access-blocking orders out of which approximately 14.000 were issued under Article 9 was notified to the Association of Access Providers. **By these orders, as of the end of 2016, access to 86.351 separate web addresses (URL-based) were blocked**. In 2017, a total of 48.671 access-blocking orders out of which about 21.000 were issued under Article 9 was notified to the Association of Access Providers. **By these orders, as of the end of 2017, access to 99.952 separate web addresses (URL-based) were blocked**.³⁵ 2018 statistical data was not available at the time of writing.

As regards the objections raised against access-blocking orders, it is observed that in **2015** criminal judgeships of peace revoked only **840** access-blocking orders while this number decreased to **489** in **2016**. In **2017**, only **582** blocking orders were revoked.

Under the EngelliWeb project it was determined that, until the drafting of this report, **7705** URLs were blocked subject to Article 9 by **2291 separate orders** issued by 308 separate criminal judgeships of peace. The number of URLs blocked was **171** in 2014, **552** in 2015, **1489** in 2016, **1596** in 2017, **3306** in 2018, and until the drafting of this report, **371** URLs were blocked in 2019.

STATISTICAL INFORMATION ABOUT THE BLOCKED NEWS ARTICLES (URL-BASED) - 2018

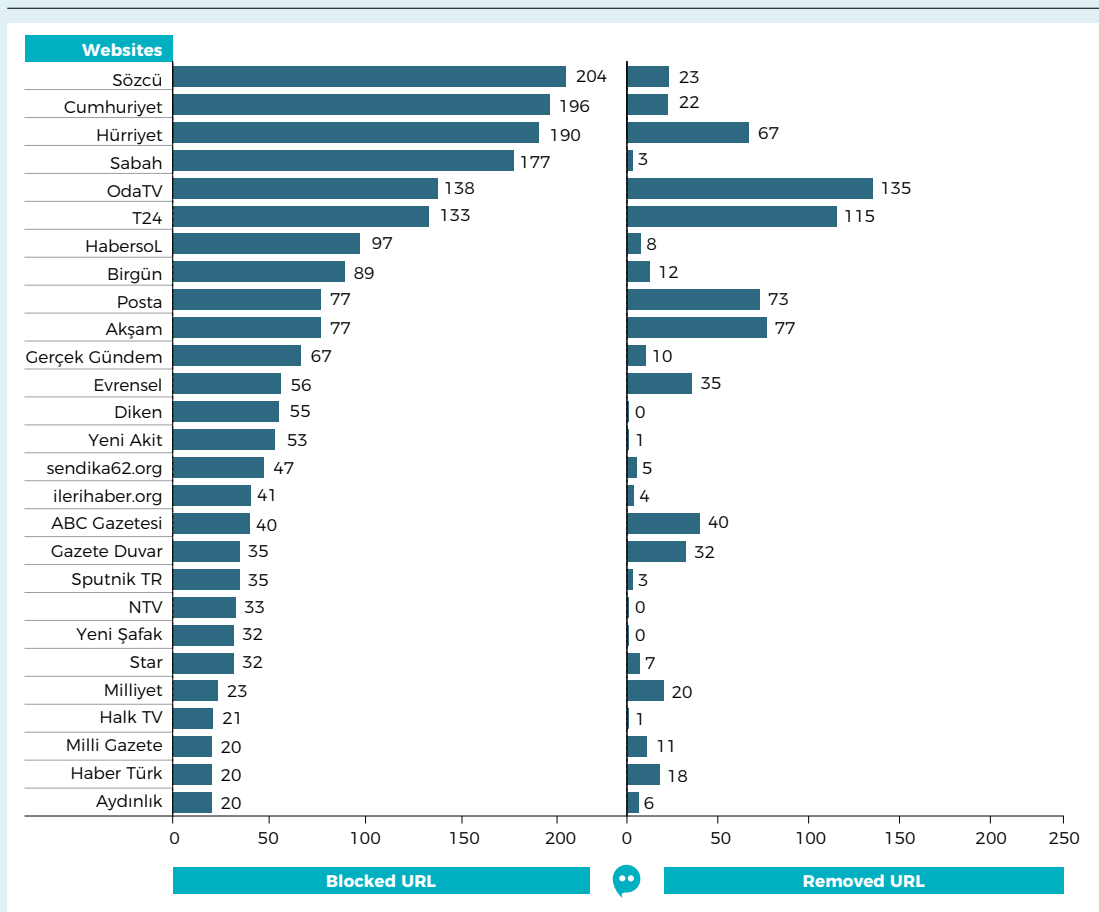
As stated above, **3306** news addresses (URL) were found to be blocked in 2018. Those URL addresses were blocked by **618 separate orders** issued by **159** separate criminal judgeships of peace. **Table 1** shows statistical information from 2018 in relation to top twenty news sites from Turkey in terms of blocked news articles and how many URLs

³⁵ Statistics of 2018 have not yet been available as of the date of this report.

on these sites were blocked, how many of those blocked URLs have been deleted or removed from the website, and the figures of blocked URLs against deleted/removed URLs are also shown in figures 6 and 7.

Accordingly, daily newspaper **Sözcü** is ranked first with **204 news articles** in the category of the “**most blocked news site in terms of news articles (URLs)**” in 2018 as can be seen in **Figure 6**. **Sözcü** has removed 23, or 11% of those blocked URLs from its website. **Sözcü** is followed by the daily newspaper **Cumhuriyet** with **196 blocked news articles**. **Cumhuriyet** has removed 22, or 11% of those blocked URLs from its website. Daily newspaper **Hürriyet** is in the **third rank** with **190 blocked news articles**. **Hürriyet** has removed 67, or 35% of those blocked URLs from its website. On the fourth rank, website of daily **Sabah** newspaper is placed with **177 blocked news articles**. **Sabah** has removed only 3, or 2% of the blocked URLs from its website. In this category, fifth rank is occupied by **OdaTV** news site with **138 blocked news articles**.

Figure 6: Number of Blocked and Removed News (URL) - 2018



Another category taken under review for the year of 2018 is “**removed and deleted news articles**” as can be seen in **Figure 7**. **OdaTV** came first in terms of removing

Figure 7: Number of Blocked and Removed News (URL) - 2018

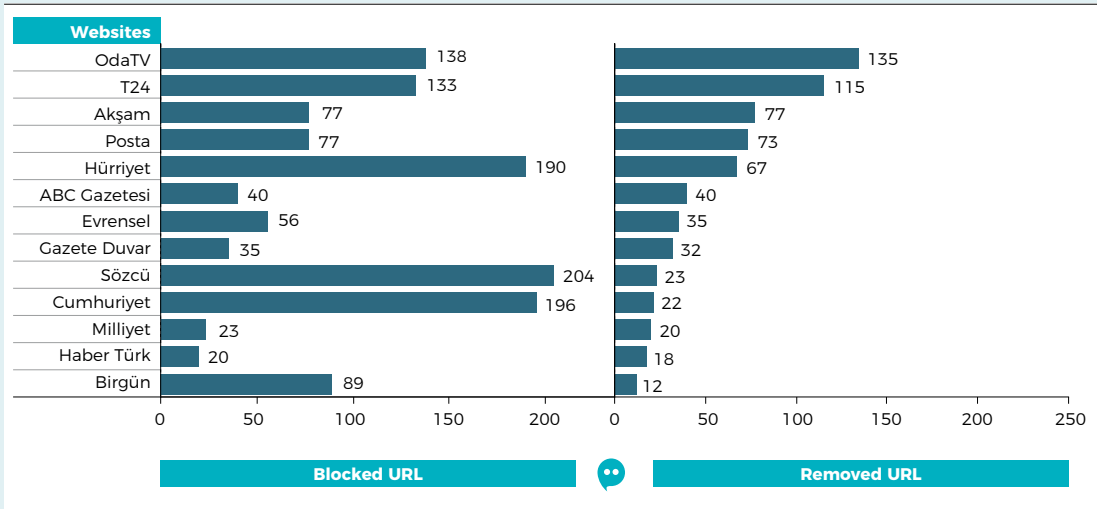


Table 1: Total Statistics of Blocked and Deleted News Articles (URL-based) 2014-2018

Rank	News Site	Number of Blocked URL	Number of Deleted URL	Deletion Rate
1	www.sozcu.com.tr	204	23	%11
2	www.cumhuriyet.com.tr	196	22	%11
3	www.hurriyet.com.tr	190	67	%35
4	www.sabah.com.tr	177	3	%2
5	odatv.com	138	135	%98
6	t24.com.tr	133	115	%86
7	haber.sol.org.tr	97	8	%8
8	www.birgun.net	89	12	%13
9	www.aksam.com.tr	77	77	%100
10	www.posta.com.tr	77	73	%95
11	www.gercekgundem.com	67	10	%15
12	www.evrensel.net	56	35	%63
13	www.diken.com.tr	55	0	%0
14	www.yeniakit.com.tr	53	1	%2
15	sendika62.org	47	5	%11
16	www.abcgazetesi.com	40	40	%100
17	ilerihaber.org	39	4	%10
18	tr.sputniknews.com	35	3	%9
19	www.gazeteduvar.com.tr	35	32	%91
20	www.ntv.com.tr	33	0	%0

articles after receiving blocking order, with **135, or 98%, removed news articles out of 138 blocked ones**. OdaTV is followed by **T24 news site with 115, or 86%, removed news articles out of 133**. Daily **Akşam** newspaper comes third, by removing **all 77 news articles** which were access-blocked (**100%**). On the fourth rank, daily **Posta** newspaper is placed with **73, or 95%, removed news articles out of 77**. In this category, fifth rank is occupied by **ABC** newspaper website, which has removed **all 40 news articles (100%)** that were blocked. Two news sites particularly drawing attention in this category are **Gazete Duvar** with **32, or 91%, removal out of 35** blocked news articles and website of daily newspaper **Evrensel** with **35, 63%, removal out of 56** blocked news articles as can be seen in **Figure 7**.

There are only two news site which has not removed any of the access-blocked news articles. **Diken** ranks first in this category with 55 blocked news articles, none of which was removed. **NTV** comes second, not removing any of its 33 blocked news articles.

2018 ACCESS-BLOCKING LEAGUE TABLE IN TERMS OF NEWS ARTICLES

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 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. **Table 2** shows statistical information from 2014 to end of 2018 in relation to top twenty news sites from Turkey in terms of blocked news articles and how many URLs on these sites were blocked, how many of those blocked URLs have been deleted or removed from the website, and the figures of blocked URLs against deleted/removed URLs are also shown in figures 8 and 9.

As can be seen from **Figure 8**, by the end of 2018, in the category of “**most blocked news site in terms of news articles (URLs)**” **Hürriyet** comes first with **721 blocked news articles**, **Sabah** comes second with **641 blocked news articles**, **T24** comes third with **585 blocked news articles**, **Sözcü** comes fourth with **580 blocked news articles** and **Cumhuriyet** comes fifth with **549 blocked news articles**.

As can be seen from **Figure 9**, by the end of 2018, **T24** topped the “**removed and deleted news articles**” category with **524 news articles** as **T24** has removed **90%** of news articles out of 585 blocked news articles published on its website. **T24** is followed by **OdaTV** news site with **343, or 97%**, removed news articles out of 354 blocked ones. **Hürriyet** comes third, by removing **212, or 29%**, out of 721 blocked news articles. In this category, fourth rank is occupied by **ABC** newspaper website, which has removed **all 139 news articles (100%)** that were blocked and in the fifth rank, **Akşam** news site is placed with **139** removed news articles out of **144 (96%)**.

Figure 8: Number of Blocked and Removed News (URL) - 2014-2018

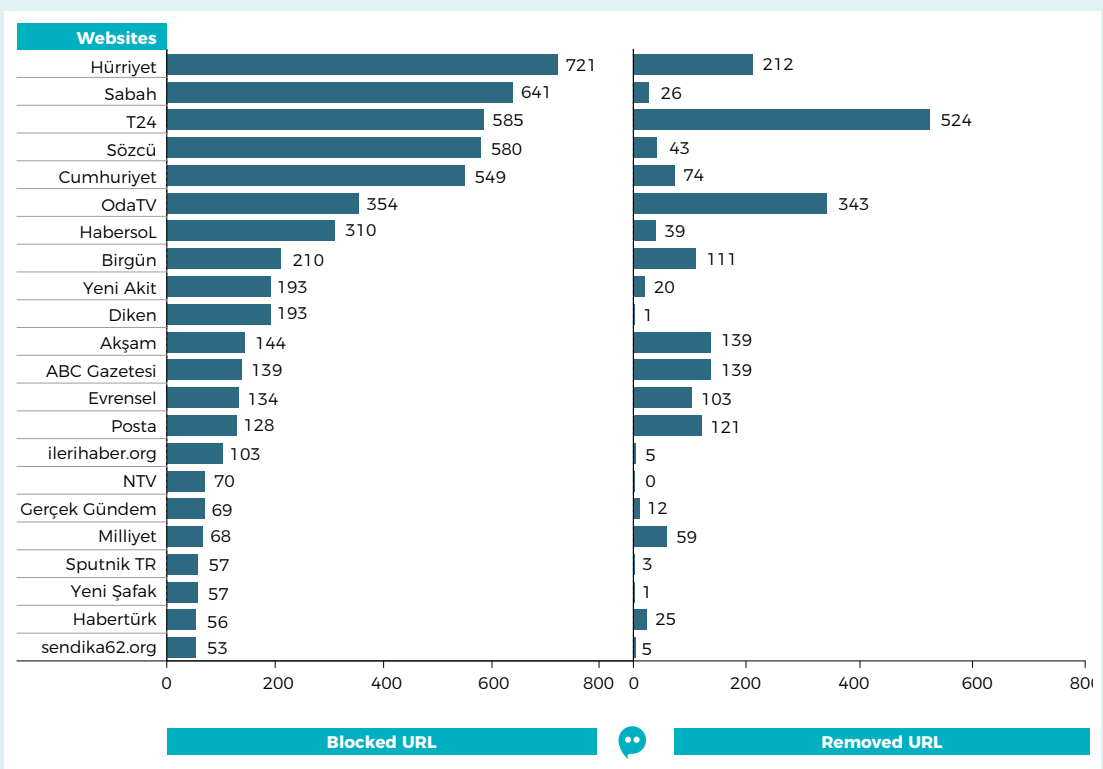


Figure 9: Number of Blocked and Removed News (URL) - 2014-2018

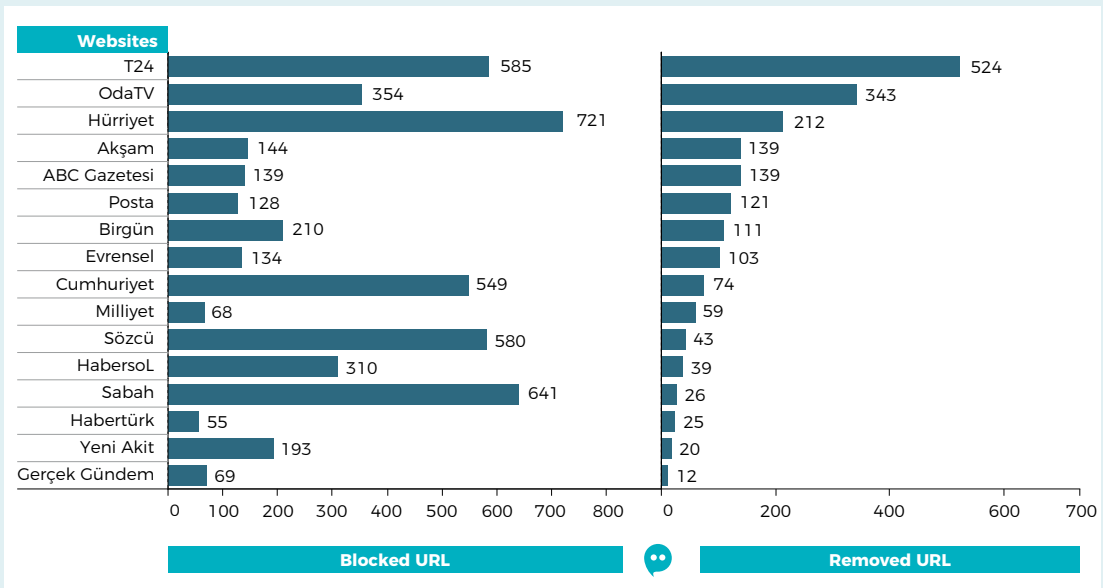


Table 2: 2014-2018 Access-Blocking League Table in Terms of News Articles

Rank	News Site	Number of Blocked URL	Number of Deleted URL	Deletion Rate
1	www.hurriyet.com.tr	721	212	%29
2	www.sabah.com.tr	641	26	%4
3	t24.com.tr	585	524	%90
4	www.sozcu.com.tr	580	43	%7
5	www.cumhuriyet.com.tr	549	74	%13
6	odatv.com	354	343	%97
7	haber.sol.org.tr	310	39	%13
8	www.birgun.net	210	111	%53
9	www.diken.com.tr	193	1	%1
10	www.yeniakit.com.tr	193	20	%10
11	www.aksam.com.tr	144	139	%97
12	www.abcgazetesi.com	139	139	%100
13	www.evrensel.net	134	103	%77
14	www.posta.com.tr	128	121	%95
15	ilerihaber.org	103	5	%5
16	www.ntv.com.tr	70	0	%0
17	www.gercekgundem.com	69	12	%17
18	www.milliyet.com.tr	68	59	%87
19	tr.sputniknews.com	57	3	%5
20	www.yenisafak.com	56	1	%2

It is worth mentioning that the news portal Diken's 193 news articles were subjected to blocking but Diken did not remove any of the blocked articles from its website. Similarly, NTV news portal's 70 news articles were subjected to blocking but similar to Diken did not remove any of the blocked articles from its website.

Pursuant to Article 9(3) of Law No. 5651, the judgeships may only **“decide to block access within the scope provided hereby in accordance with the requests of victims, of whose privacy rights have been violated as a result of content published on the Internet.”** However, as seen in the figures above, although criminal judgeships of peace may only decide “to block access” pursuant to Article 9 of Law No. 5651, many news sites frequently and increasingly remove and delete their news articles and content items which have been blocked by the decisions of the criminal judgeships of peace. Consequently, **self-censorship increases** “with content removed” directly by content owners themselves and therefore the orders issued by the criminal judgeships of peace “becomes automatically void” “when the blocked content is removed from publication” in accordance with Article 9(7) of Law No. 5651. In other words, upon removal of the relevant blocked news articles from websites by the content owners, the orders given by the criminal judgeships of peace become void. Thus, neither challenging the order, nor applying to the Constitutional Court would be possible under such circumstances.

URL'S, NEWS ARTICLES AND SOCIAL MEDIA CONTENT BLOCKED UNDER ARTICLE 9/A OF THE LAW NO. 5651

Under the procedure provided in Article 9/A of Law No. 5651, persons who assert that their right to privacy has been violated by content of a publication on the Internet may, by applying directly to the President of BTKs, request that access to that content be blocked. The President shall immediately enforce access-blocking as regards to the specific publication/section, image, video (in the form of URL etc.) infringing the right to respect for private life.

Following this, the persons who request access blocking shall submit their request to a judge within twenty-four hours. The judge shall issue his/her decision on whether the Internet content has violated the right to privacy within a maximum of forty-eight hours and directly submit the blocking decision to BTK; otherwise, the blocking measure shall automatically be removed and cancelled.

Further, in circumstances where it is considered that delay would entail a risk of violation of the right to privacy, the access-blocking shall be carried out by BTK upon the direct instructions of the President of BTK.

It is observed that, in practice the procedure provided under Article 9/A has not been preferred as much as Article 9 of Law No. 5651. A significant contributing factor is the complexity of the procedure provided by BTK regarding the application of Article 9/A.³⁶ While the intention of the legislator in enacting Article 9/A was to ensure “**expeditiousness**” with respect to violations of right to privacy, BTK requires **the relevant violation request form to be submitted either by hand or mail**. As a result, upon request of citizens only 112 orders in 2015, 93 orders in 2016 and 9 orders were issued in 2017 by criminal judgeships of peace, making a total of **214 orders** subject to Article 9/A much less compared to thousands of decisions issued with regards to Article 9 claims and decisions issued by the criminal judgeships of peace.

COPYRIGHT VIOLATIONS AND ACCESS BLOCKING INVOLVING THE PERISCOPE TV

Upon request of the satellite broadcaster Digturk regarding Twitter-owned Periscope TV, İstanbul 1st Intellectual and Industrial Property Rights Court blocked access to the Periscope TV domain names of pscp.tv, proxsee.pscp.tv, prod-assets.pscp.tv, prod-

Bu internet sitesi (pscp.tv)
aşağıdaki kararlara istinaden 5651 sayılı Kanun uyarınca Erişim Sağlayıcıları Birliği tarafından erişime engellenmiştir.

- * İSTANBUL 1. FİKRİ VE SINAİ HAKLAR HUKUK MAHKEMESİ'nin 17-07-2018 tarih ve 2018/85 sayılı kararı
- * İSTANBUL 1. FİKRİ VE SINAİ HAKLAR HUKUK MAHKEMESİ'nin 17-07-2018 tarih ve 2018/85 sayılı kararı
- * İSTANBUL 1. FİKRİ VE SINAİ HAKLAR HUKUK MAHKEMESİ'nin 17-07-2018 tarih ve 2018/85 sayılı kararı

³⁶ See <https://www.ihbarweb.org.tr/ohg/>

video-eu-central-1.pscp.tv limited for the duration of the Turkish 2018-19 Super League football matches by an injunction ruling dated 17 July 2018 and no. 2018/85. The implementation of this order has been executed by the Association of Access Providers. By the end of 2018, during the first half of the Super League season, comprised of 17 weeks, Periscope TV was blocked 64 times.

Social Media Accounts and Content Blocked from Turkey in 2018

TURKEY'S INTERNET CENSORSHIP PRACTICES IN THE TWITTER TRANSPARENCY REPORTS

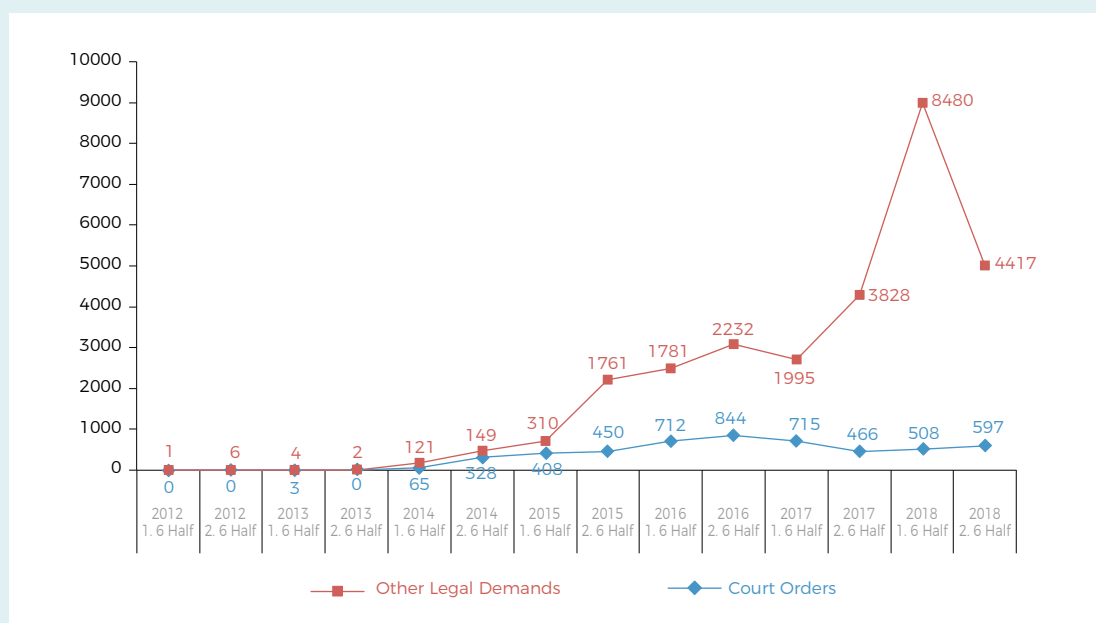
Twitter has started to publish biannual Transparency Reports since 2012. In these reports, Twitter reveals number of removal orders received from local courts as can be seen in Table 3 and Figure 10, removal demands sent by government bodies and other real persons or legal entities, removal rates, numbers of accounts demanded to be withheld/removed and of withheld/removed accounts and numbers of tweets blocked or removed from Twitter platform per country, including Turkey.

Table 3: Turkey in Twitter Transparency Report: All Statistics

Report Period	Court Orders	Other Legal Demands	% of Legal Demands Where Some Content Withheld	Accounts Specified	Accounts Withheld	Tweets Withheld - Turkey	Tweets Withheld - Global	Tweets Withheld - Other Countries
2012: 1. 6 Half	1	0	0%	7	0	0	0	0
2012: 2. 6 Half	0	6	0%	9	0	0	44	44
2013: 1. 6 Half	3	4	0%	30	0	0	73	73
2013: 2. 6 Half	2	0	0%	2	0	0	191	191
2014: 1. 6 Half	65	121	30%	304	17	183	251	68
2014: 2. 6 Half	328	149	50%	2642	62	1820	1982	162
2015: 1. 6 Half	408	310	34%	1978	125	1667	2534	867
2015: 2. 6 Half	450	1761	23%	8092	414	3003	3353	350
2016: 1. 6 Half	712	1781		14953	222	1571	2599	1028
2016: 2. 6 Half	844	2232	19%	8417	290	489	1113	624
2017: 1. 6 Half	715	1995	11%	9289	204	497	1463	966
2017: 2. 6 Half	466	3828	3%	6544	148	322	1122	800
2018: 1. 6 Half	508	8480	18%	13843	425	1464	2656	1192
2018: 2. 6 Half	597	4417	0%	9155	72	355	2471	2116
Toplam	5099	25084		75265	1979	11371	19852	8481

In 2018, 1105 court orders and 12.897 other removal demands were sent to Twitter from Turkey and 22.998 Twitter accounts were requested to be withheld/removed by those demands. Nonetheless, Twitter announced that it withheld/removed only **497 accounts and 1819 tweets** from Turkey. Under the EngelliWeb Project, **532 Twitter accounts** were determined to be **blocked access** from Turkey during 2018.

Figure 10: Court Orders and Other Legal Demands Sent to Twitter from Turkey

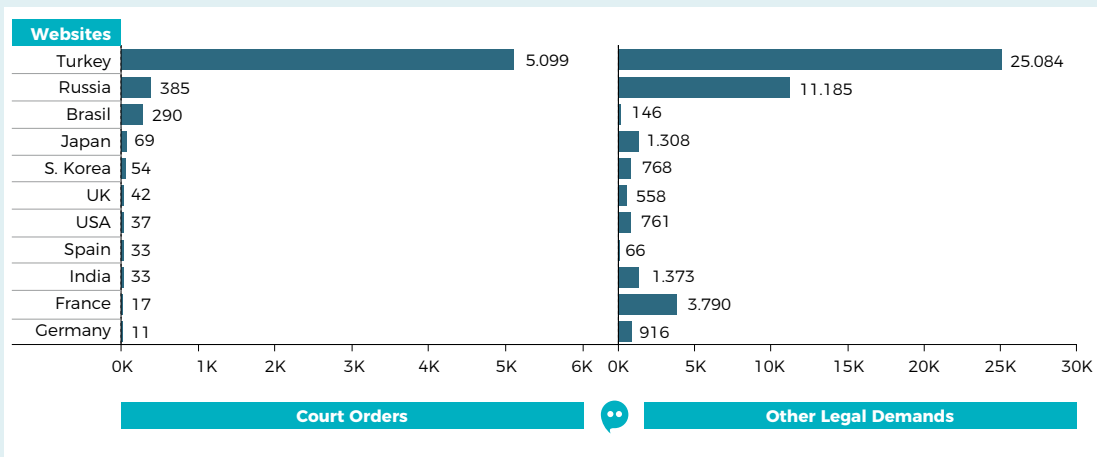


When compared with other countries, Turkey came first in the number of court orders sent to Twitter in 2018, with 1105 rulings, while Russia came second with 372 and Brazil third with 107 court orders. In terms of other removal demands, Turkey came first by far, with 12.897 demands in 2018; followed by Russia with 4613 demands and then Japan with 850 demands. As regards to withheld/removed Twitter accounts in 2018, Turkey came first again with 497 accounts, India was in the second rank with 124 accounts and Russia in the third rank with 74 accounts. Finally, as to the withheld/removed tweets in 2018, Turkey became number one with 1819 tweets, Russia second with 1789 tweets and India third with 612 tweets.

RANKING OF TURKEY IN TWITTER TRANSPARENCY REPORTS WORLDWIDE

2012-2018 Twitter Transparency Reports present a grim picture of Turkey when compared with other countries, as shown in the figures 11-14. As can be seen in Figure 11, between 2012 and 2018, a total of 5099 courts orders were sent to Twitter from Turkey. In the same period, Russia sent 385 and Brazil sent 290 court orders to Twitter. As regards to other removal demands, Turkey sent 25.084 other removal demands, while Russia sent 11.185 and France 3790 other removal demands.

Figure 11: Total Number of Court and Other Legal Demands in the Twitter Transparency Reports (2012-2018)



As can be seen from Figure 12, Turkey requested the highest number of Twitter accounts to be removed or withheld with 75,265 accounts. However, Twitter only withheld/removed 1,979 accounts from Turkey. Russia was in the second rank with 12,400 Twitter accounts specified to be removed or withheld and Twitter only withheld/removed 301 accounts. In third place comes India which specified 5,695 accounts to be withheld/removed. However, Twitter only withheld/removed 132 accounts.

Figure 12: Number of Accounts Specified and Accounts Withheld in the Twitter Transparency Reports (2012-2018)

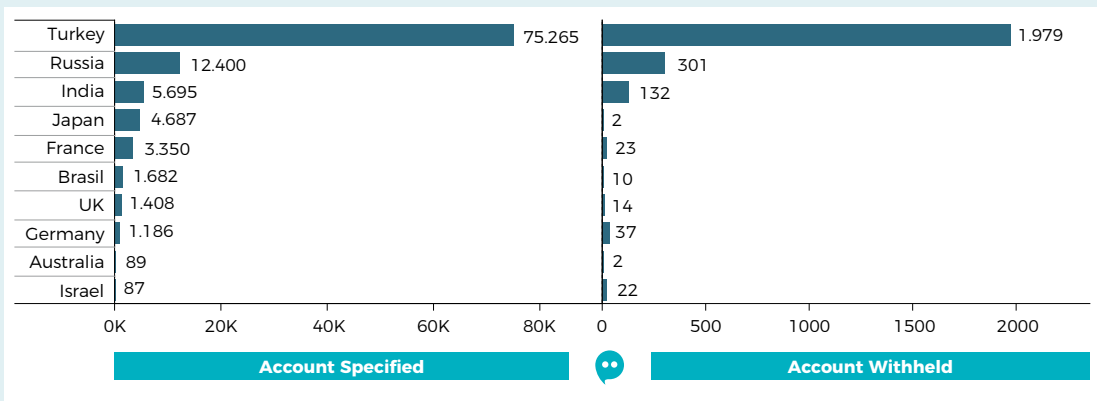
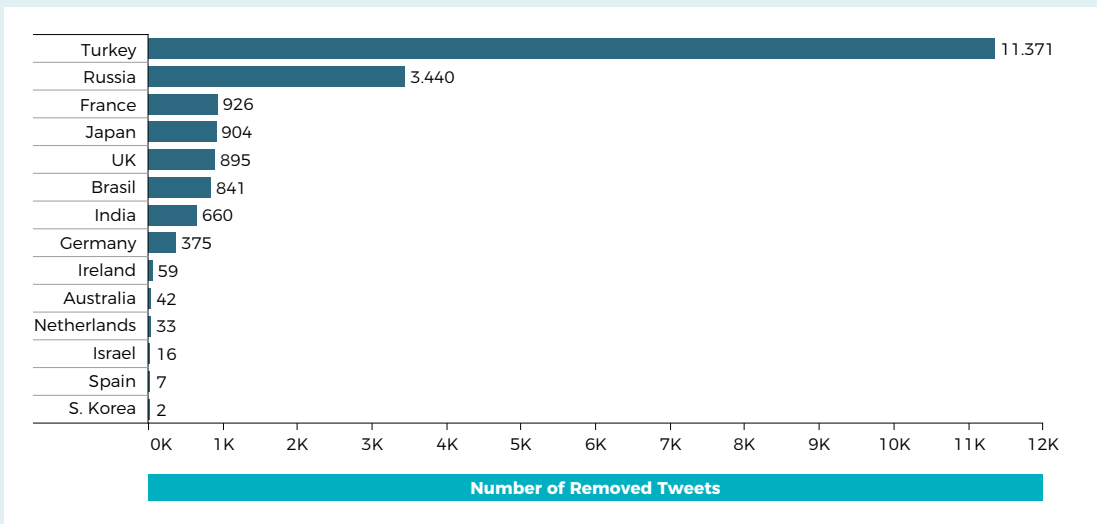


Figure 13: Number of Tweets Removed: Twitter Transparency Reports (2012-2018)



As can be seen from Figure 13, **Twitter withheld/removed a total of 11,371 tweets from Turkey**. During the same period of 2012-2018, the total number of tweets that were withheld/removed worldwide, except Turkey, were 8461. 3440 tweets from Russia and 926 tweets from France were withheld/removed.

Figure 14: Comparative Twitter Transparency Statistics

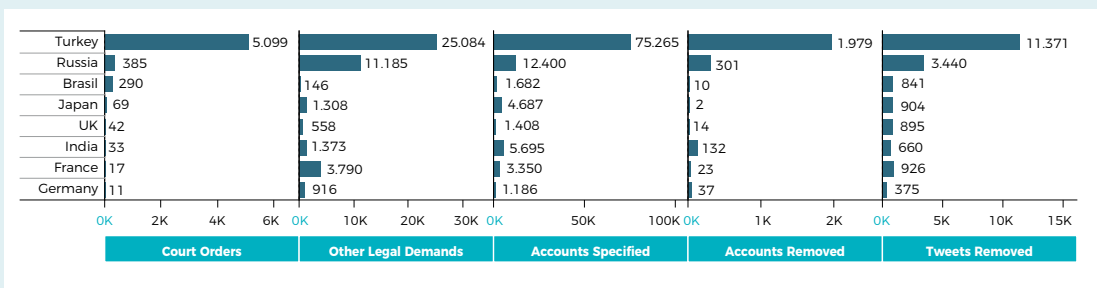


Figure 14 shows a comparison of various countries including Brazil, Germany, India, Japan, Russia, Turkey and United Kingdom. The grim picture of Turkey presented in the Twitter Transparency Reports is reflected clearly in this table as well. In all the categories of submitted court orders, other legal demands, accounts specified for removal, accounts withheld or removed and tweets removed, Turkey is way ahead of the other countries.

TURKEY'S INTERNET CENSORSHIP PRACTICES IN THE FACEBOOK TRANSPARENCY REPORTS

Facebook has started to publish biannual transparency reports since the second half of 2013 and published its last Transparency Report with respect to the second half of 2018.³⁷ From the second half of 2013 until the end of 2017, Facebook restricted access to a total of 20.621 content items from Turkey, while the same figure for 2018 was 2381. Thus, Facebook restricted access to a total of 23.002 content items from Turkey by the year of 2018 details of which can be seen in figures 15 and 16.

Figure 15: Number of Removed Content From Facebook: Turkey

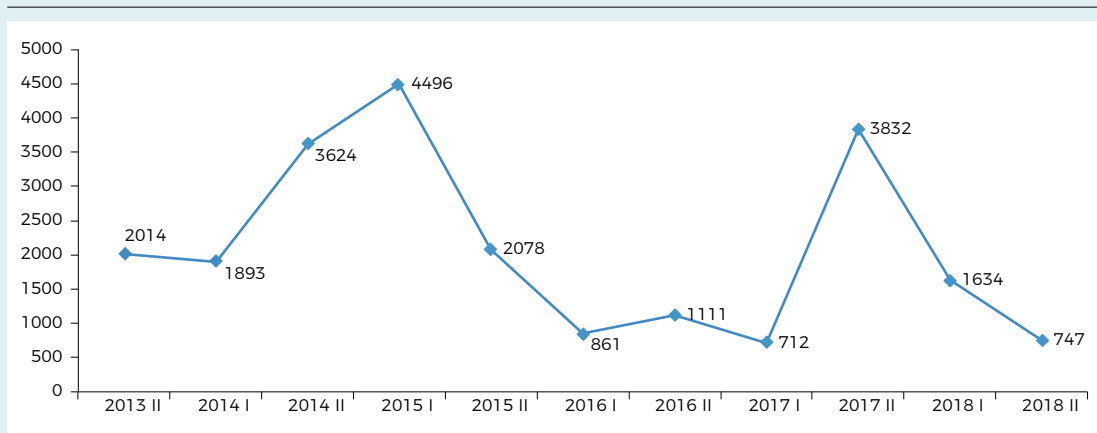
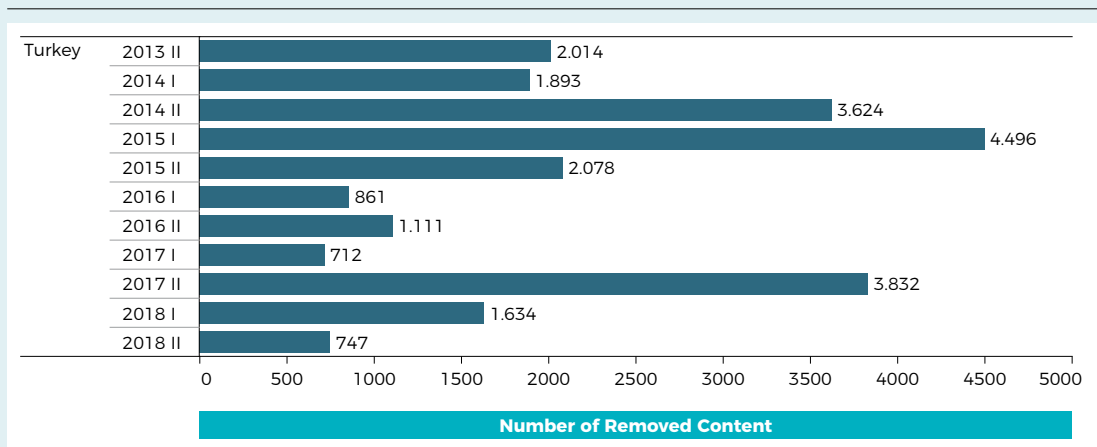


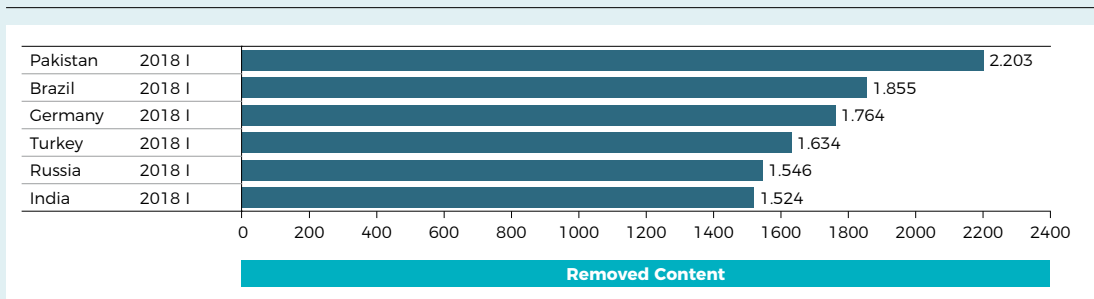
Figure 16: Facebook: Number of Removed Content From Turkey Based on Reporting Period (2013-2018)



³⁷ See <https://transparency.facebook.com/content-restrictions>

As can be seen in Figure 17, according to the 2018-first half statistics, Turkey ranks in the fourth place with 1634 content restrictions after Pakistan (first with 2203 items), Brazil (second with 1855 items) and Germany (third with 1764 items).

Figure 17: Number of Content Removed Facebook: 2018 First Half



As can be seen in Figure 18, according to 2018-second half statistics, Turkey ranks in the fifth place with 747 content restrictions after Vietnam (first with 1556 items), Russia (second with 1537 items), Mexico (third with 1274 items) and Germany (fourth with 1148 items).

Figure 18: Number of Content Removed From Facebook: 2018 Second Half

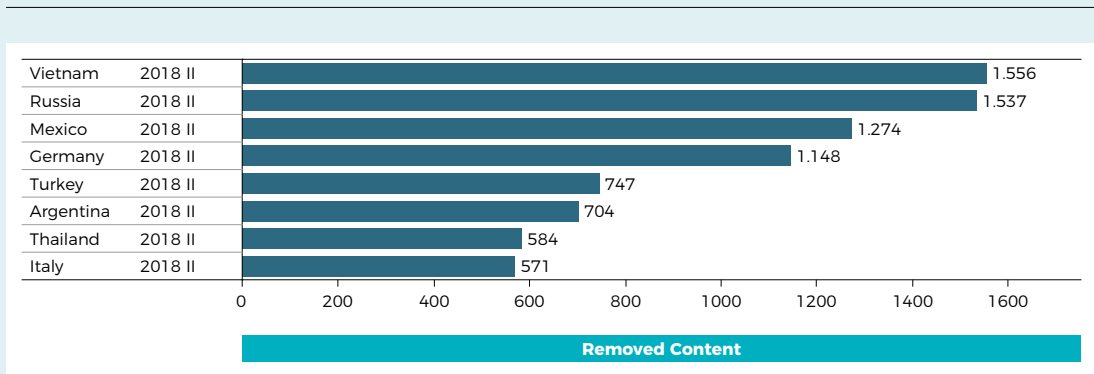


Figure 19: Total Number of Removed Content From Facebook: 2018

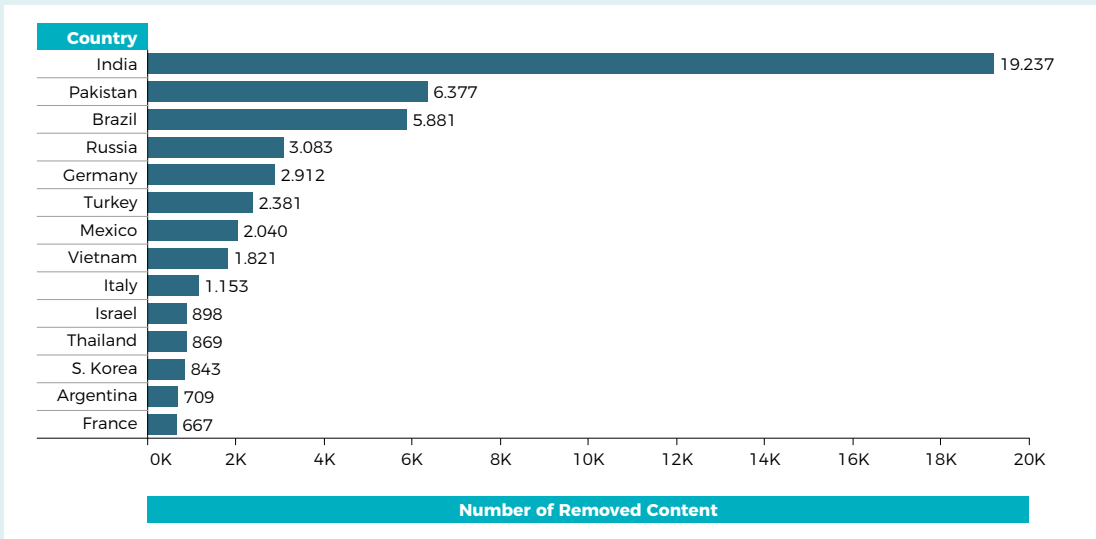
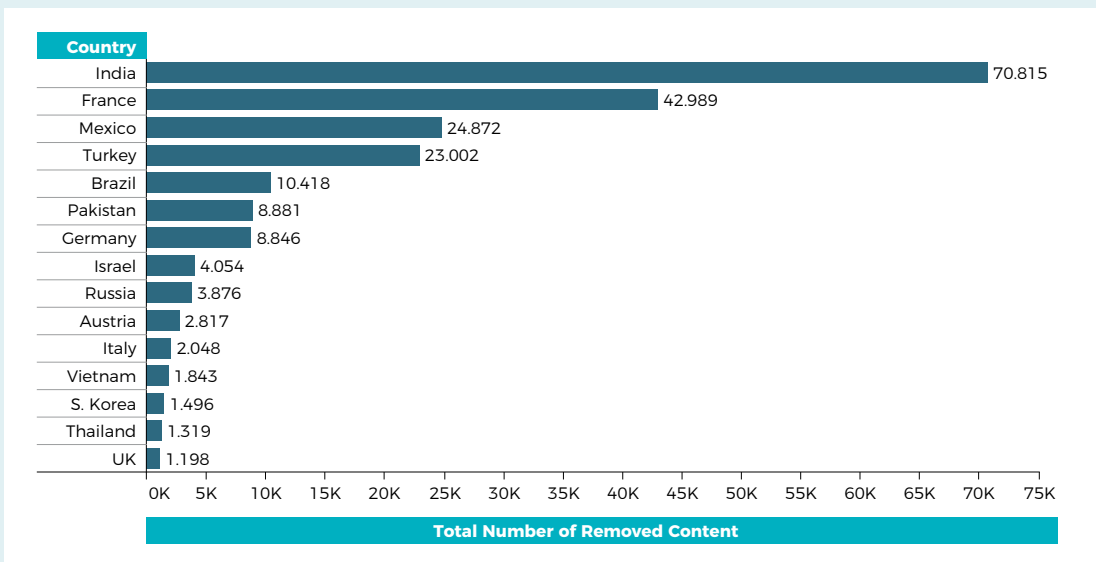


Figure 19 shows the total number of restricted access to content items by Facebook in 2018 and India ranks in the first place with 19,237 items, Pakistan in the second with 6,377 items, Brazil in the third with 5,881 items, Russia in the fourth with 3,083 items and Germany in the fifth with 2,912 items. Turkey follows Germany with 2,381 content items, thereby placing it in the sixth ranking for 2018.

Figure 20: Total of Removed Content From Facebook: 2013-2018



When the worldwide statistics are assessed, Facebook restricted access to a total of 161.187 content items from its platform by the end of 2017, while this figure seems to be 51.039 for 2018. In total sum, Facebook announced that they restricted access to 212.496 items from its platform between the second half of 2013 until the end of 2018. Turkey ranks in the fourth place in the category of restricted items from Facebook platform with 23.002 content items as can be seen from Figure 20, while India is first with 70.815 items, France is second with 42.989 items and Mexico is third with 24.872 items.

Unlike Twitter, Facebook does not provide more detailed information and disclose the details of restriction demands or requesting organisations. Facebook has stated that 1106 items from 1634 items restricted from Turkey in the first half of 2018 were removed in response to requests from BTK, the courts, Access Providers Association, the Ministry of Health and the Ministry of Trade pursuant to Law No. 5651. According to Facebook, a further 528 items were restricted in response to private reports related to a range of offenses including privacy rights violations. Likewise, Facebook has announced that, in the second half of 2018, it restricted access to 400 content items in response to requests from BTK, the courts, Access Providers Association, the Ministry of Health and the Ministry of Trade pursuant to Law No. 5651 and to a further 347 social media content items in response to private reports related to a range of offenses including privacy rights violations

TURKEY'S INTERNET CENSORSHIP PRACTICES IN THE GOOGLE TRANSPARENCY REPORTS

Google started to publish transparency reports by the second half of 2009, which include statistical information on requests submitted to its services such as YouTube, Google Web Search Engine, Blogger, Google Photos, Google AdWords, Google Earth, Google Maps, Google Docs, and Google Groups for removal of content.

Until 2018, a total of 9183 removal requests were sent from Turkey to Google; including 4921 court orders, and it was requested that a total of 50.275 content items to be removed. Out of the 50.275 items subject to removal requests, 36.965 were requested pursuant to court orders and Google removed or restricted access to 14.330 items from Turkey in accordance with court requests. Under 4262 requests submitted by other than courts, 13.229 social media content items were demanded to be removed and Google removed or restricted access to 5093 items from Turkey in accordance with those other requests. Thus, by the end of 2017, 19.423 items were removed or restricted from Turkey, out of 50.275 items requested to be removed (38%).

In the first half of 2018, a total of 1196 requests were sent from Turkey to Google; including 811 court orders and 385 other removal orders. Under those requests, it was demanded that a total of 7576 content items to be removed; out of which 4947 were based on court orders, while 2629 on other requests. Google has announced on its last transparency report that it removed or restricted access to a total of 3019 items including 1336 content items subject to court orders and 1683 content items subject to other requests. The reasons given by Turkish authorities for the removal requests

Figure 21: Turkey in Google Transparency Reports (2009-2018)

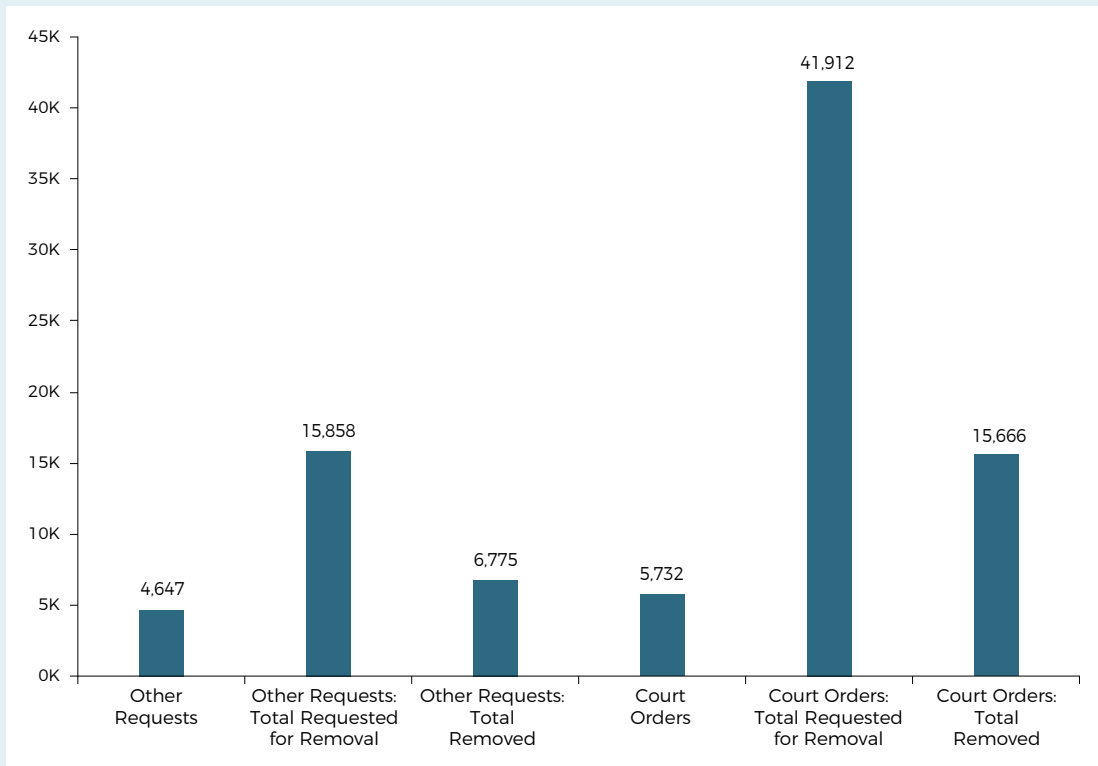
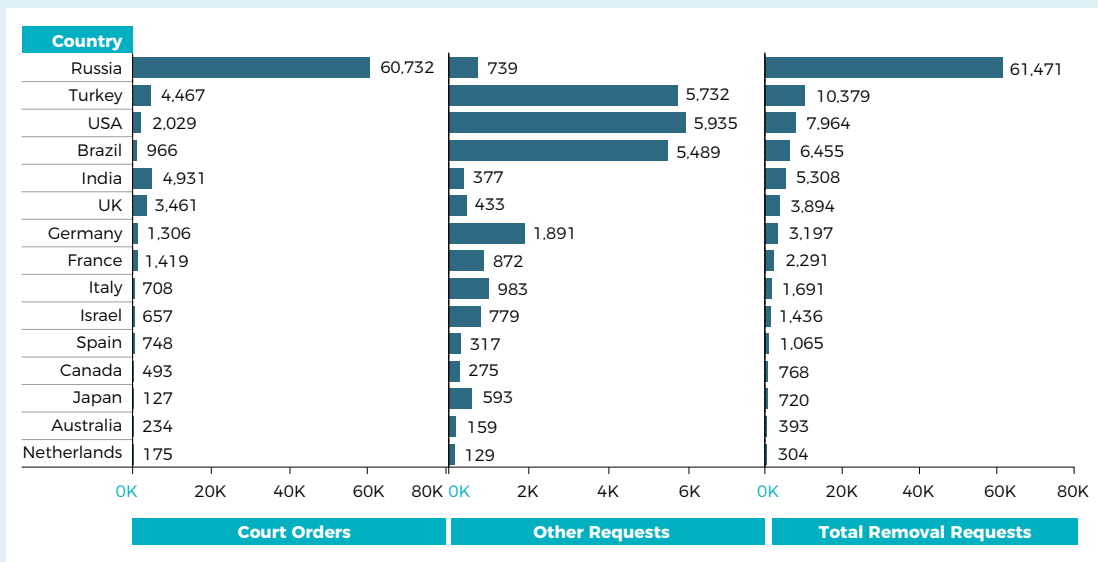


Figure 22: Total Removal Requests Sent to Google: 2009-2018



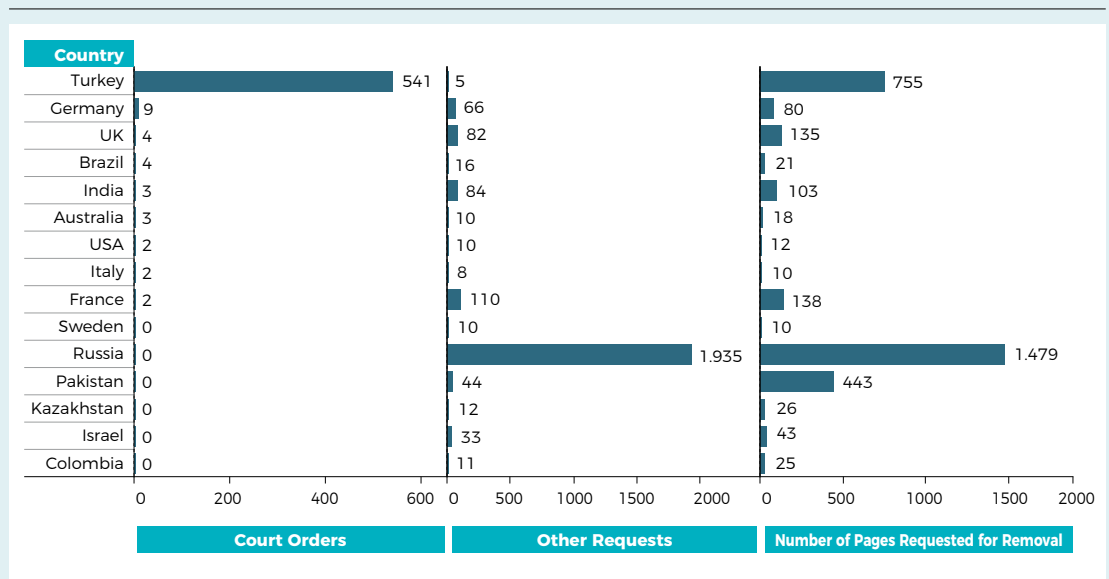
mainly include defamation, as well as national security, privacy and security, drug abuse and obscenity. Google has not published its Transparency Report for the second half of 2018 as of June 2019. As can be seen from Figure 21, in total 10.379 requests (5732 court orders and 4647 other requests) were made from Turkey and 57.770 items (41.912 through court orders and 15.858 through other requests) were requested for removal. Google removed 22.441 (38%) content items (15.666 items through court orders and 6775 through other requests).

When the worldwide statistics are assessed in relation to removal requests received by Google, as can be seen from Figure 22, Russia is ranked first in submitting content removal requests to Google with 61.471 requests. Most of these requests (60.372) were categorized under “other requests” rather than court orders in terms of Russian requests. Only 739 court orders were sent by Russia to Google. Turkey ranked second with 10.739 removal requests; out of which 5732 were based on court orders, while 4647 were other requests. In the category of submitted court orders, Turkey comes second after the USA which submitted 5935 court orders to Google. In the category of other requests, Turkey comes third after Russia and India.

TURKEY’S INTERNET CENSORSHIP PRACTICES IN THE WORDPRESS TRANSPARENCY REPORTS

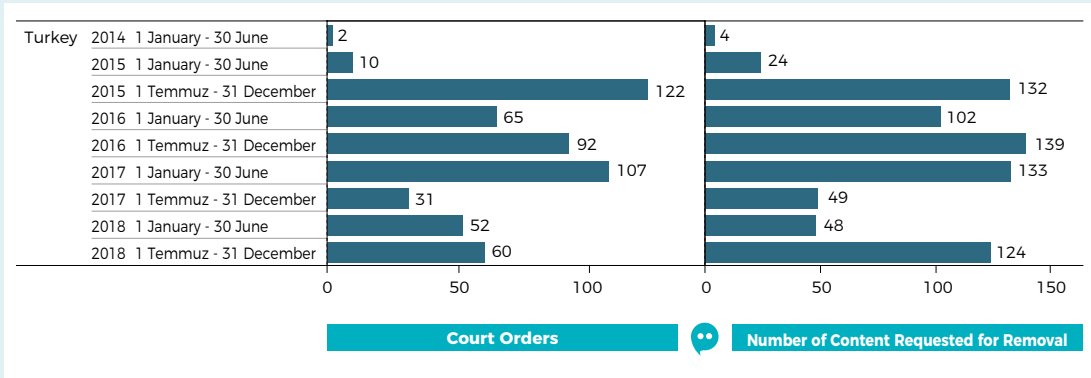
Figure 23 shows that between 2014 and 2018, 541 of 577 court orders that were sent to Wordpress worldwide were submitted from Turkey. Turkey is followed by Germany with only 9 court orders and then the United Kingdom and Brazil with 4 court orders each. In the category of “other takedown requests”, Russia comes first with 1935 requests, while there were only 5 other requests sent from Turkey to Wordpress.

Figure 23: Turkey Compared to Other Countries in the Wordpress Transparency Reports: 2014-2018



Pursuant to 577 court orders, a total of 3334 content items were requested to be removed by Wordpress. Turkey comes second in this category with 755 items, while Russia ranks first with 1479 items as can be seen from Figure 23. According to Wordpress data, 58% of these takedown requests were met affirmatively. Figure 24 shows the numbers of court orders sent by Turkey and the numbers of items and Wordpress pages requested to be removed for each period. It is observed that court orders were submitted most frequently in the second half of 2015, while takedown requests were made most commonly in the year following the 15 July 2016 coup attempt. These court orders were issued by Turkish criminal judgeships of peace pursuant to Article 8/A and 9 of the Law No. 5651.

Figure 24: Number of Content Removal Requests from Turkey in Wordpress Transparency Reports



As regards to the first half of 2018, Wordpress announced that 62% of the takedown requests sent from Turkey subject to 52 court orders were met affirmatively. During this period, Turkey was the only country that had submitted court orders to Wordpress as a basis of takedown requests. In the second half of 2018, another 60 court orders were sent from Turkey to Wordpress. According to Wordpress, 45% of

ERROR 451: Unavailable for Legal Reasons

This site has been blocked in response to a unilateral order from a Turkish authority. You can find out about alternative ways to view this content on our guide to [bypassing Internet restrictions](#).

Bu site, yetkili bir Türk makamından gelen tek taraflı bir talebe cevaben engellenmiştir. Bu içeriği görüntülemek için alternatif yolları [internet kısıtlamalarını aşmaya ilişkin kılavuzumuzdan](#) öğrenebilirsiniz.

The notification message which appears on the restricted pages of Wordpress.

them were met affirmatively. Subject to those requests, by the end of 2018, **out of 1011 Wordpress blog pages, 413 (40%) were withheld and blocked access from Turkey.**³⁸ In practice, Wordpress withheld those items by “geoblocking” technology and users attempting to access the blocked pages are greeted with the following notification message:

A total of 100 separate Wordpress blog addresses (34 in the first half and 66 in the second half of 2018) were withheld from Turkey with this method and pursuant to court orders. On 16 July 2018, 116 separate Wordpress blog addresses and content items (URL-based) were blocked access to and withheld from Turkey pursuant to an individual order of İstanbul 6th Criminal Judgeship of Peace decision no. 2018/3996 D. İş (Misc.) with a request from President Recep Tayyip Erdoğan on the grounds that the pages and content “violate personal rights of the person submitting the request” and that they “contain defamatory content beyond the limits of freedom of press and expression, and violate personal rights”.

TURKEY’S INTERNET CENSORSHIP PRACTICES IN THE REDDIT TRANSPARENCY REPORTS

The popular social media platform Reddit has also released its 2018 Transparency Report.³⁹ As it may be recalled, in 2015 access to Reddit platform was blocked from Turkey, even for a short period of time, by a blocking order of Telecommunications Communication Presidency. Reddit stated in its 2015 Transparency Report that no explanation was provided on why the brief block occurred.⁴⁰

The 2018 Reddit Transparency Report also includes a section reserved for requests for content removal. According to the Reddit report, 101 requests for removal or access blocking were submitted to Reddit in 2018 from 5 foreign governmental authorities. Reddit reported that it removed or withheld some of these content items, especially in circumstances including a court order. Reddit also stated that they rejected some of these requests on the ground of inconsistency with international law. As regards to the requests sent by Turkey to Reddit, it was reported that **40 content items were scrutinized** by Reddit and **7 of them were completely removed** from its platform, while the other 33 were only blocked access from Turkey.

SOCIAL MEDIA ACCOUNTS UNDER INVESTIGATION IN 2018

In 2018, the Ministry of Interior started investigations into several social media accounts in relation to the crimes of making propaganda for a terrorist organization, praising those organizations, publicly declaring affiliation with terrorist organizations, inciting people to enmity and hatred, insulting state officials, acting against indivisible integrity of the state and threatening safety of the nation and hate speech.

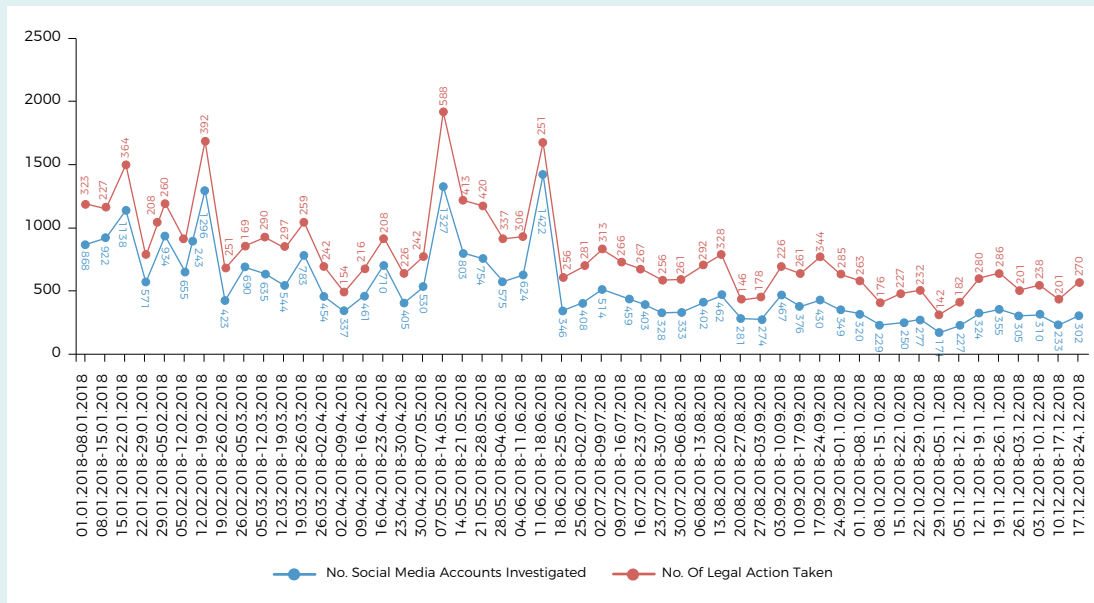
³⁸ See <https://transparency.automattic.com/country-block-list-draft-february-2019/#turkey>

³⁹ See <https://www.redditinc.com/policies/transparency-report-2018>

⁴⁰ See <https://www.reddit.com/wiki/transparency/2015>

As a result of these investigations, legal action was taken against a considerable number of individuals. As can be seen in Figure 25, according to weekly statements and statistical data, it is observed that during 2018 **26.996 social media accounts were investigated** and **legal actions were taken against 13.544 accounts**.

Figure 25: Weekly Statistical Data Announced by the Ministry of Interior



Whereas, in the statement of the Ministry of Interior dated 31 December 2018 under the title of “**Operations Carried out Between 1 January and 31 December 2018**” it was stated that **42.406 social media accounts** in relation to the crimes of “making propaganda for a terrorist organization, praising those organizations, publicly declaring affiliation with terrorist organizations, inciting people to enmity and hatred, insulting state officials, acting against indivisible integrity of the state and threatening the safety of nation and hate speech” were investigated. As a result of these investigations, **legal action was taken against 18.376 persons**.⁴¹ Thus, the weekly statements are inconsistent with the statistical data announced at the end of the year. According to the annual statistics, it seems that 16.000 further social media accounts were investigated as well as 5000 more persons were subjected to legal action. It is observed that, during 2018, the number of investigated and prosecuted social media accounts were dramatically increased after the Operation Olive Branch in Afrin and around the 24 June 2018 General Elections.

⁴¹ See Ministry of Interior, Operations in the Period of 1 January – 31 December 2018, <https://www.icisleri.gov.tr/1-ocak-31-aralik-2018-yili-icerisinde-yurutulen-operasyonlar>

CONCLUSION AND OVERALL EVALUATION

Within the scope of the 2018 EngelliWeb report prepared by the Freedom of Expression Association, it is determined that by the end of 2018, **245.825 websites and domain names** were blocked access from Turkey. As can be seen in Figure 26, it is determined under the EngelliWeb project that access to **40** websites and domain names were blocked in **2007**, **1017** in **2008**, **5151** in **2009**, **1729** in **2010**, **7487** in **2011**, **8699** in **2012**, **19,724** in **2013**, **36.689** in **2014**, **29.238** in **2015**, **24.071** in **2016**, **55.617** in **2017** and **54.903** in **2018**. The date of the blocking orders could not be established for **1460** domain names.

Figure 26: Total Number of Blocked Websites in Turkey: Annual Statistics for 2007-2018

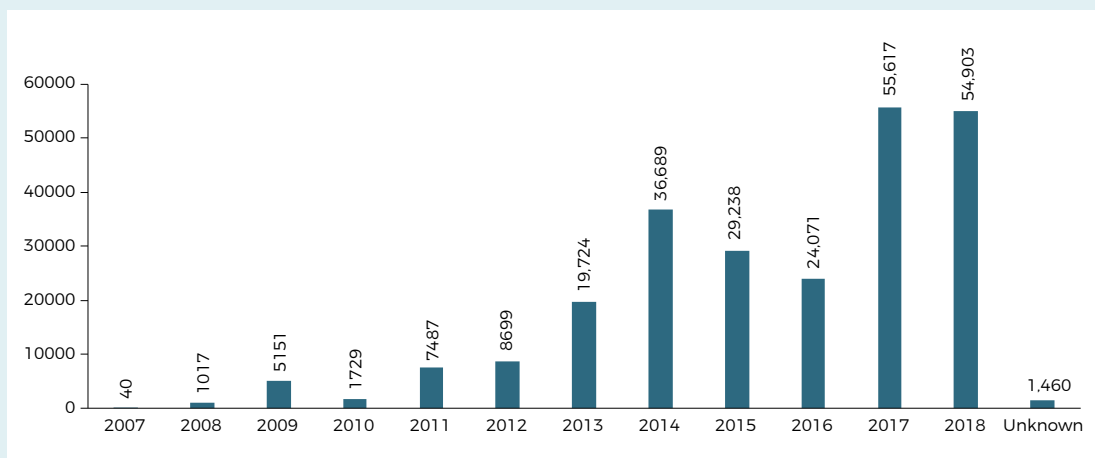
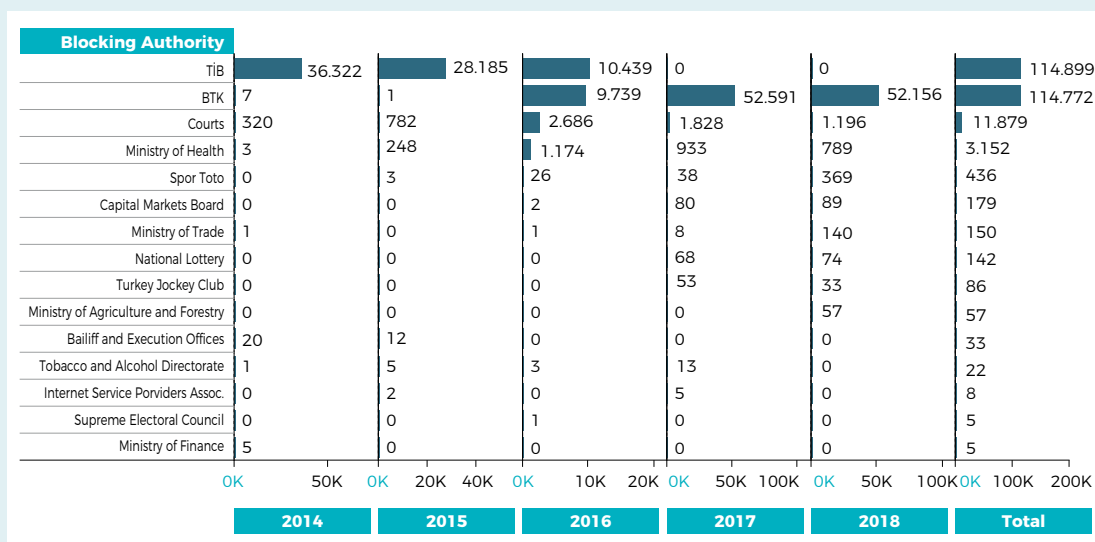


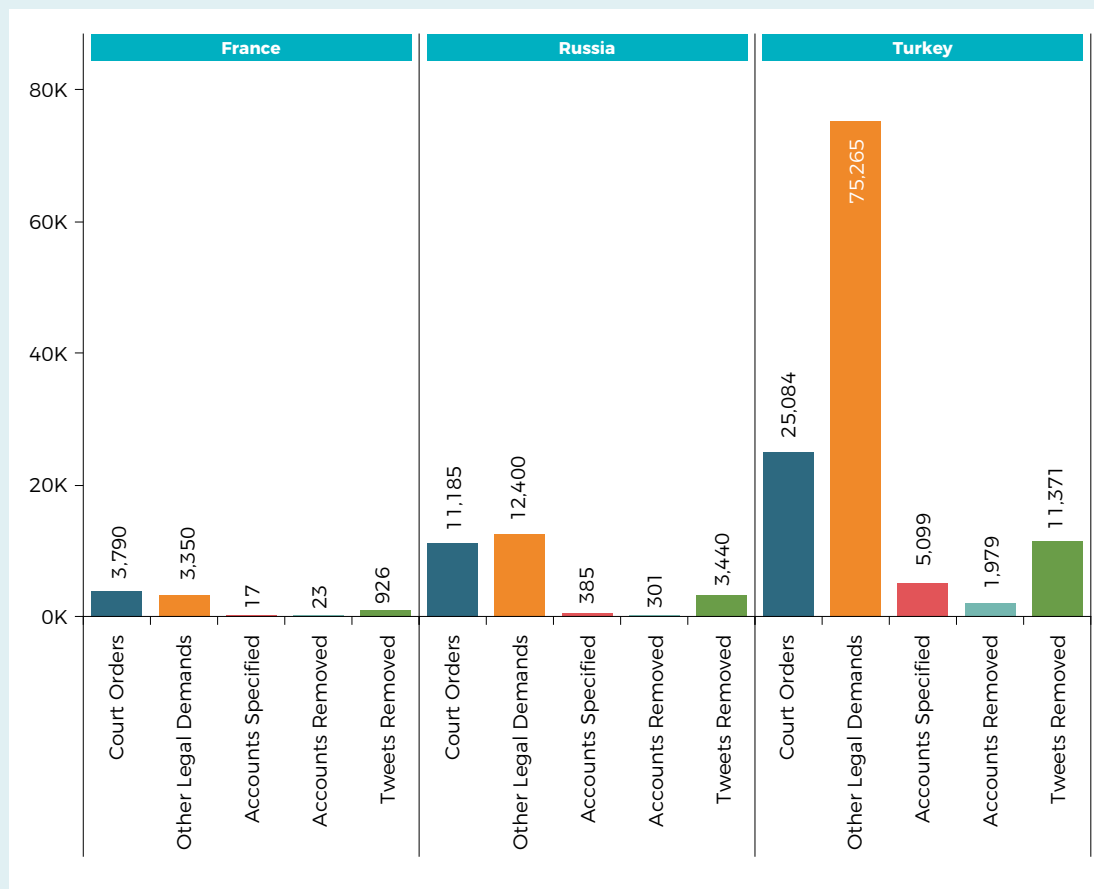
Figure 27: Number of Blocked Websites Based on Blocking Authority (2014-2018)



The **245.825** websites and domain names that were blocked access from Turkey by the end of 2018, were blocked with **212.200** separate blocking orders issued by **578** separate authorities. As can be seen from Figure 27, out of the **245.825** websites and domain names that were blocked, **229.671** were blocked subject to Law No. 5651 by two administrative authorities, namely by BTK which blocked access to **114.772** domain names and before that, by its predecessor TIB, which blocked **114.899** domain names. The remaining **16.154 domain names** were blocked access to by criminal judgements of peace and other public bodies and authorities explained in this report, such as the Ministry of Health. As regards to URL-based blocking measures, subject to Article 9 of the Law No. 5651 alone, more than 42.000 blocking orders were sent to the Association of Access Providers between 2015-2017 and approximately 100.000 URL addresses were blocked access to. While the URL blocking statistics of 2018 are unknown yet, it is estimated that the number of orders issued under Article 9 to be around 60.000, while the number of blocked URLs to be around 135.000.

On the other hand, EngelliWeb project found out that, until the end of 2018, **7705** news articles (URL-based) were blocked subject to Article 9 by **2291 separate blocking**

Figure 28: Comparison of Turkey, France and Russia in the Twitter Transparency Reports



orders issued by 308 separate criminal judgeships of peace; while **3306** of those URLs were blocked in 2018. Apart from the assessment of blocking orders, this report also includes statistical information about the number of removed news articles subsequent to blocking orders and pointed out to the worrying increase in self-censorship by content providers.

The report also displayed that the rise in censorship in Turkey has reached to an astonishing level as were shown 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 ranking, as shown in Figure 28.

While hundreds of blocking orders are issued systematically, the approach of the Constitutional Court of Turkey towards freedom of expression and press freedom also needs to be addressed. It is observed that, since 2015, the Constitutional Court has given three leading judgments in terms of legal principles regarding Article 9 of Law No. 5651.⁴² In the *Ali Kızılk* judgment dated 26 October 2017,⁴³ the Constitutional Court 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.⁴⁴ 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.⁴⁵ However, it is found out that subsequent to the *Ali Kızılk* judgment, none of the blocking orders issued in 2018, by criminal judgeships of peace has referred to the *prima facie* **principle** nor applied *Ali Kızılk* in their assessment and they systematically ignore this principle despite the principle being adopted in 10 Constitutional Court judgments.

While the Constitutional Court has given 9 other separate judgments based on its leading *Ali Kızılk* judgment, it has not dealt with any of the individual applications filed with respect to Article 8/A of Law No. 5651 before or in 2018.

While the applications relating to a vital communications network such as the Internet that amount to censorship and violations of freedom of expression and free-

⁴² *Medya Gündem Dijital Yayıncılık Ticaret A.Ş.*, Application No: 2013/2623, 11 November 2015; *Fetullah Gülen (2)*, App. No: 2014/11499, 22 September 2016; *Ali Kızılk*, Application No: 2014/5552, 26 October 2017.

⁴³ *Ali Kızılk*, supra note 42.

⁴⁴ *Ibid*, para. 61

⁴⁵ *Özgen Acar and Others*, Application No. 2015/15241, 31 October 2018, para. 31

dom of the press should be handled in a more expeditious manner, the already few judgments given by the Constitutional Court are ignored by the criminal judgeships of peace, while they decide on access-blocking orders and the blocking orders are issued as if no applications on this subject were decided by the Constitutional Court.

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.



The 2018 EngelliWeb Report of the Freedom of Expression Association (İFÖD) includes overview of and considerations on increasing Internet censorship and access blocking practices by the end of 2018 in Turkey. This assessment is predominantly conducted by reference to the application of Law No. 5651 on Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications, which was enacted about 12 years ago and other subsequent regulations in Turkey.

As a matter of fact, no statistical data on websites blocked from Turkey was published either by the former Telecommunications Communication Presidency (TIB) or its successor Information Technologies and Communication Board (BTK). Moreover, no statistical data on blocked websites, news articles (URL-based) and/or social media content has ever been published by the Association of Access Providers (ESB). In line with the government policy, the Minister of Transport and Infrastructure provided the following justification for non-disclosure of those statistics as a response given to a recent Turkish Parliamentary question: **“Since the figures [related to statistics on access blocking] are not officially disclosed by other countries, a false perception, an information pollution may arise internationally against our country by way of using these figures.”** Similar Parliamentary questions were responded negatively during 2018.

This report includes detailed statistical information for the year of 2018 and also provides an overview for the 2007-2018 period on blocked websites, news articles (URL-based) and social media content. It is the intention of İFÖD to share such data and analysis with the general public on a regular basis. Therefore, further reports will be prepared and published; the first in September 2019 with regards to the first half of 2019 and a subsequent report in February 2020 as a year-end report for 2019.



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