LGBTI People's Freedom of Expression on the Internet

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A-FREEDOM OF EXPRESSION ON THE INTERNET IN TURKEY

Turkey has come to the fore due to its conduct to ban world-famous websites, which undoubtedly targets not only websites with LGBTI content but freedom of expression in general.

Restrictions on access to websites come in two ways: Blocking the content and bans on obtaining domain names.

I- BLOCKING THE CONTENT

The Alternative Informatics Association's report "the 2013 Situation for the Internet in Turkey" includes the following statements about blocking the content: *"In Turkey, the restrictions on accession continue at full tilt. According to what the 'Engelliweb' [Blockedweb] initiative could determine, the number of blocked domain names went beyond 33 thousand by October. In a 6-month-period since the last April, more than 5000 domain name has been blocked as required by the Law No. 5651. Which means that in Turkey, 1000 domain names are blocked on average monthly.*

The Law No. 5651 and related administrative/legal regulations, which has drawn criticism by the civil society since 2007 for being profoundly wrong and incomplete, become heavier with new ad-

ditions and carry a potential to create even bigger problems. Bag laws bringing inattentive changes open the way for private persons to have the authority to block websites.

As the current regulations were prepared in a state-of-mind that stipulates that everything be recorded, the practice also keeps track in various checkpoints, be it necessary or not. This situation threatens the privacy of our personal data. Therefore, how and by whom these records will be kept should be regulated clearly. The obligation to eliminate the records kept, when this should take place and,how and by whom these records could be accessed should be expressed openly. What the citizens of Turkey need is regulations prepared with a point-of-view that aims to expand basic rights and freedoms. And this is only possible with principles such as the privacy of our personal data and communications, priority of freedom of expression and net neutrality.

Despite of so many meetings and workshops held for the Law No. 5651 to be changed, there is not a concrete step taken.This law, which was considered as contrary to basic rights and freedoms in a ECtHR's verdict early this year, should be completely renewed. Moreover, especially after the Gezi Park protests the government spokespersons repeatedly targeted the internet and digital activism, which increase concerns of censorship and surveillance. Such statements are unlawful, groundless and useless, and they are interventions for citizens' freedoms of expression and assembly.

As the association, we say that blocking the access is not an active way of dealing with crime. It should never be applied except very specific cases. Websites should not be closed through the laws of press and anti-terror which are proved to threaten freedom of expression in various cases. Such closings are equal to political censorship. Furthermore, as the protection measures given by courts

are indefinite, the measure itself turns into a punishment and permanent censorship."[1]

Let's examine some striking examples of blocking the internet access mentioned in the report:

YouTube access was blocked for more than a year and following that Daily Motion website was blocked in a similar way. Regarding the issue, the new website Bianet reported on May 7, 2009 as follows:

"Just having commemorated the first anniversary of censorship on the global video-sharing website ***youtube.com***, another website used to share video -***DailyMotion***- has been blocked by the prosecution ruling. The blocking was applied following the ruling of Beyoglu Chief Public Prosecutor's Office in Istanbul on March 24. Those who wanted to enter the website faced the following: ***"The access to this website has been blocked by a court ruling. It has been blocked as required by the ruling no. 2009/25 of Republic of Turkey Beyoglu Chief Public Prosecutor's Office on March 24, 2009".*** *The website DailyMotion was closed on August 2008 even without stating the reason and ruling implemented for the decision. Myspace, Wordpress were among websites that used to be blocked for various reasons. Furthermore, the website geocities.com is still inaccessible after the the ruling to block the website by Ankara 4th Penal Court of Peace on February 4, 2008. Reminding that the Youtube ban in Turkey turned 1, Chair of the Internet Technologies Association Mustafa Akgul said "We should get rid of the prohibitive reflex. It does harm to the internet." The video-sharing website had supposedly a video "insulting Ataturk", which led YouTube to have been blocked on May 5, 2008 by a court ruling. Akgul emphasised that the Law No. 5651 on fighting against crimes committed through internet broadcasting should be revoked, adding*

1 http://www.alternatifbilisim.org/wiki/T%C3%BCrkiye%27de_%C4%B0nternet%27in_2013_Durumu

that the problem is not limited to it: "Any court in Turkey is able to rule a blocking as a measure without taking anyone's statement or consulting an expert on the basis of violations of individual rights or intellectual property rights."[2]

The Youtube blocking took place a several times. Regarding the blocking decisions for access to Youtube and Twitter, Sukru Oktay Kilic reported on the website Al Jazeera Turk on March 21, 2014 as follows:

"In Turkey, the access to Twitter had been blocked by a court ruling which went into effect Thursday night. As of today, the access to Youtube has also been blocked due to a measure by the Telecommunications Communication Presidency (TIB). This decision is taken by the TIB. There is no court ruling whatsoever. Together with the new internet law, the TIB has the authority to block the access to any website following a technical and legal evaluation. Istanbul Anatolian 5th Penal Court of Peace rejected the appeal by Twitter regarding the website being blocked in Turkey. The Twitter administration announced that they filed a case to abolish the blocking. The reason for this application was the "deep concern" as an account was on a request list for blocking for making corruption claims.

Twitter made a statement about the access ban in Turkey on blog.twitter.com. Twitter's General Counsel Vitaya Gadde wrote a piece titled "Challenging the access ban in Turkey" where she said: "It's now been six days since the Turkish government blocked access to Twitter. The millions of people in Turkey who turn to Twitter to make their voices heard are being kept from doing just that. The purported legal basis for the ban is three court orders (none of

2 http://bianet.org/bianet/ifade-ozgurlugu/114346-turkiyede-yasakli-internet-sitelerine-dailymotion-da-eklendi

which were provided to us prior to the ban) and a public prosecutor's request. Two of the three court orders relate to content that violated our own Rules and is already suspended. The last order instructed us to take down an account accusing a former minister of corruption. Political speech is among the most important speech, especially when it concerns possible government corruption. That's why today we have also petitioned the Turkish court on behalf of our users to reverse this order. We'd like to emphasize that at no point during this blockage have we given the Turkish government any user data like email or IP addresses, consistent with our commitment to user privacy. With all announced bases for the access ban addressed, there are no legal grounds for the blocking of our service in Turkey."

Ankara Administrative Court stopped the execution of the ruling which blocked the access to Twitter after an appeal by the Union of Turkish Bar Associations in order "not to cause unrecoverable results."[3]

After the Twitter ban was taken to the Constitutional Court, the news website T24 reported the court's ruling as follows: ***"The Constitutional Court declared a historic ruling regarding freedom of expression on social media as the Twitter ban reached its 12th day. The high court ruled anonymously that the complete ban of Twitter violated the freedom of expression. Remarking that the administrative jurisdiction still did not implement its decision to "stop the execution", the high court has sent its ruling to the Telecommunications Communication Presidency (TIB), Information and Communication Technologies Authority (BTK) and Ministry of Transport, Maritime Affairs and Communication.***

3 http://canli.aljazeera.com.tr/Event/Twitter_Yasag?Page=1

The Constitutional Court underlined that the court rulings shown to justify the ban should be implemented not to the whole website, but only to the relevant content and implied that the TIB acted against the ruling by banning Twitter completely. The ruling went as follows: "Internet has an important instrumental value in modern democracies in regards with exercising basic rights and freedoms, particularly the freedom of expression. The social media ground provided by the internet has an essential trait for people to express, exchange and spread their information and ideas .Therefore, it is very obvious that the state and administrative bodies should be very sensitive when it comes to regulations and practices regarding the internet and social media tools."[4]

The given ruling by the Constitutional Court also justified lifting the Youtube ban. Annan Keskin from the daily Taraf reported on April 4, 2014 as follows:

"Golbası Penal Court of Peace Judge Suzan Polat lifted the March 27 ruling that blocked the video-sharing website Youtube completely, following the appeal by the Union of Turkish Bar Associations. Concluding that the complete ban of the website violated the freedom of expression of millions of Youtube users, the Judge ruled that only 15 links in the website remain blocked, lifting the general access ban.

The judge lifted the ban based on the Constitutional Court ruling on April regarding Twitter and emphasised that the Court's ruling is binding for legislative, executive and judicial bodies.

Gobasi Office of the Chief Public Prosecutor appealed to Golbasi Penal Court of Peace upon the investigation regarding political

4 http://t24.com.tr/haber/anayasa-mahkemesi-twitter-yasagi-hak-ihlali-tib-ve-bakanlik-geregini-yapsin,255007

espionage and disclosure of the secrets of state after the leakage of records from a Ministry of Foreign Affairs meeting on Syria. The Court ruled that certain websites be blocked, however, as the "the website youtube.com did not react to the ruling on time regarding the blocking of mentioned contents despite of notifications by the TIB" the whole website was blocked.

Judge Polat justified her freedom ruling which limits the Youtube ban only to the pages complained as follows: "As mentioned in the Constitutional Court, the internet has an important instrumental value in modern democracies in regards with exercising basic rights and freedoms, particularly the freedom of expression. Although it was possible to block the website youtube.com only through a URL-based ruling, blocking the website youtube.com completely means a heavy intervention to the freedom of expression of all users benefiting from the youtube.com network. Blocking a video-sharing website that has millions of users in our country is an intervention to freedom of expression protected by Article 26 in the Constitution and Article 10 in the European Convention on Human Rights. Furthermore, considering the regulations in Article 153/6 in the Constitution "the Constitutional Court ruling are immediately published in the Official Newspaper and they are binding for legislative, executive and judicial bodies, administrative authorities, natural and legal persons", it was necessary to accept the applicant's demand based on the aforementioned Constitutional Court ruling No. 2014/3986 on April 2, 2014."[5]

Regarding justifications for access bans, websites publishing the cover with Prophet Mohammad caricature on the Charlie Hebdo Magazine can be examined as a typical example. The news website www.haberler.com reported the court ruling on January 14, 2015 as follows:

5 http://arsiv.taraf.com.tr/haber-mahkeme-youtube-acilsin-152116/

"Upon the appeal by Ercan Ezgin, a lawyer from Diyarbakir Bar Association, for Prophet Mohammad caricatures to be banned, Diyarbakir 2nd Penal Court of Peace ruled that pages showing the caricatures in 4 websites be banned. The pages showing the Prophet Mohammad caricatures on birgunnet, t24.com, internethaber and thelira.com were banned.

On the justification for the decision, 2nd Penal Court of Peace Judge Ozcan Kusatan stated that everyone has the right to freedom of expression, stating that bottom line is the protection of the freedom of expression. Stating that freedom of expression is limited by other personal rights and freedoms, Kusatan said "Freedom of expression does not allow the person who exercises this right to say whatever he/she wants to the other person. Sometimes freedom of expressions might be in conflict with others' personal rights. It is not possible for the legal system to protect conflicting values at the same times. Both personal rights and freedom of expression are protected by the legal system. Considering one of them superior to the other happens in a certain event and under certain conditions. Which means that which of them would be protected more is determined by a concrete event. In this context, freedom of expression goes beyond enlightening the public and if the instrument used does not match the purpose, protection of a person's religious values, honour and dignity would be considered higher than freedom of expression. It is possible to take words, texts, pictures, caricatures and publication which aim to humiliate religious values and the Prophet as an insult belonging to that religion. Because one's religious belief is an inseparable part of the person, honour and dignity - a value that should be protected under the scope of personal rights."[6]

6 http://www.haberler.com/charlie-hebdo-dergisinin-kapagina-erisim-yasagi-6867408-haberi/

II- BANS ON OBTAINING DOMAIN NAMES

Bans over the internet use does not only happen through blocking the access to websites but also through obtaining domain names. The daily Harriet reported on November 28, 2011 regarding the regulations brought about by the Information and Communication Technologies Authority (BTK) as follows:[7]

"According to the report of Webrazzi, the BTK managed to mark an era in terms of censorship via a notification sent to companies providing service and including contents on domain names. The first group consists of the words which should never be used as domain names and almost all these words can literally be considered 'inappropriate'.

The strange thing is about the words in second and third groups. Many words in these groups can be associated with almost any issue, let alone pornographic content: 'animal, baldiz [sister-in-law], sicak [warm, hot], kalca [thigh], liseli [high school student], itiraf [confession], olgun [mature]' and hold on tight 'forbidden'… So now even the word 'forbidden' is forbidden itself…

It is mentioned in several places that companies react to these bans. Especially the expression added just next to the words in thirds group "controlling within the content" makes things even worse. This expression means that the companies have to control their customers' website to check if they include these words.

In short, the BTK made a very controversial decision regarding the internet in Turkey. We will see what this decision brings together.

The Information and Communication Technologies Authority (BTK) announced that there is no ban regarding the explicit words and that it was notified to the hosting providers just to inform them.

7 http://www.hurriyet.com.tr/teknoloji/17656351.asp

The written statement by the BTK reports that citizens made so many complaints to the Telecommunications Presidency regarding some domain names and contents and demanded measures against them. The statement emphasises that the websites with such content are only examined by the authorities under the scope of the catalog crimes mentioned in Article 8 of the Law No. 5651 and they are notified in order not to mediate crimes. The statement also said:

"What we do under the scope of the Law No. 5651 is restricted to notify the hosting providers in order not to include the key words numbered 1 in domain names and to control and take necessary measures regarding the domain name which includes the key words numbered 2 and the content which includes key words numbered 3.

There is no ban on these words, it is just to help hosting providers identify website committing one of the catalog crimes by giving them some key words."

The original notification sent to the companies is as follows:

Dear Sir/Madam,

As it is known, the Guide on Procedures and Principles Regarding Telecommunications Institution's Good Standing Certificate for Access Providers and Hosting Providers, which is based on Law No. 5651 and dated May 4, 2007 Law on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications, came into force on October 24, 2007 after being published on the Official Newspaper no. 26680.

Any natural or legal person providing/running systems including open service to the internet and contents is a hosting provider. All natural and legal persons that host websites in their servers have to obtain a good standing certificate due to the Guide, even though they do not provide the hosting service commercially. The first clause of Article 8 in the Law lists the crimes that might lead to an access ban as a catalog: "Incitement to suicide (Article

84), Sexual abuse of children (Article 103, 1st Clause), Facilitation of the use of drugs or stimulating substances (Article 190), Provision of substances hazardous to health (Article 194), Obscenity (Article 226), Prostitution (Article 227), Providing a place and opportunity for gambling (Article 228) as covered in the Turkish Penal Code No. 5237 and dated September 26, 2004, and crimes mentioned in the Law on Crimes Committed against Ataturk no. 5816. The 1st Clause of Article 4 in the Guide states that:

Publications a) should be respectful to human dignity and basic rights and freedoms. b) Should not include contents which would damage the physical, mental and moral development of young people and children. c) Should not harm the elements that bring peace and welfare to the family. d) Should not encourage people to indulge in bad habits such as drug addiction, prostitution, obscenity and gambling.

According to this, the domain names you host should not be include contents against the Law and the Guide. Below is a group of words that can be evaluated as against the Law and the Guide. The domain names that have these words should be stopped and the latest situation should be notified to us via e-mail. It should not be forgotten that failing these responsibilities might cause penal sanctioning.

Telecommunications Communication Presidency (TIB)

The daily Haberturk reported on the issue on April 28, 2011 as follows:

"Turkey, which fails to protect freedom on the internet, faces a new list of 'forbidden words'.

A notification sent by the Telecommunications Communication Presidency to service providers and hosting providers with an e-mail address yersaglayici@tib.gov.tr as sender, includes a list of forbidden words which make up an inevitable part of our everyday life.

According to the notification, no domain names with those words can be obtained or used and the already existing ones will face access bans.

The most striking words in the notification are as follows:

31, Adrianne, Animal, Hayvan [animal], Baldiz [sister-in-law], Beat, Buyutucu [enhancer], Ciplak [nude], Citir [chick], Escort, Etek [skirt], Fire, Girl, Atesli [hot], Frikik [wardrobe malfunction], Free, Gey [gay], Gay, Gizli [hidden[, Got [ass], Hatun [lady], Haydar, Hikaye [story], Homemade, Hot, İtiraf [confession], Liseli [high school student], Nefes [breath], Nubile (?), Partner, Pic, Sarisin [blonde], Sicak [hot], Sisman [fat], Teen, Yasak [forbidden], Yerli [local], Yetiskin [adult], Xn, XX...

As the list also covers words that have these words in it, the effect of censorship would reach to an unimaginable level. For example, domain names with two or three names matching the "obscene" words would also be banned.

Here are the some examples of "unfortunate" websites mentioned in tknlj.com: Degisikmezeler.com, herkesokusundiye.com, sokmarket.com, bayramcikolotasi.com, bilgisayarakademisi.com, sanaldestekunitesi.com, forzabesiktas.com, tiklayarak.com, donanimalani.org, bakireklam.com, citirkurabiyem.com, kredikartiborcunubitir.com, burcunubil.com, globaldizayn.org, casperminishop.net, anlayarakokuma.com..."[8]

The ban regarding the word "gay" both in Turkish and English is an obvious example of how the list creates a bar in front of gays' freedom of expressing themselves and violates the freedom of expression.

8 http://www.haberturk.com/polemik/haber/625491-138-kelimeye-yasak

B- LGBTI PEOPLE'S FREEDOM OF EXPRESSION AND THE INTERNET

In Turkey, LGBTI people's freedom of expression on the internet is not so different than the general situation. Before delving into LGBTI people's freedom of expression on the internet, it would be useful to examine LGBTI people's freedom of expression in general.

Despite the ignorance and negative attitudes of Turkish media towards LGBTI people, the country's first LGBTI periodical Kaos GL Magazine is still alive since 1994 in order to fight against disinformation regarding LGBTI people and encourage them to speak up. Following the appearance of LGBTI publication, we see that the authorities' homophobic and transphobic attitudes, which have worked by ignoring, have turned into censorship.

Although there are many examples of how LGBTI people have been stopped by authorities to express themselves, we have to confine them to a few with a legal frame.

The most well-known example of censorship is the confiscation of Kaos GL Magazine's 28th issue with the theme of "Pornography". The decision came by Ankara 12th Penal Court of Peace Op. No. 2006/848 following the written appeal of Public Prosecutor Metin Sezgin from Ankara Chief Public Prosecutor's Office Press Offences Investigation Office, dated July 21, 2006 and Press Investigation No. 2006/1708.

The appeal to the confiscation decision was rejected by the Ankara 15th Penal Court of First Instance decision dated July 28, 2006 and no. 2006/223. The decision was taken to the European Court of Human Rights by the Kaos GL Association with a file number 4982/07 yet to be decided upon.

Ankara Chief Public Prosecutor's Office was not contented with the confiscation of the magazine and it demanded Managing Editor Umut Guner to be judged with a claim that he committed the crime of obscenity regulated in Article 226 of the Turkish Penal Code.

Ankara 2nd Penal Court of First Instance ruled in its decision no. 2006/580 that because the magazine was confiscated by the prosecutor's office before it was distributed, the crime of obscenity has not been committed and Umut Guner was acquitted. Although the decision was appealed based on its justification, the Supreme Court rejected the appeal, approving the court's decision.

Similarly, Anıl Alacaoglu's book "The Third Class Woman" was decided to be sold in a package based on the Prime Ministry Board of Protection of Minors from Sexually Explicit Material decision dated July 29, 2009 and no. 2009/5 on the ground that the book "should be subject to limitations on Article 4 of the Law no. 1117 changed by the Law no. 3266 as it would have harmful effects on minors' morale." The appeal to the decision was rejected by Ankara Penal Court of Peace.

Bans and limitations regarding LGBTI-themed publications are not limited to written material. As the internet became widespread and LGBTIs started using the internet to socialise, many LGBTI websites have been blocked, too.

These blockings have been reported fir the first time on LGBTT People's Human Rights Report published by the LGBTT People's Human Rights Monitoring and Judicial Commission.[9]

The report stated the following about the blockings:

"While determining violations regarding LGBTT people's freedom of expression, the cases related to sexual orientation and gender identity are often unlawfully considered as obscene. Therefore, even the LGBTT dating websites can be affected by this. Since especially transvestite and transsexual people are cited with prostitution as well as obscenity, censorship on internet websites seems like a potential threat on freedom of expression, which requires some measures.

The cases that make up these observations had come to the Commission before the Law (no. 5651) became effective. Kaos Gay and Lesbian Cultural Research and Solidarity Association stated that they recognised that the internet cafes in Istanbul, Bursa and Ankara use a word-based filtering system including the words such as transsexual and gay, and appealed to the Ministry of the Interior under the scope of right to information."

The reply to the Kaos GL's appeal to the Ministry of Interior dated February 26, 2007 and no. 11522 does not clearly explain why LGBTT-themed websites are blocked at the internet cafes.

The report continues: ***"A similar case is based on a study conducted on the internet cafes. In a study by LGBTT people at the internet cafes, it is observed that the informative websites of LGBTT associations and websites with similar purposes are blocked by filtering programs at various times and places.***

9 http://www.kaosgldernegi.org/resim/kutuphane/dl/lgbtt_ih_raporu_2007.pdf

The concerns mentioned in the report soon came true. For the first time in 2009, the LGBTI websites Gabile and HaydiGari were blocked by the Turkey's Communication Presidency on October 3, 2009[10]. The bans made to the national and international press and were mentioned in the LGBTT People's Human Rights report published in 2009 by the LGBTT Rights Platform.[11]

Besides that, access to LGBTI websites from public computer at many universities and public institutions was blocked by filtering systems. ***"It is observed that after the Law no. 5651 became effective, in June, searching for the words gay, lesbian, bisexual, transvestite and transsexual and access to any website including these words were banned in all faculties and departments of Anadolu University in Eskisehir.***

The ban was uplifted following the "Uplift the Bans" campaign of the MorEl Eskisehir LGBTT Initiative -a constituent of the Commission- in Eskisehir and the official appeal of Kaos Gay and Lesbian Cultural Research and Solidarity Association and Lambdaistanbul Solidarity Association between Lesbian, Gay, Bisexual, Transvestite, Transsexual Women and Men -both constituents of the Commission."[12]

Uplifting the ban on access to the LGBTI websites from the computers at the Turkish Parliament following some appeals was reported at the Kaos GL 2011 Human Rights Report as follows:

"According to a news by Ali Ekber Erturk, the Turkish Parliamentary Speaker's Office uplifted the 'access ban' on some websites in-

10 hadigayri.com isimli internet sitesi 11 Mart 2011 tarihinde erişime açılmıştır (http://bianet.org/bianet/lgbti/137165-kaos-gl-2011-insan-haklari-raporu-yayinlandi)

11 http://www.kaosgldernegi.org/resim/kutuphane/dl/2009lgbthaklarirapor.pdf

12 http://www.kaosgldernegi.org/resim/kutuphane/dl/lgbtt_ih_raporu_2007.pdf

cluding the websites of the LGBT associations Kaos GL and Lambdaistanbul. It is learned that the directive to uplift the ban was given by the Parliamentary Speaker Cemil Cicek following an attempt by the Republican People's Party MP Aylin Nazliaka."[13]

Aforementioned examples are given to show the general attitude towards the freedom of expression on the internet and the relevant legislation and current examples are explained below:

13 http://bianet.org/bianet/lgbti/137165-kaos-gl-2011-insan-haklari-raporu-yayinlandi

C- LEGISLATION ON THE INTERNET USE

1- LEGISLATION DIRECTLY REGULATING THE INTERNET USE

Although there are many references in various laws and guides regarding how the website content is regulated, this report only focuses on the legislation that directly regulates the website content.

I-LEGISLATION ON REGULATING THE INTERNET PUBLICATIONS

The most comprehensive law on the internet content is the Law on Regulation of Publications on the Internet and Fighting against Crimes Committed by Means of Such Publications dated May 4, 2007 and no. 5651.

The regulation in an article titled as **"Deciding and implementing access ban"** goes as follows:

ARTICLE 8- (1) Access to websites are subject to blocking if there is sufficient suspicion that certain crimes mentioned below are being committed on a particular websites.

a)As mentioned in the Turkish Penal Code dated September 26, 2004 and no. 5237

1) Incitement to suicide (Article 84),

2) Sexual abuse of children (Article 103, 1st Clause)

3) Facilitation of the use of drugs or stimulating substances (Article 190)

4) Provision of substances hazardous to health (Article 194)

5) Obscenity (Article 226)

6) Prostitution (Article 227)

7) Providing a place an opportunity for gambling (Article 228).

As seen in aforementioned examples, publications where LGBTI people expressed themselves were in practice considered as "obscene" and blocked. Even the Turkish Penal Code (TCK) does not have a certainty about which acts can be considered as obscene, therefore, any ban resulting from some reference to the TCK's regulation on obscenity brings froward the risk that the expression of LGBTI people's own being can be considered as obscene.

Article 8/A of the Law, titled "Removing the content and/or banning access in cases where a delay can be damaging", brings the following regulations:

"(1) A decision on removing and/or banning the content in an internet publication can be given by the Presidency upon the appeal of Prime Ministry and/or ministries dealing with national security, protecting the public order, preventing crimes and protecting general health in order to protect right to life and people's security of life and property, to **protect public order** and national security, to prevent crimes or to protect general health. The decision is immediately notified to access provides and relevant hosting providers. The decision to remove content and/or ban access is implemented immediately and four hours after the notification by latest.

(2) The decision given by the Presidency following the appeal of Prime Ministry or relevant ministries to remove content and/or ban access is submitted to the Penal Court of Peace in 24 hours for approval. The judge need to announce the verdict in 48 hours, otherwise the decision is automatically uplifted.

(3) Access ban decisions given under this Article is implemented through banning the access to publication, section or part (in the form of URL, etc.) where the violation takes place. However, in cases where the content concerning the violation can technically not be blocked or where the violation still continues after the access ban, the whole website can be blocked.

(4) The Presidency files a criminal complaint to the Chief Public Prosecutor's Office regarding those make up and circulate the internet contents related to crimes in this Article. In order to reach the perpetrators of these crimes, necessary information is given to the judicial authorities by content, hosting and access providers following a judicial decision. Providers who do not share this information are imposed punitive fine between three thousand days to ten thousand days unless the act causes another crime to be punished more severely.

(5) According to this Article, access, content and hosting providers that did not implement the decision to remove content and/or ban access will be fined from 50.000 Turkish Liras up to 500.000 Turkish Liras.

The expression "public order", as mentioned in Article, allows legislation officers to have unlimited powers with ambiguous rules. In order to guarantee LGBTI people's freedom of expression, such laws that enable the restriction of rights should include regulations stating that rights cannot be banned through discrimination.

The Guide on Procedures and Principles Regarding the Regulation of Publications on the Internet, which published on the Official Newspaper no. 26716 on November 30, 2007, has the following regulation under its article titled "Principles":

" (1) The publications;

b) should not include any content that would damage the physical, mental and moral development of young people and children."

The expression "that would damage the moral development" has the risk of being interpreted against the LGBT people. As the concept of morality does not have a concrete definition and the legislation officers has a big power of discretion about it, LGBTI people face a threat against their freedom of expression.

II-LEGISLATION ON THE REGULATION OF DOMAIN NAMES

Domain names on the internet are regulated by the Internet Domain Names Guide, which came into effect after being published on the Official Newspaper no. 27752 on November 7, 2010, and the Internet Domain Names Notice, which came into effect after being published on the Official Newspaper no. 28742 on August 21, 2013.

The Internet Domain Names Guide has the following regulation on Article 3-ğ: ***"The list of unallocatable names: It explains the list composed of the subdomain names and the domain names not allocatable due to being against the legislation, public order and general morality."***

Furthermore, the Internet Domain Names Notice has the following regulation on Article 34: ***"Names not allocatable due to being against the legislation, public order, national security, general mo-***

rality, health and security as well as all top-level domain names in the world and second level domain names under ".tr" go into the List of Unallocatable Names."

The definition of morality in this regulation has the risk of being interpreted against the LGBT people. As mentioned before, not having a concrete definition of morality and the concept's ambiguous use by the legislation officers pose a risk because LGBT people's expression might be considered immoral and be punished.

In the past, the regulation in Article 56 of the Civil Code, ***"No association contrary to law or morality can be founded"***, caused Kaos GL, Pink Life and Bursa Rainbow LGBT associations to risk being closed down and started closure cases against Lambda Istanbul and Black Pink Triangle LGBT associations. When the regulations are considered together with these cases, it is possible to say that blocking domain names with a morality criterion create risk against the LGBTI people.

III- REGULATIONS ON FILTERING APPLIED AT THE INTERNET CAFES

Implementation of filtering programs at the internet cafes started with a circular letter no. 2006/38 on April 26, 2006 by the General Directorate of Provincial Administration. The letter has the following precept:

"Provision of filtering softwares at the internet cafes that will prevent accessing websites injuring the indivisible unity of the State with its country and nation, threatening general security and aiming to break down the constitutional order as well as websites consisting of gambling, pornographic, marginal content that promotes harmful habit and websites, and constant updating of these filtering programs."

The definition of morality in this regulation has a risk of being interpreted against the LGBTI people due to the reasons mentioned before.

In the LGBTT People's Human Rights report published in 2007 by the LGBTT People's Human Rights Monitoring and Judicial Commission has the following statement about the regulation: ***"The exercising of freedoms of expression and organisation by the LGBTT people is often precluded due to general morality, which in this case might be the very precept of the regulation that was used. The Commission establishes that the freedom of expression is violated."***

The Guide on Business License concerning the internet cafes has the following regulation in Article 44: ***"Playing games that increase knowledge and skills or develop the mind from the computers at the internet cafes are allowed. In this businesses, accessing internet pages that might harm the indivisible unity of the State with its country and nation, the Constitutional order, general security and general morality, is forbidden. It is obligatory to use the filtering softwares that help blocking such websites in order not to enter them."*** As being "harmful to the general morality" is left ambiguous, again it creates a risk to ban LGBTI publications.

2- LEGISLATION RESTRICTING PUBLICATIONS ON THE INTERNET

The regulations mentioned in the first part include regulations that are directly related to the internet publications. The regulations that do not directly regulate the publications on the internet, however, allow certain enforcement are explained below:

THE TURKISH PENAL CODE

Obscenity

Article 226 - (1) a) Those who give a child obscene visual, printed or audio material or those who show, read, make read or make listen to the content,

b) Those who show, read, make read, speak or make speak about the content publicly or in places where children can go or see,

c) Those who expose these materials for sale or rent in a way that the content is clear,

d) Those who expose these materials for sale or rent, or sell in places not dedicated for selling them,

e) Those who give or distribute these materials for free besides or through the sale of other goods and service,

f) Those who advertise these materials,

are punished with imprisonment from six months to two years, and punitive fine.

(2) Those who publish the obscene visual, printed or audio material through press or who facilitate that are punished with imprisonment from six months to three years, and punitive fine up to five thousand days.

(3) Those who use children in the production of obscene visual, printed or audio material are punished with imprisonment from five years to ten years, and punitive fine up to five thousand days. Those who smuggle, copy, expose for sale, sell, transfer, store, export, keep or bring these materials for others' use are punished with imprisonment from two years to five years, and punitive fine up to five thousand days.

(4) Those who produce, smuggle, expose for sale, sell, transfer, keep or bring these materials containing visual, printed or audio record of sex by using violence, with animals, with a death body or in an abnormal way, for others's use are punished with imprisonment from one year to four years, and punitive fine up to five thousand years.

(5) Those who publish the material mentioned in the 3rd and 4th Clauses through press or who facilitate that, or who make children see, listen or read those materials are punished with imprisonment from six years to ten years, and punitive fine up to five thousand years.

(6) Regarding these crimes, legal persons are entitled to specific security measures.

(7) The clauses of this article is not implemented in scientific publication as well as productions of artistic and literary value excluding the 3rd Clause and providing the condition that children do not have access.

The definition of "obscenity" has a risk of being interpreted agains the LGBT people. Not having a concrete definition of obscenity and the concept's ambiguous use by the legislation officers pose a risk because LGBT people's expression might be considered obscene and be punished. As a matter of fact, the 28th issue of the Kaos GL Magazine, the L Version of Love book published by Kaos GL and Anil Alacaoglu's book "The Third Class Woman" are classified as obscene due to their homosexual content.

Murat Volkan Duger evaluates the crime of obscenity from a legal point of view in this article "Legal Evaluation of Blocking Internet Communication and Regulation Brought by Law No. 5651" as follows:

"Another important issue that should be mentioned here is whether pornographic materials involving adults constitute a crime or not. There is an established view in socioeconomically developed countries, where freedom of expression is respected, that pornographic materials involving adults and their distribution do not constitute a crime… According to this, adult pornography is considered as a

crime with no victim. The reason why it is considered as a crime is based on past moral values. However, the people that are assumed to be victims are actually the actors in pictures or movies in question. These actors are over 18 and they are doing the shoots for a certain free according to a contract signed with producers, therefore, it is not possible for them to be deceived or forced into these shootings. Hence, in the sense of penal code, there is no victim.

On the other hand, these materials are not sold publicly and can only be bought and watched by people over 18. Therefore, it is prevented for children's psychological development to be affected by such materials. Furthermore, people who watch these materials are not victims. It is a conscious choice of people who reached a sexual maturity. Whether producing or consuming these materials are morally right or wrong is not in the interest of penal code and the State does not have a duty to protect adults from such materials. Because a secular state does not interfere with its citizens' sexual lives and desires as long as they do not affect another person's freedom; this is only possible in a regime run by religious rules. Therefore, in our country, which is claimed to be a secular state, such acts should not be a crime and there should not be any protective measures against it. Otherwise, soon it would be possible to consider websites with pictures of women in swimwear or websites promoting or selling underwear as obscene, block the access to these websites as a protective measure, and punish the managers of them. However, all of this is about adult pornography, it does not include child pornography or the protection of children from materials aimed at adults. The state is responsible for protecting children from such materials in compliance with international convention and all measures should be taken.

The leading example on this issue is the United States of America. In the country, the provision of pornographic materials is consid-

ered as part of the freedom of expression. According to this, the most important regulation in the USA regarding freedom of expression is the First Amendment in the US Constitution. When the First Amendment is evaluated for its content, it seems to be a protection amendment which includes not only freedom of expression but also other freedoms such as press, meeting, petition or form an association. According to the US Constitution, the source of freedom of expression is a necessity for the State's duty for its people. Which means that the State is responsible for protecting these freedoms due to its duty of service."[14]

"At the first glance, the First Amendment might seem like it provides an absolute protection over freedoms. However, contrary to what is believed, the area of absolute protection is rather narrow. Classification of freedoms by certain methods and standards constitute the basis. These methods and standards are formed through legal precedents, and acknowledged as a 'test' to apply on similar cases. Freedom of thought and expression has a great importance among the freedoms protected by the First Amendment. Early applications in the USA which disregarded some statements narrowed the area of the First Amendment. In the early applications, pornography, too, was not considered as a 'statement' and not protected. By time, dynamic interpretations were brought in, which opened up the narrowed protection of the First Amendment. Pornography, as well, was included in the protection area due to the developing dynamic interpretations. The important point here is the separation of the concepts pornography and obscenity. In the Miller v. California decision, pornography and obscenity were defined and the protection area of the First Amendment was determined. According to this, while explicit expressions and images aiming to arouse sexual

14 http://www.dulger.av.tr/pdf/interneterisimininengellenmesi.pdf

incitement in the viewer is defined as 'pornographic', whereas immoral, irritating, disgusting, sexually abusing expressions, images and acts were evaluated as 'obscene'. The separation made there also determines the protection area of the First Amendment. Thus, pornography can benefit from the general protection of the freedom of thought and expression, whereas obscenity cannot. In order to determine the difference, the 'Miller test' was formed upon the court decision and the standard was determined (Miller v. California, 413 U.S. 15, 1973). The Miller test evaluates the content and the following expressions, images or acts are defined as 'obscene': Lacking serious literary, artistic, political, or scientific value; violating community standards regarding obscenity; appealing to prurient interest. However, this standard has also very ambiguous lines. Evaluating pornography as part of freedom of expression should not be understood as an absolute protection of any expressions made through pornography. Proliferation of child porn, where sexual abuse and objectification of children takes place, led to reconsidering the borders of pornography. In fact, today women are forced to be a model or object of pornography without their consent determines the borders of freedom of expression and pornography."[15]

The article "Restricting the Freedom of Internet Access: An Evaluation on Turkey" by Turkay Henkoglu and Bulent Yilmaz includes following questions:[16]

"It is seen that censorship applied on information centres in the fields of obscenity, politics, society and religion is today applied on the internet where there are more information sources (Oppenheim and Smith, 2004). However, the internet censorship is a new and impor-

15 Öykü Didem Aydın, Üç Demokraside Düşünce Özgürlüğü ve Ceza Hukuku, C.İ, Ankara, Seçkin Yayıncılık, 2004, s. 55, 58, 62, 82.

16 http://www.bby.hacettepe.edu.tr/e-bulten/dosyalar/file/Aralik2013/henoglu.pdf

tant phenomenon changing by the country, culture and content (child pornography, terrorism, gambling etc.) (Al-Saqaf, 2010). The term 'filtering' has the same meaning of censorship when applied by and authority and is often used as the technical expression of censorship.

Filtering is applied to child abuse, violence, racism, drugs, gambling, terrorism and pornographic content in many countries on the grounds of maintaining society's morality, protecting children and security. (Bothma, 2010). In democratic societies, the responsibility of filtering is left to users' own decisions. The essence of the discussions consists of acknowledging the presence of internet censorship and which cases will be subject to access ban.

When obscenity and pornographic content cannot be defined, it is difficult to define the internet censorship (Jones, 1999). According to Malley (Malley, 1990, p.21), when censorship will be applied changes depending on the political opinion. Herein, it is important to consider the difference between censorship restricting the freedom and access ban, which are applied by the very same authority. Restriction is a set of definite and clear rules to stop an act which is not wanted to spread in the society due to ethics. Whereas censorship is an approach pressuring the thoughts and expressions of individuals or society. From this aspect, censorship is the reflection of an harder attitude used to eliminate the authority's concerns (Prabhat, 2011).

Semantic and practical differences between censorship and restriction legitimise access restrictions. Therefore, the authorities accomplish their censorship practices based on the expression "access restriction" and legal regulations.

… The ambiguousness of the concept obscenity, the ambiguousness of how to fight other crimes that the catalog crimes, banning the access to whole website rather than to harmful content, not ac-

knowledging the website owner's right to defence and not giving information about the closure make up areas that need to be reconsidered within the Law no. 5651 and that affect Turkey's situation for censorship negatively.

… The restrictions that the TIB require service providers to adapt regarding filtering based on the legal regulations might turn into censorship practices depending the the content of list of forbidden words to be used in the hosting services. Another important issue regarding access bans is that most ban decisions are related to obscenity. Obscenity and child pornography, which are mentioned in Article 226 of the Turkish Penal Code and among the catalog crimes in the Law no. 5651, do not have clear definitions in the Turkish Legislations. Legal sources as to give an idea about the scope and content of obscenity can be the Supreme Court Practices. But in this issue as well, how the TIB works is not clear. Thus, it is thought that there can be mistaken practices. However, the EU regulations, which are sensitive to child pornography, explained the concept in its legislations in 2001. (European Commission, 2001). Similarly, the definition of child pornography is clearly given in the protocol prepared by the United Nations as an appendix to the Convention on the Rights of the Child, which is also signed off by Turkey in 2004 (CRİN, 2000).[17]

As seen in the aforementioned legal discussions and examples, determining the criteria for which acts are subject to obscenity regulations affects the LGBTI people's freedom of expression directly, and determining the criteria is mandatory by the principle of no punishment without law.

17 Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

D- EXAMPLES ON ACCESS BAN TO LGBTI WEBSITES

As the internet use swelled, internet websites for LGBTI peopled also increased. This increase face more access bans to LGBTI websites, as well.

On this issue, Yildiz Tar reported on June 2, 2015 at kaosgl.org:

"The websites www.gaylez.com, www.travestice.com, www.travestisitesi.com, www.turkgaybar.com and www.istanbulgay.com, which promote places for gay and trans people, and share news, were blocked by the TIB on April 9, May 7, May 27 May 26 and May 27, respectively. Administrative measures on the websites make it impossible to access them in Turkey.

It is remarkable that the whole websites have been blocked rather than certain content and the number of censored websites by the "Law on Regulation of Publications on the Internet and Combatting Crimes Committed by Means of Such Publication" no. 5651 increases."[18]

On this issue of access ban to the internet website GayMag, Yildiz Tar reported on August 17, 2015 on kaosgl.org:

18 http://kaosgl.org/sayfa.php?id=19548

"The gay culture, life and tabloid website Gaymag is blocked to access by the Telecommunications Communication Presidency as an administrative measure.

Following the censorship, Gaymag made a statement from their social media account and said "The TIB uses an administrative measure to our address due to a content we don't know."

Kaos GL Association and Foundation for Society and Legal Studies (TOHAV) give legal support to Gaymag on the issue of censorship. Website manager received counselling under the scope of the "Diversity and Strategic Litigation Network" run by the two organisations. The censorship decision will be appealed to stop the implementation.

TOHAV lawyer Meryem Kavak talked to ***KaosGL.org*** *on the blocking of Gaymag and said: "The content of the measure was not notified to us. We do not even know which catalog crime led to the measure. We will appeal to stop the implementation. The TIB is acting contrary to all legal principles."*[19]

19 http://kaosgl.org/sayfa.php?id=20028

E-CENSORSHIP BY GLOBALLY USED INTERNET WEBSITES TO LGBTI PEOPLE IN TURKEY

The harsh censorship that the website contents face in Turkey is not only resulted from the state. Globally used websites are observed to implement more censorship in Turkey, fearing potential enforcement on themselves.

A striking example of that was seen when Facebook censored a news by Kaos GL. According to a news published on July 29, 2015 at kaosgl.org:

"Facebook administration censored the kaosGL.org news titled 'Completely naked against homophobia' . The news, censored for violating the community rules, was removed by Facebook.

The news was about a gay couple who got naked in the Sao Paulo Paulista Square to protest homophobia. The photos published by kaosgl.org show the couple hugging each other."[20]

The censorship by Facebook to the Kaos GL news continued, as the Bianet news on the censorship was censored by Facebook, too!

20 http://kaosgl.org/sayfa.php?id=19929

On the issue, kaosgl.org reported as follows:

"The Bianet news on the Facebook censorship to the Kaos GL news titled 'Completely naked against homophobia' was also removed by Facebook.

Facebook said the photograph used as headline, which belonged to the original news, violated its 'community rules.' Facebook also removed the Bianet page managers and shared the warning message 'Content shared by bianet was removed more than once due to being contrary to the community rules.'

The censored news at kaosgl.org is about a gay couple in Brazil who got naked in the Sao Paulo Paulista Square to protest homophobia. The photos published by kaosgl.org show the couple hugging each other."[21]

Besides that, Facebook closed down the accounts of users without their official names, which restricts the LGBTI people's right to share in social area and rights to communication in a country where LGBTI people are forced to live without outing themselves.

On the issue, Kaos GL Editor Yildiz Tar reported on May 27, 2015 at kaosgl.org:

"Due to Facebook's imposition on 'real identity', many people's accounts are closed down one by one. The social media website, which forces people to open accounts 'with names used in real life', asks for documents such as ID for proof.

The obligation to present ID and relevant information to Facebook brings about the discussion of privacy and profiling. When it comes to LGBTI people, this practice leads to many threats and discrimination.

21 http://kaosgl.org/sayfa.php?id=19933

Gay and trans people who are not out are forced to come out. LGBTI people who want to keep their Facebook accounts are forced to present their names on their IDs. This situation opens the way for potential violence, mobbing and discrimination. This practice causes an extra discrimination for trans people. Trans people are discriminated by forcing them to choose the ID name given by their family, not their real name of choice."[22]

The spread of the internet censorship in Turkey to websites which do not practice censorship in other countries show how important the discussion of censorship practices are for the freedom of expression.

22 http://kaosgl.org/sayfa.php?id=19506

F-APPEALS BY LGBTI ORGANISATIONS AGAINST RESTRICTION ON THEIR FREEDOM OF EXPRESSION ON THE INTERNET

As aforementioned with various examples, access ban to the internet as an often used method had an impact on LGBTI websites, as well. Following are the appeals against the restrictions:

Following the access bans to LGBTI organisations' websites from the computers used by students at various universities, Kaos Gay and Lesbian Cultural Research and Solidarity Association appealed to Eskisehir Anadolu University, Ege University, Hacettepe University, Trakya University, Kafkas University and Diyarbakir Metropolitan Municipality to acquire knowledge on filtering they use. Upon the appeals, access bans in many universities and in municipality were uplifted.

However, the reply no. B.30.2.ANA.0.70.61.00-1010-218 on June 13, 2007 by Eskisehir Anadolu University was as follows: ***"Our university uses a software to block websites that are contrary to the use of the network, peer-to-peer file download websites, websites broadcasting advertisement, websites to illegally download MP3 and similar multimedia files, websites allowing to download big amounts of picture and video, websites creating a security risk and high traffic which usually provides sexual content.***

This is a Websense URL database and content filtering software that classifies all websites. In this software, all the websites are classified according to their content.

Your association's website www.kaosgl.org is seen under the "Adult Content" category in the Websense database. In the search done in Websense database, it is understood that the website in question is added to the "Adult Content" category due to having visual material associated with sexual intercourse. Therefore, the software blocks the access.

Access to the websites contrary to the purpose of university network can be provided by the exterior access points on the condition that the costs will be paid by those concerned.

Due to the reasons mentioned, our Administration cannot take action regarding your petition."

Despite this reply, by the time the report was given, the access was restored at the university.

And Kafkas University replied to the association on May 31, 2011 as follows: ***"Our university did not block access to any websites other than those in the Black List prepared by the Telecommunications Communication Presidency."***

Following that, Kaos GL appealed to the TIB based on Kafkas University's reply to acquire knowledge about the filtering at universities. With the appeal based on Right of Information Act, the association asked whether the official website of the association is in the black list. Although the reply was that there is no such practice, the access ban on the association's official website from the public computers still continues.

Besides that, access to one of the worldwide dating websites for LGBTI people, www.grindr.com, was blocked by Istanbul Anatolian 14th

Penal Court of Peace's decision no. 2013/406 on August 26, 2013. The appeal by the Black Pink Triangle Izmir Association and the ban was still effective by August 20, 2015 when the report was updated.

The Information and Communication Technologies Authority's Draft of Procedures and Principles on Safe Use of the Internet to make the filtering systems already used in Turkey more systematic caused serious debates. A campaign was called "Don't Touch My Internet" was started up against the bill, which organised demonstrations in 30 cities in Turkey.

"The Draft of Procedures and Principles on Safe Use of the Internet is tackled on the issue of 'safe use of the internet' on February 22, 2011, and consists of fifteen articles. Upon the articles in the Draft, it is decided that the 'Draft of Procedures and Principles on Safe Use of the Internet' in the appendix, which is under the scope of 4th, 6th and 50th Articles of Law no. 5809 and Article 10 of Guide to Consumer Rights in the Electronic Communications Sector which became effective after being published on the Official Newspaper no. 27655 on July 28, 2010, is approved and becomes effective. According to the draft, companies providing internet service will offer 4 different kinds of filtering (standard, child, family, domestic) to their subscribers. The subscribers have to choose one of the options, otherwise their internet access will be filtered according to the 'standard' profile. The websites to be filtered in every option will be determined by the BTK but they will not be shared with public. The content in Article 4 to create user profiles on the internet is as follows:

ARTICLE 4- (1) Profiles mentioned in this document of procedures and principles are:

a) Family profile: The profile that the user cannot access to the domain names, IP addresses, ports and web proxy sites in the black list sent by the Authority to the companies.

c) Child profile: The profile that the user can only access to the domain names, IP addresses and ports in the white list sent by the Authority to the companies.

k) Standard profile: The profile that there is no limitation regarding user's access to websites and applications, that the internet is accessed under the scope of the current legislation.

l) Domestic internet profile: The profile that the user can only access to domain names, IP addresses and ports which are hosted in the home country and not in the black list.

IPS Communications Foundation/bianet, appealed to the Council of State on April 13, 2011 in order for the BTK decision to be cancelled and the implementation stopped. On the appeal to the Council of State, the Foundation stated that the BTK's new decision does not have a legal basis and it disproportionately restricts basic rights and freedoms recognised by the Constitution and International Conventions. Lawyer Ayse Altiparmak, who appealed on behalf of the Foundation, expressed that the Authority is allowed to arbitrarily prepare a list of forbidden words and that it is not reasonable to decide on behalf of parents to protect the children from harmful content.

On April 27, 2011, the Telecommunications Communication Presidency (TIB) send a list of forbidden words to hosting companies. No domain names can be obtained, used or accessed if they happen to use one of words mentions in the notification with a sender address yersaglayici@tib.gov.tr. The list consists of 138 words and three groups."[23]

There are words in the list of forbidden words which express LGBTI identities. It is clear that by prohibiting these words, LGBTI people's

23 https://tr.wikipedia.org/wiki/%C4%B0nternetime_Dokunma!

right to expressing them on the internet and right to communication is taken away. Likewise, "gey, gay" words that express (male) gay person both in Turkish and English are also among the forbidden words.

It is announced on April 28, 2011, that the notification sent by the TIB regarding the forbidden words is not to prohibit but to inform.

"An e-mail sent by the Information and Communication Technologies Authority to hosting companies on April 21, 2011, asked for many websites to stop service. The e-mail is as follows:

> *"Dear Hosting Provider,*
>
> *It is detected that you give hosting service to the domain names below. In this context, you have to immediately stop giving hosting service to these. Otherwise, legal actions will be taken without any notification. On the other hand, you should not give hosting service to the internet websites within the scope of catalog crimes (obscenity, prostitution, sexual abuse of children) mentioned in the Law no. 5651 from now on, as well.*
>
> *We request necessary actions to be taken immediately and information on the result to be shared with us.*
>
> *Information and Communication Technologies Authority*
>
> *Telecommunications Communication Presidency"*

More than sixty websites were on the list, including the urban dictionary Eksi Sozluk, fast forum website myfastforum.org, girls' dormitory alkinkizyurdu.com.tr, religious video website ankebut.net, real estate agency website emlakbankbodrum.com, news websites index aferin.net, information websites on harassment and abuse www.tacizveistis-

mar.com and Pink Life LGBTT Solidarity Association pembehayat.org. Following the press published the e-mail, the TIB made a short statement and said 'there is no decision of blocking'.

There were criticism against the "Draft of Procedures and Principles on Safe Use of the Internet" and the TIB's demand to close down Eksi Sozluk. There were many posts protest messages on Twitter, as well. The #22agustos became one of the most popular hashtags in the world on Twitter. More than 600.000 people attended the event 'Don't Touch My Internet!" on Facebook. Eksi Sozluk writers responded to the closure decision with hundreds of entry. An online petition started on Imza.la with the title 'Don't Touch My Internet' had more than 8 thousand supporters soon after being shared on Twitter and Facebook.

In many cities, people have been prepared to protest the "Draft of Procedures and Principles on Safe Use of the Internet" which will be effective on August 22. It has been decided to hold marches against censorship in Amsterdam, Koln and Vienna together with 30 different cities in Turkey on May 15, 2011 Sunday at 14:00."[24]

As seen in the news, the official website of Pink Life LGBTT Association pembehayat.org is among the websites to which access was blocked through filtering. But there is no information regarding the official website of TIB and the website pembehayat.org is still accessible.

24 https://tr.wikipedia.org/wiki/%C4%B0nternetime_Dokunma!

RESULT AND SUGGESTIONS

The legislation in Turkey regarding the content of internet publications and the acquisition of domain names is a threat no only to LGBTI people, but to the freedom of expression in general. Even the limited number of examples evaluated in the report shows that ambiguous concepts such as "obscenity", "public order" and "morality" result in the use of a widespread authority for blocking.

Article 26 of the Turkish Constitution states:

Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.

(As amended on October 3, 2001; Act No. 4709) The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or

protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

(Repealed on October 3, 2001; Act No. 4709)

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts as long as the transmission of information and thoughts is not prevented.

(Paragraph added on October 3, 2001; Act No. 4709) The formalities, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought shall be prescribed by law.

Moreover, according to Article 10 of the European Convention on Human Rights, which is signed by Turkey and implemented by the Turkish Parliament:

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The European Court of Human Rights made a reference to the importance of freedom of expression democratic societies in various decisions stating what the freedom of expression mentioned in Article 10 of the Convention means. One of the decision remarks: ***"Freedom of expression constitutes one of the basic institutions of a democratic society which is one of the essential conditions for the development of society and all individuals.***

The "expression" protected by Article 10 is not limited to written or verbal expressions; it also includes expressing an idea, and visual materials or acts aiming to present information. In some cases, even clothing can be evaluated as part of Article 10.

Furthermore, Article 10 protects not only the content of information or ideas, also the means helping express these. Therefore, documents radio broadcasting, painting, films and electronic data systems are protected by the Article. It means that means used to produce, transfer and circulate information and ideas are also part of Article 10.

A typical characteristic of Article 10 is that it also protects information or ideas that offend, shock or disturb big parts of the society. As the European Court of Human Rights put it laconically in the case of Handyside v. the UK and repeated again and again in various decisions:

"[Freedom of expression] is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'.

On this basis, the ECtHR judged that a painter's freedom of expression is intervened as his/her paintings were seized temporarily upon the decision of a national court claiming the paintings were obscene. Similarly, authorities seizing a film due to claims that some scenes are obscene is defined as an intervention the freedom of expression by the ECtHR. Again, collecting books because some parts are regarded as obscene is approached in the same way by the ECtHR.

In order for the freedom of expression, which is guaranteed by the Turkish Constitution and international conventions signed by Turkey, to be actively exercised, there is a need for the legislation, which allows authorities to restrict the internet access, to be regulated again in a way that does not include ambiguous criteria and that does no cause discrimination.

FEMINIST PRINCIPLES ON THE INTERNET

1. A feminist internet starts with and works towards empowering more women and queer persons – in all our diversities – to dismantle patriarchy. This includes universal, affordable, unfettered, unconditional and equal access to the internet.

2. A feminist internet is an extension, reflection and continuum of our movements and resistance in other spaces, public and private. Our agency lies in us deciding as individuals and collectives what aspects of our lives to politicize and/or publicize on the internet.

3. The internet is a transformative public and political space. It facilitates new forms of citizenship that enable individuals to claim, construct, and express our selves, genders, sexualities. This includes connecting across territories, demanding accountability and transparency, and significant opportunities for feminist movement-building.

4. Violence online and tech-related violence are part of the continuum of gender-based violence. The misogynistic attacks, threats, intimidation, and policing experienced by women and queersLGBTQI people is are real, harmful, and alarming. It is our collective responsibility as different internet stakeholders to prevent, respond to, and resist this violence.

5. There is a need to resist the religious right, along with other extremist forces, and the state, in monopolizing their claim over morality in silencing feminist voices at national and international levels. We must claim the power of the internet to amplify alternative and diverse narratives of women's lived realities.

6. As feminist activists, we believe in challenging the patriarchal spaces that currently control the internet and putting more feminists and queers LGBTQI people at the decision-making tables. We believe in democratizing the legislation and regulation of the internet as well as diffusing ownership and power of global and local networks.

7. Feminist interrogation of the neoliberal capitalist logic that drives the internet is critical to destabilize, dismantle, and create alternative forms of economic power that are grounded on principles of the collective, solidarity, and openness.

8. As feminist activists, we are politically committed to creating and experimenting with technology utilizing open source tools and platforms. Promoting, disseminating, and sharing knowledge about the use of such tools is central to our praxis.

9. The internet's role in enabling access to critical information – including on health, pleasure, and risks – to communities, cultural expression, and conversation is essential, and must be supported and protected.

10. Surveillance by default is the tool of patriarchy to control and restrict rights both online and offline. The right to privacy and to exercise full control over our own data is a critical principle for a safer, open internet for all. Equal attention needs to be paid to surveillance practices by individuals against each other, as well as the private sector and non-state actors, in addition to the state.

11. Everyone has the right to be forgotten on the internet. This includes being able to access all our personal data and information online, and to be able to exercise control over, including knowing who has access to them and under what conditions, and being able to delete them forever. However, this right needs to be balanced against the right to access public information, transparency and accountability.

12. It is our inalienable right to choose, express, and experiment with our diverse sexualities on the internet. Anonymity enables this.

13. We strongly object to the efforts of state and non-state actors to control, regulate and restrict the sexual lives of consenting people and how this is expressed and practiced on the internet. We recognize this as part of the larger political project of moral policing, censorship and hierarchization of citizenship and rights.

14. We recognize our role as feminists and internet rights advocates in securing a safe, healthy, and informative internet for children and young people. This includes promoting digital and social safety practices. At the same time, we acknowledge children's rights to healthy development, which includes access to positive information about sexuality at critical times in their development. We believe in including the voices and experiences of young people in the decisions made about harmful content.

15. We recognize that the issue of pornography online is a human rights and labor issue, and has to do with agency, consent, autonomy and choice. We reject simple causal linkages made between consumption of pornographic content and violence against women. We also reject the umbrella term of pornographic content labeled to any sexuality content such as educational material, SOGIE(sexual orientation, gender identity and expression) content, and expression related to women's sexuality.