



PERMANENT MISSION OF TURKEY  
TO THE UNITED NATIONS  
GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue, the Special Rapporteur on the rights to freedom of peaceful assembly and of association Mr. Maina Kiai and the Special Rapporteur on the situation of human rights defenders Ms. Margaret Sekaggya's letter dated 27 March 2014 (ref: AL G/SO 214 [67-17] Assembly & Association [2010-1] G/SO 214 [107-9] TUR 3/2014), has the honour to transmit herewith an informative note obtained from the relevant Turkish authorities, regarding the current legislation on internet access and the blocking and restoration of access to the microblogging website Twitter.com in Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

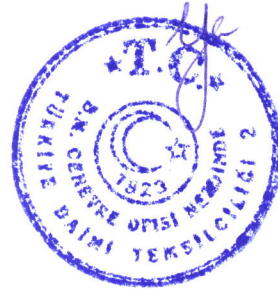
OHCHR REGISTRY

23 APR 2014

Geneva, 23 April 2014

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Encl: As stated



Office of the High Commissioner for Human Rights  
Palais Wilson  
Geneva

**RESPONSE OF THE GOVERNMENT OF TURKEY TO THE JOINT ALLEGATION  
LETTER (TUR 3/2014) RECEIVED FROM THE UN SPECIAL RAPPORTEURS**

The Turkish Government would like to submit the following information in response to the allegations stated in the allegation letter sent by Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association and Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders:

The Law No.5651 on Regulations on the Internet and Combating Crimes Committed by Means of Publications through Internet entered into force on 23 May 2007. The Law was designed to provide an efficient and accurate framework for combatting crimes committed by abusing the opportunities provided by fast-spreading electronic communications including the internet.

The Law aims to prevent crimes against certain social groups notably family, children and youth that are under special protection of the Turkish Constitution. The scope of the Law is in line with the European Commission's "European Strategy for a Better Internet for Children" (No.COM (2012) 196) dated 2 May 2012, which intends to enable children to fully enjoy freedom of internet and to provide access to a safer internet environment. In this context, Turkey fights against extreme pornographic content which can easily be accessed by children as well as child abuse, and almost all of the access blocking measures in Turkey have been taken mainly for the purpose of preventing access to such contents.

The said Law was amended respectively on 6 February 2014 and 26 February 2014. Several internet actors and NGOs were consulted within the context of the legislative works. With the amendment, the provisions of international conventions on protection of personal rights and the right to privacy to which Turkey is a party are now better implemented.

*The following amendments were made to the Law No.5651 by the Law No.6518 dated 06/02/2014:*

1. Prison sentences are abolished and punishments restricting freedoms are converted to punitive fines,
2. Violations of personal rights are precluded by effective and proportionate measures,
3. Interlocutory injunctions are applied effectively and expeditiously by civil initiative by means of forming a Union of Access Providers,
4. It is enabled to issue a blocking order for a certain period of time instead of an indefinite period,
5. It is provided that the violation of personal rights (particularly the violation of the right to privacy) via internet be eliminated by proportional measures to be taken within the shortest time possible,
6. Interlocutory injunctions with respect to blocking access will be issued solely for the publication, part and section where the violation takes place, by means of blocking such content in the form of URL. An order for blocking an entire access of a website can only be issued as a last resort,
7. Provisions on providing safe use of internet and enhancing cyber/IT consciousness are included,
8. Operation of inland hosting service is facilitated,

9. The scope of traffic information which contains a set of data belonging to internet users is narrowed considerably, and the optional clauses in the previous regulation are removed from the relevant definition,
10. Traffic data can only be obtained by the Presidency of Telecommunication and Communication upon an investigation or a prosecution. Thus, judicial protection is strengthened in favour of the internet users,
11. By means of identifying the courts which are competent to issue interlocutory injunctions with respect to blocking access to publications made through internet, division of work envisaging specialisation among the courts are realized,
12. Shortcomings with respect to judicial protection are eliminated by introducing a provision that the decisions on blocking access issued upon an individual application filed in case of a violation of personal rights or by an ex-officio motion by the Presidency of Telecommunication and Information in case of a violation of the right to privacy shall be submitted directly to the approval of the competent court.

Access blocking measures against Twitter website was taken pursuant to the following court decisions:

- Decision of Samsun 2<sup>nd</sup> Magistrates' Court dated 4 March 2014 on the denial of access on the ground of creating a fake Twitter account with obscene material,
- Decision of İstanbul Anadolu 5<sup>th</sup> Magistrates' Court dated 18 March 2014 on the denial of access on the ground of violation of personal rights,
- Decision of İstanbul Anadolu 14<sup>th</sup> Criminal Court of First Instance dated 3 February 2014 on the ground of violation of personal rights by creating fake Twitter accounts.
- Warrant of İstanbul Chief Public Prosecutor's Office dated 7 March 2014 stating that the person in question was indicated as a target to criminal organizations

Before taking an administrative action to block access to Twitter website, authorities of the said website were asked to remove the problematic content pursuant to the courts' decisions and the warrant of the Public Prosecutor's Office. However, almost none of these requests were fulfilled by Twitter. Therefore, such a measure was imposed as a last resort in order to bring an end to the violations of personal rights, the right to privacy, confidentiality of the investigation and obscenity, as well as to prevent further irreparable damages for the citizens.

The decision to block access to Twitter website was based on the above-mentioned courts' decisions and was aimed to address the violation of the rights mentioned above. The allegations in the letter that the blocking decision was ordered to curtail criticism against the Government are totally baseless and false.

The Turkish Government would like to indicate that access to the website Twitter.com was restored upon a judgment rendered by the Constitutional Court on 2 April 2014 where the Court annulled the decision of blocking access to the said website. The judicial process leading to reactivation of access to Twitter is explained below:

İstanbul Anadolu 5<sup>th</sup> Magistrates' Court ruled on 18 March 2014 pursuant to Article 9/3 of the Law No.5651 that access to certain websites be blocked. Upon an objection, İstanbul Anadolu 18<sup>th</sup> Criminal Court of First Instance on 27 March 2014 has annulled the decision of İstanbul

Anadolu 5<sup>th</sup> Magistrates' Court on the grounds that the said decision is against the Turkish Constitution, international conventions on human rights, and the Law No.5651.

On 25 March 2014, Ankara 15<sup>th</sup> Administrative Court has adopted a motion for stay of execution on the grounds that the measure in question is related to ban the entire website Twitter.com, and such measure constitutes a restriction of freedom of expression and information which is guaranteed by the Turkish Constitution and the European Convention on Human Rights, and may cause irreparable damages if applied.

Finally, as mentioned above, upon an individual application made to the Constitutional Court, the Court, taking into account the provisions of Law No.5651, has decided on 2 April 2014 that the measure taken by the Presidency of Telecommunication and Communication blocking the entire access to Twitter.com has no legal basis, and blocking such social media network upon a decision with undefined boundaries constitutes a serious intervention to the freedom of expression which is one of the basic values of democratic society.

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Turkey upholds the core values of human rights, fundamental freedoms and the rule of law. As such, freedom of expression and media, as well as the right to privacy and personal rights are safeguarded by the Constitution and other relevant legislation.

Turkey values its cooperation with the international organisations on human rights issues and honours its international commitments. Cooperation with the UN, as well as its special procedures and mechanisms with their valuable work, is of particular importance. Turkey is ready to continue its cooperation and dialogue to this end.