

A Comparative Overview Of Social Media Regulations in the World and Concrete Recommendations FOR TURKEY

Introduction

Progress in information technology particularly in the last 20 years re-defines social relations in various countries and results in radical changes in the structure of politics and economy. Being an output of the progress in information technology, social media platforms are important components that impact social and political changes. At the beginning, these new technologies were welcomed as they provided rich alternatives, were more pluralistic compared to conventional media channels, accelerated and facilitated access to alternative sources of information, strengthened civil society, and expanded democratic collective organization opportunities. Therefore, these new technologies were conceptualized as ‘Liberation Technology’.¹

In recent years, although social media platforms continue to carry the above-mentioned democratic potential in them, the social and political problems they created attracted more and more attention and resulted in a more pessimistic perspective about them.² The problems include enhanced level of social and political polarization through echo chambers, collection and use of personal data without individuals’ consent, proliferation of hate speech and other harmful content, bot accounts

and computational propaganda, election meddling and more. All these problem areas gave rise to a more pessimistic approach to the relation between social media and democracy.³ More importantly, although social media platforms have a democratic potential in them, they can be functional in self-consolidation of authoritarian regimes and in the processes where leaders with authoritarian tendencies make democratic regimes authoritarian.⁴ In this context, social media platforms offer leaders with authoritarian tendencies and authoritarian regimes extremely problematic infrastructural power capabilities such as social control, censorship, discourse manipulation, and strategic distraction by accessing personal data of millions of people.⁵

Due to the inherent structure of digital media channels and social media platforms with these two potentials, many different regulations have been put in place in recent years to regulate social media both in consolidated democracies and authoritarian regimes. According to the Freedom on the Net 2021 report published by Freedom House, 48 of the 70 countries covered introduced one or more regulations to supervise social media. Another important finding from this publication is that global internet freedom declined for the 11th consecutive year.⁶

¹ Liberation technology is briefly defined as any form of information and communication technology (ICT) that can expand political, social, and economic freedom. See Larry Diamond, “Liberation Technology”, *Journal of Democracy*, Vol. 21, Issue 3 (2010), pp. 69-83.

² See Espen Geelmuyden Rod and Nils B Weidmann, “Empowering activists or autocrats? The internet in authoritarian regimes”, *Journal of Peace Research*, Vol. 52, Issue 3 (2015): 338-351.

³ Nathaniel Persily and Joshua A. Tucker (ed.) *Social Media and Democracy: The State of the Field and Prospects for Reform*. (Cambridge: Cambridge University Press, 2020)

⁴ For a summary of studies examining functions of digital platforms in authoritarian regimes, see Jeremy Boo and Dan Slater “The Digitalization of Dictatorship: Early Lessons from a Growing Literature”, *Turkish Policy Quarterly* Vol.20, Issue 3, 2021, pp.19-29.

⁵ See Espen Geelmuyden Rod and Nils B Weidmann, “Empowering activists or autocrats? The internet in authoritarian regimes”, *Journal of Peace Research*, Vol. 52, Issue 3 (2015): 338-351; Jeremy Boo and Dan Slater “The Digitalization of Dictatorship: Early Lessons from a Growing Literature”, *Turkish Policy Quarterly* Vol.20, Issue 3, 2021, pp.19-29.

⁶ Bkz. Freedom House. “Freedom on the net 2021: The global drive to control big tech,” https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf

In Turkey, steps have been taken in recent years to supervise social media. Government officials state that new regulations in this field will be on the agenda in the future. We as Checks and Balances Network have emphasized in various reports that an independent, effective and pluralistic media (conventional and digital) is an indispensable element in a effectively-functioning checks and balances system. The above-mentioned problems about social media can be solved with regulations which can protect users from these effects but which can also secure fundamental rights and freedoms that are vital for a soundly functioning democracy such as privacy, freedom of expression, and access to alternative sources of information.

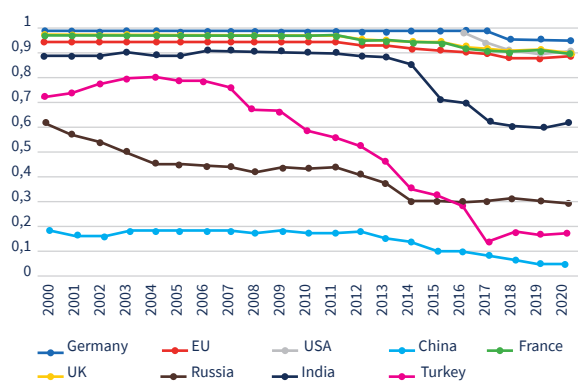
The goal of this report is to examine applications aimed at regulating social media in various countries from a comparative perspective, and to analyze current and expected regulations in Turkey based on examples from other countries. As in all our analysis reports, in the final section of our report, we share with the public and decision makers a set of concrete recommendations about how social media can be regulated without causing any decline in freedom of expression based on good examples of social media regulations.

Methodology

This study has been designed based on comparison of countries with different regime types. In this framework, regulations that are on the agenda or are already in place in countries with a consolidated democratic regime are analyzed with their justifications. Countries included in the study in this respect are Germany, the United Kingdom, France and the United States. The report also examines the recent steps taken to regulate social media at the European Union (EU) level. To make the study a holistic one, we also examined the regulations aimed at regulating social media in Russia and People’s Republic of China which are authoritarian regimes. Regulations to supervise social media in Turkey are evaluated based on this comparative analysis. Characteristics of political regimes in the countries examined in the study are presented in the graph

below (Graph 1) based on Electoral Democracy Index of the Varieties of Democracy Index. According to the graph, the UK, France and Germany are classified as consolidated democracies while Russia and China are in the category of authoritarian regimes. India, on the other hand, is included in the study as an example of a country experiencing democratic backsliding along with Turkey. Especially after 2014, India experienced a rapid decline in the Electoral Democracy Index. Similarly, Turkey has rapidly fallen below the level of 0.5 in the data set since and moved from defective democracy category to competitive authoritarian regime category.

Graph 1. Varieties of Democracy: Electoral Democracy Index



Description: Electoral democracy index ranks countries based on free and fair elections, which constitute the minimum standard of democracy. In the graph, 1 represents the highest level of electoral democracy while 0 represents a level where electoral democracy is totally removed. In the literature of political science, 0.5 is considered as a threshold for transition to an authoritarian regime.

Source: V-Dem, <https://www.v-dem.net/en/>

Status of the countries included in the study in indices with international reputation indicating their data about freedom of expression and freedom on the net is in parallel to the data about their regime type (Table 1, Graph 2).

Table 1. Freedom House Freedom on the Net Data (2020)

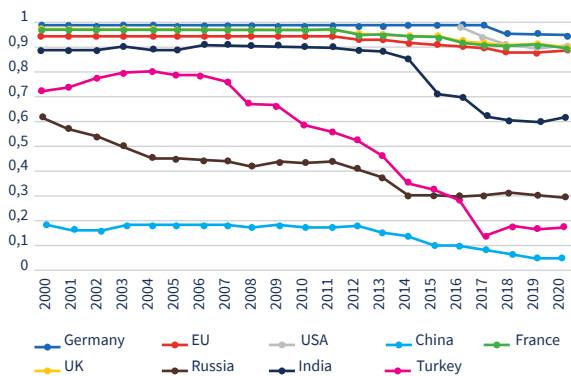
Country	Political Regime Type	Internet Freedom Status	Obstacles to Access	Limits on Content	Violation of User Rights	Total
Germany	Democracy	F	22	29	28	79
France	Democracy	F	23	30	25	78
UK	Democracy	F	23	30	25	78
USA	Democracy	F	21	29	25	75
India	Democracy	PF	11	21	17	49
Turkey	Autocracy	NF	15	10	9	34
Russia	Autocracy	NF	12	10	8	30
China	Autocracy	NF	8	2	0	10

Source: Shahbaz, Funk, Slipowitz, Vesteinsson, Baker, Gothe, Vepa, Weal eds. Freedom on the Net 2021, Freedom House, 2021, freedomofthenet.org

Description: Obstacles to Access: 0-25, Limits on Content: 0-35, Violations of User Rights: 0-40

Total internet freedom score: Total of the categories above: 100-70 = F (Free), 69-40 = PF (Partly Free), and 39-0 = NF (Not Free).

Graph 2. Varieties of Democracy: Freedom of Expression and Alternative Sources of Information Index



Source: V-Dem, <https://www.v-dem.net/en/>

Description: In the graph, 1 represents the highest level of freedom of expression while 0 represents a level where freedom of expression is totally removed.

⁷ See Jack Wagner. (2017). "China's Cybersecurity Law: What You Need to Know". The Diplomat. <https://thediplomat.com/2017/06/chinas-cybersecurity-law-what-you-need-to-know/>

⁸ See Lotus Ruan. (2019). "Regulation of the internet in China: An explainer". The Asia Dialogue. <https://theasiadialogue.com/2019/10/07/regulation-of-the-internet-in-china-an-explainer/>

⁹ See Freedom House. "Freedom on the net 2021: The global drive to control big tech," https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf

In this study, data from various indices of international reputation, domestic and international academic studies that were published, analysis reports and press content were used. The report is composed of three parts. In the first part, differences in justifications for social media regulations in democratic and authoritarian regimes are examined. In the second part, the content of the regulations is analyzed. In the third part, Turkey is examined based on these examples. In the final part, concrete recommendations are presented for a social media regulation which both minimizes freedom of expression deterioration and protects users from harmful content.

Justification of Social Media Regulations in Countries with Different Types of Political Regimes

When justifications of initiatives aimed to regulate and supervise social media are examined, differences in democratic and authoritarian countries attract attention. The dominant discourse about justifications of initiatives aimed to regulate social media in authoritarian countries rather involves the necessity to take measures against illegal and harmful content from foreign web sites. For example, a document published by the Chinese government in 2010 emphasizes that 'within Chinese territory, the internet is under the sovereignty of China'.⁷ In addition to the emphasis on sovereignty, themes such as "protecting the state's dignity", "maintaining public stability and order" stands out as the main discourse in justification of regulations.⁸ Various international institutions highlight that these regulations rather aim to prevent spread of opposing voices and opinions.⁹

In India, which is in the process of democratic decline, the social media regulation came to the fore with the government's demand from Twitter to close or block more than 1000 accounts during the farmer protests across the country. The legislative proposal to regulate the social media area was justified by emphasizing the prevention of harmful content against state security and public order, and it was underlined that the new regulation did not aim to limit the right to criticism and opposition.

When justifications of social media regulation initiatives in Germany, France, and UK are examined, the discourse is different than the ones in authoritarian regimes. For example, justification for the regulation in Germany is expressed as fighting more effectively against producing and spreading of false information, inciting people to crime, provoking people, sharing of images of violence and threatening, which are carried out in general by far-right groups.¹⁰ Likewise, in the example of France, the regulation was justified as to prevent online hate crimes.¹¹ In the UK, discussions about social media regulations started when a 14-year-old girl committed suicide after viewing content on social media in February 2017. Following this incident, initiatives to regulate social media were justified as lowering the probability of all citizens to come across illegal content and enabling social media users to report such content.¹²

Content of Social Media Regulations

Differences observed in justification of social media regulations are also reflected in the content of social media regulations in countries with democratic and authoritarian regimes. Exhibiting these differences and understanding different approaches to regulating and supervising social

media in the world are important in terms of shedding light to discussions in Turkey. Although there are considerable differences between regulations aimed at regulating social media in countries, social media regulations can be classified under different headings:¹³

- 1 Regulations about online content
- 2 Regulations about safeguarding of personal data
- 3 Regulations about competition between social media platforms

Regulations mentioned above aimed to regulate social media, particularly those introduced in the last 10 years, have the potential to trigger a decline in fundamental rights and freedoms such as the freedom of expression. Studies of various international indices measuring freedom on the net indicate that global internet freedom has declined in recent years due to the regulatory attempts.¹⁴

Although the above-mentioned regulations have some similarities in authoritarian regimes and democratic regimes, there are considerable differences in terms of content of regulations and penalties that are applied. Furthermore, structural issues in authoritarian regimes such as independence and impartiality of judiciary and independence of regulatory and supervisory agencies from the executive power show that similar regulations have the potential of bearing different consequences in terms of fundamental rights and freedoms in countries with different types of regimes.

¹⁰ See Deutsche Welle. (2020). "Alman sosyal medya yasası Türkiye'ye örnek olur mu?." <https://www.dw.com/tr/alman-sosyal-medya-yasas%C4%B1-t%C3%BCrkiye-%C3%B6rne%C3%BCrnek-olur-mu/a-54033328>

¹¹ See Universal Rights Group. (2020). "France's watered-down anti-hate speech law enters into force." <https://www.universal-rights.org/blog/frances-watered-down-anti-hate-speech-law-enters-into-force/>

¹² Bkz. Jane Wakefield. (2021). "Government lays out plans to protect users online". BBC. <https://www.bbc.com/news/technology-57071977>

¹³ See Freedom House. "Freedom on the net 2021: The global drive to control big tech," https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf

¹⁴ See Freedom House. "Freedom on the net 2021: The global drive to control big tech,"

Social media regulation and supervision in authoritarian regimes

In authoritarian regimes like the People's Republic of China and Russia, social media has been supervised through various regulations for a long time. In this context, China is among the countries that supervise and regulate social media in the most drastic way. Therefore, China has been at the bottom of the list of countries in terms of freedom on the net according to Freedom House's annual reports.¹⁵

The People's Republic of China

Following a document published in 2010 by the State Council Information Office (SCIO) of the People's Republic of China about the internet policy of the country, the Chinese government gradually introduced regulations and sophisticated filtering systems that gave rise to a strict censorship on the internet in the country. A series of regulatory bodies including the Ministry of Culture, the Ministry of Industry and Information Technologies, the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), the State Council Information Office and other government authorities were assigned the duty of regulating all basic internet activities all together. Service providers must obtain approval and licenses from various state authorities before offering any internet information service.¹⁶ In 2014 the Cyberspace Administration of China (CAC) was established and is responsible to the Central Leading Group (CLG) for Internet Security and Informatization, a policy-making and implementing body that was established to manage the issues

related to internet. Since 2015, spreading of false information that seriously distorts the public order constitutes a crime punishable by imprisonment of up to seven years.¹⁷

Entering into force in 2017, the Cybersecurity Law regulates all online activities in China and assigns the responsibility of verifying real names of users to online service providers. The Law also tasks all network operators to monitor user-created content and detect information "banned by laws or administrative regulations to be published or transmitted". Right after the Law became effective, the Cyberspace Administration of China implemented a series of supplementary regulations such as strengthening requirements of registration by using real name on internet forums and making persons managing chat groups responsible for the content in the platform.¹⁸

These regulations cascade responsibility to individual users, beyond technology companies. Social media companies operating in China grew their workforce and technology to monitor and filter the information hosted in their platforms. They thus adopted a mixed method that involves human examination and machine filtering to help with both pre-active and reactive content removal.¹⁹

The regulations issued by the Cyberspace Administration of China in 2021 made it obligatory for bloggers, content creators, and influencers to hold a permission issued by the government for what they publish on their social media accounts. Users violating these provisions may face a temporary or permanent suspension from social media sites.²⁰

¹⁵ See Freedom House. "Freedom on the net 2021: The global drive to control big tech"

¹⁶ See Lotus Ruan. (2019). "Regulation of the internet in China: An explainer"

¹⁷ See. Human Rights Watch. (2015). "China: New Ban on 'Spreading Rumors' About Disasters". <https://www.hrw.org/news/2015/11/02/china-new-ban-spreading-rumors-about-disasters>

¹⁸ See Lotus Ruan. (2019). "Regulation of the internet in China: An explainer"

¹⁹ See Lotus Ruan. (2019). "Regulation of the internet in China: An explainer"

²⁰ See Freedom House. (2021). "China's information isolation, new censorship rules, transnational repression (February 2021)". <https://freedomhouse.org/report/china-media-bulletin/2021/chinas-information-isolation-new-censorship-rules-transnational>

Russia

In the last 10 years, various regulations regulating and supervising internet and social media were put in place in Russia. A regulation issued in 2015 made it obligatory for social media companies to keep their servers including data about Russian citizens in Russia. The “Yarovaya” law in 2016 further expanded these obligations. Regulations adopted in July 2018 made it obligatory for companies to keep data about all kinds of communications including text messages, voice, data and images on Russian servers for a period of six months and to submit these to authorities upon request without the need for any judiciary supervision.²¹

In 2019, a law was adopted that introduced punishments for individuals who insult public authorities and spread false information on internet. According to the law, individuals who insult the Russian flag or constitution “explicitly” will face a penalty of up to 100 thousand Rubles, and individuals who share or spread fake or false information will face a penalty of up to 400 thousand Rubles. The law also authorizes the government to block websites that do not remove information that the government says fake despite being requested to remove such information.²² Although there is not any clarity as to the implementation, the law authorized regulatory bodies in November 2020 to stop access to internet “in case of an emergency”.²³

Upon some amendments to the Law on Information, Information Technologies, and Protection of Information in 2021, it became obligatory to remove abusive and obscene content on social media sites operating in Russia within 24 hours. In addition, it became obligatory for social

media platforms to remove calls to unauthorized demonstrations and protests, and posts including insults to the state, state figures and authorities.²⁴ It was stated that in controversial circumstances solutions would be found in contact with the Russian Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor).

When efforts to regulate and supervise internet and social media in authoritarian regimes are examined, they function as the instruments in the hands of states and governments that are used harshly to suppress the freedom of expression to an extreme extent and to eliminate opposing voices and pluralism. The level of freedom of expression in China and Russia demonstrates this situation concretely (Graph 1). Likewise, in the data set compiled by the Freedom House on an annual basis to measure the freedom on the net, these countries are ranked at the bottom of the list (Table 1).

Various social media regulations in authoritarian regimes are in general the kind of regulations that involve excessive penalties without a judiciary verdict, prevention of sharing of political content, making personal data and social media posts of social media users public for the state and blocking access to social media platforms, which eliminate the inherent, positive potential of social media for democracy and freedom of expression. Some of the regulations aimed to silence opposing voices and make self-censorship effective may be seen in many countries which maintain their democratic qualities to some extent but which face a process of democratic backsliding.

²¹ See Human Rights Watch. (2020). “Russia: Growing Internet Isolation, Control, Censorship”. https://www.hrw.org/news/2020/06/18/russia-growing-internet-isolation-control-censorship#_ftn6

²² See Enes Günaydın. (2019). “Protestolara rağmen Rus parlamentosu yeni internet yasasını onayladı”. Euronews. <https://tr.euronews.com/2019/03/13/protestolara-ragmen-rus-parlamentosu-yeni-internet-yasasini-onayladi>

²³ See “Sosyal medya yasası: Hangi ülke, internette nasıl denetimler uyguluyor?”. (2020). BBC News Türkçe. <https://www.bbc.com/turkce/haberler-dunya-53261921>

²⁴ See Emre Gürkan Abay . (2021). “Rusya’da sosyal medya sitelerine yeni kısıtlamalar getirildi”. Anadolu Ajansı. <https://www.aa.com.tr/tr/dunya/rusyada-sosyal-medya- sitelerine-yeni-kisittlamalar-getirildi-/2129793>

India

India has been in a rapid democratic decline especially in the last 5 years. India's new social media regulation, which came into force after the protests against agricultural policies, is among the most comprehensive social media regulations that have come into force recently. The regulation in 2021 obliges major social media platforms to open offices and to have 3 authorized representatives in the country. It gives the responsibility of regulating content to social media platforms and requires these platforms to use AI-based content moderation tools. It also obliges the representatives of social media platforms to implement content removal decisions made by a court or other government agencies within 36 hours. In case of non-implementation of the decision, these representatives are held personally liable and sentenced to imprisonment for up to 7 years.

Social media regulation in India includes some positive features such as informing users in advance of the actions to be taken against the content, presenting the reasons for the decisions, and the right to appeal against content removal. However, the evaluation of content through concepts that are difficult to define such as morality and public order, the obligation to disclose the identity of the originators of the content and messages when requested by the government or the judiciary, and the criminal liability of the social media platform representatives are the problematic components of the new regulation in terms of freedom of expression and personal privacy.

In the light of the examples above, the main components of social media regulations in authoritarian regimes can be listed as follows:

- Strict criminal sanctions against users and media platforms.
- Content removal practices without judicial decisions.
- Non-transparent sanctions without prior notice.

- Sanctions for content that is defined overly broad and open to interpretation, such as national security and disinformation.
- Content blocking and website shutdown practices in addition to other sanctions such as content removal and fines.
- Storing the data within the country without any guarantees regarding the confidentiality of the users' information and without judicial oversight.

Social Media Regulations in Democratic Regimes

Discussions and actions about regulation of social media were carried out in democratic regimes as well. Such initiatives aimed at supervising and regulating social media have also stirred discussions in these countries due to their potential to restrict the freedom of expression.

Germany

Germany became the first country to make a regulation in this field. Entering into force on 1 October 2017, The Network Enforcement Act (NetzDG) was revised in 2020 following attacks of far-right groups in the country. NetzDG obliges all social networks with over two million users to establish a system where users can report illegal content such as hate speech, fake news, insult, threats, incitation to crime or violence. Responsible for examining the reported content, social networks are required to remove or block clearly illegal content within 24 hours of it being posted. Social networks who fail to abide by the law may face a penalty up to 50 million Euros.²⁵ Social networks must prepare a report about how they handled complaints every six months, publish the report on their websites and send it to German authorities. The law also obliges social media platforms to have at least one representative to respond to social information requests of German judiciary authorities.²⁶

²⁵ See. "Sosyal medya düzenlemesi: 'Almanya modeli' nedir?". BBC News Türkçe. <https://www.bbc.com/turkce/haberler-dunya-53414098>

²⁶ See. "Sosyal medya düzenlemesi: 'Almanya modeli' nedir?". BBC News Türkçe.

Through the amendments in 2020, social media platforms are obliged to remove social media content that includes death threat or incitation to violence in addition to reporting such cases to the Federal Police. Social media users who make physical and sexual assault threats on the net may face imprisonment of up to three years, and others who commit the crime of insult may face imprisonment of up to three years.²⁷

France

A regulation similar to the one in Germany came to the agenda in France. The French National Assembly adopted on 13 May 2020 a law aiming to combat various forms of online hate speech including removal of illegal content (popularly known as the Avia law). The law has a lot of similarities with its German counterpart, which regulates social media in Germany.

The law became inapplicable to a great extent when the French Constitutional Council cancelled the key provision of the law, pointing out that it gave too much of discretion to the administration and not provided sufficient legal assurance to website owners.²⁸

Examining the content of the law, one can see that supervision of social media content is largely entrusted to social media platforms themselves like in Germany. In the framework of the law, hate speech involving race, religion, sexual orientation and gender in addition to content in the category of sexual harassment on social media platforms are requested to be removed within 24 hours. Deadline for removal of content including child pornography and terrorism was set as one hour. Individuals failing

to comply with the law may face a fine of up to 250 thousand Euros, and companies failing to do the same a fine of up to 1.2 million Euros.²⁹ The French regulator (CSA) is authorized to impose higher fines, corresponding to up to 4% of the company's global annual revenue for continuous and repeated violations.³⁰

The United Kingdom

Particularly after the suicide case in 2017, regulation of social media has been a widely discussed topic in the UK. In 2019, the UK Home Office and the Digital, Culture, Media and Sport Committee published a document entitled "Online Harms While Paper" to establish a policy framework for draft bills in this field. Online Harms While Paper argued that the current regulatory and voluntary initiatives did not go "far or fast enough" to keep users safe.³¹

During the process of public consultation about proposals in the white paper, more than 2,400 responses were received from stakeholders including technology companies, academics, think-tanks, charities, rights groups and publishers.³² Following the consultation process, and the documents issued in February 2020 and December 2020 outlining the government's policy approach, Draft Online Safety Bill was published by the government on 2 May 2021.

Similar to the regulation in Germany, the Draft Online Safety Bill introduces obligations to online content sharing platforms and search services providers to protect users. The Bill would empower Ofcom, the media regulator in the country, to implement the regulation, and companies failing

²⁷ See. "Sosyal medya düzenlemesi: 'Almanya modeli' nedir?". BBC News Türkçe.

²⁸ See Menekse Tokyay. (2021). "Sosyal medyaya Fransa ve ABD modeli: Türkiye'ye uygulanmaları ne kadar mümkün?". <https://tr.euronews.com/2020/07/07/sosyal-medyaya-fransa-ve-abd-modeli-onerisi-uzmanlar-degerlendiriyor>

²⁹ See Menekse Tokyay. (2021). "Sosyal medyaya Fransa ve ABD modeli: Türkiye'ye uygulanmaları ne kadar mümkün?".

³⁰ See "France gives online firms one hour to pull 'terrorist' content". (2020). BBC News. <https://www.bbc.com/news/technology-52664609>

³¹ See John Woodhouse. (2021). "Regulating Online Harms". House of Commons Library. <https://researchbriefings.files.parliament.uk/documents/CBP-8743/CBP-8743.pdf>

³² See John Woodhouse. (2021). "Regulating Online Harms"

³³ See UK Government. (2020). "Online Harms White Paper: Full government response to the consultation"[20]. <https://www.gov.uk/government/consultations/online-harms-white-paper/outcome/online-harms-white-paper-full-government-response>

to fulfill the requirements of the bill would be liable to fines of up to 18 million Pounds or 10% of their annual turnover, whichever is higher.³³ The Bill would also authorize Ofcom to block access to particular websites. According to the regulation, large and popular social media platforms would need to act against legal but harmful content such as content promoting abuse, self-harm and misinformation. These platforms would need to specify how they would handle such harmful content in their terms and conditions. The draft bill would also empower Ofcom to start criminal action against executives of companies who do not respect information requests of Ofcom, the regulatory and supervisory authority in this field. User-generated online forms of fraud such as romance scams or investment fraud are also covered by the regulatory framework.³⁴

Another feature distinguishing the UK example from other democratic countries is about the barriers securing the freedom of expression that were added to the draft bill. In this context, during their content moderation, social media platforms would need to consider the political context in which content is shared. Social media platforms would need to implement rules that protect “democratically important” content such as posts promoting or opposing government policy or a political party before a vote in parliament, an election or a referendum, or campaigning on a live political issue. They will also be banned from discriminating against particular political viewpoints and will need to apply protection equally across political opinions.³⁵

The United States of America and the European Union

In this framework, the Digital Services Act prepared by the European Union and the Platform Accountability and Consumer Transparency Act revised in line with feedback from the civil society in the US are the texts that should be mentioned in the context of regulation of social media in democratic

regimes. The Digital Services Act prepared by the European Union stipulate that large social media platforms carry out regular and detailed reporting about their acts that have the potential of impacting freedom of expression online such as content moderation, algorithmic improvement and recommender systems. In addition, the act includes other remarkable requirements such as pre-informing users about content removal or content moderation decisions, and implementing legal processes in line with the laws.

Through the revision in the law introduced in the US, social media platforms were obliged to provide detailed reporting about their actions on user-generated content, similarly to the regulation in the EU. The US act stipulates that social media platforms can carry out acts such as content removal only when the court considers such content illegal.

Draft bills summarized above that are aimed to regulate and supervise social media in countries with a democratic regime have been and are still criticized. The criticism mostly focuses on the potential risks that such regulations may pose to the freedom of expression, which is the most important right and freedom in democratic regimes.

For example, one of the most important points of criticism about the regulations both in France and in Germany is that the freedom of expression, which is a fundamental right and freedom, should not be supervised and, when necessary, restricted by private companies without a judicial ruling. In addition, it is argued that since the deadline given to social media platforms in Germany and France to remove content is too short and the fines too heavy, the platforms may remove content without due diligence to avoid fines. Another fundamental criticism about the law in Germany is that it obliges social media platforms to report to the police posts that might constitute a crime. The law is criticized as it enables detailed information about users to be conveyed to security forces without any judiciary decision and only based on the suspicion resulting from the assessment of a social media company.

³⁴ See Jane Wakefield. (2021). “Government lays out plans to protect users online”.

³⁵ See John Woodhouse. (2021). “Regulating Online Harms”

The main components of social media regulations that came to the agenda in democratic countries and that are currently applied can be summarized as follows:

- Obligations of social media platforms to transparently share reports on content moderation.
- Leaving the decisions regarding content moderation to the responsibility of social media platforms.
- Judicial appeal mechanisms against decisions regarding content removal.
- Limiting the types of content that are subject to sanctions to certain contents such as hate crime, sexual abuse, and encouraging self-harm.
- Absence of any sanctions on social media platforms other than fines.
- The obligation of social media platforms to have representatives in the country.

Social media regulations in Turkey through examples from the world

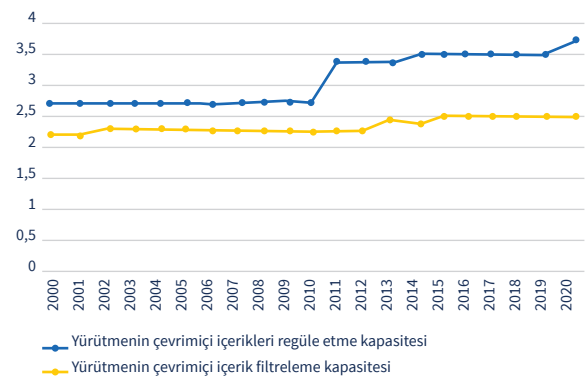
Looking at examples of regulations aimed to supervise and regulate social media from the world, one can see that there is not a single practice that dominates this field. Although Turkey had quite a poor democratic track record compared to the above-mentioned democratic countries, it is not a closed authoritarian regime like Russia and China despite its democratic decline in recent years.

The first internet and social media regulation in Turkey was made in 2007 rather in a bid to protect children from harmful content. However, particularly during the 17-25 December process, the scope of this regulation was extended. Access to many political and critical news was blocked on the grounds of privacy and violation of personal rights. An example that was frequently discussed at that time was the blocking of access to Wikipedia for two years.

The decline in Turkey can be seen very clearly especially in the context of the freedom of

expression since 2013. There has been a remarkable increase of internet and social media censorship for the last 10 years. Many decisions and regulations in recent years about internet and social media played a role in this decline. The level of censorship applied to digital media especially after the 17-25 December process increased considerably. Blocking access to various social media and blockage and censorship that were applied were the steps that caused a decline in the freedom of expression online. The data sets prepared by the Varieties of Democracy Index measuring the level of government control on social media and internet environment indicate that in Turkey, especially since 2010's the government has established a growing control over internet and social media (Graph 2).

Graph 2. Varieties of Democracy: Government capacity to regulate and filter online content



Source: V-Dem, <https://www.v-dem.net/en/>

Description: In the graph 2, level 4 indicates the highest level of regulation and filtering capacities.

The level of censorship in social media can be clearly seen through Turkey's content removal requests and account blocking/country withholding requests to Twitter between 2012 and 2020. Between 2012 and 2020, the total number of content removal requests from all countries was 181,689, and Turkey ranked second in the world with 49,525 requests. Likewise, out of 500,325 account blocking/country withholding requests to Twitter, 107,211 came from Turkey, which puts Turkey to the second rank in this category.³⁶

³⁶ The data provided above is only for Twitter. More detailed data including other social media platforms is available in the Engelliweb report. See Engelliweb 2020: Fahreheit 5651Sansürün Yakıcı Etkisi. İfade Özgürlüğü Derneği, Ağustos 2021. https://ifade.org.tr/reports/EngelliWeb_2020.pdf

Considering that the first comprehensive social media regulation in Turkey was introduced in 2020, there is a clear restriction and censorship potential in the field of social media in Turkey. In this context, we believe it is useful to focus on last year's regulation about social media platforms, whose impact in the field of application we could not yet fully determine.

The 2020 Regulation on social media

On 29.07.2020, the Law no. 7253 amending the law no. 5651 introduced important obligations for social network providers in addition to heavy sanctions that apply in case of not respecting these obligations. The new regulation introduced the definition of a social network provider and obliges social network providers to have at least one representative in Turkey. On the other hand, the new regulation introduced many obligations to social network providers about various contents. To start with, an obligation was made to social network providers to provide a response positively or negatively to applications by individuals in relation to the online content in the framework of article 9 of the law no. 5651 about personal rights and article 9/A about privacy within maximum 48 hours following the application. Social network providers that do not fulfill this obligation are imposed an administrative fine of 5 million Turkish Liras by the Head of the Information and Communication Technologies Authority (ICTA). In addition, foreign social network providers which have over 1 million daily access from Turkey are obliged to implement access blocking and/or content removal decisions given under the law no. 5651, or they will face an administrative fine of 1 million TL.

Moreover, if a social network provider is notified about illegal content as established by the judge or court decision and does not remove or block access to such content within 24 hours despite the notification will be liable to compensate any damage and loss. In this context, in order to make this legal obligation effective, it is not required to recourse to responsibility of the content provider or to file a lawsuit against the content provider.

In the framework of the new regulation, domestic or foreign social network providers with over 1 million daily access from Turkey are obliged to take necessary measures to host in Turkey the data of users in Turkey. However, based on the related article of the law and the related procedures and principles, which data and under what circumstances and in which way social network providers must host in Turkey the data of users in Turkey and whether they shall share such data in an aggregate way with the ICTA and/or other authorities is not clear yet.³⁷

Domestic or foreign social network providers with over 1 million daily access from Turkey are also obliged to send six-monthly periodical reports prepared in Turkish to the ICTA about statistical and category-based data regarding application of content removal and/or access blocking decisions notified to them and the applications within the framework of sub-article three. In this context, social network providers are obliged to publish on their websites the report about applications that are directly made by individuals to social network providers with personal data anonymized. The provisional article five of the law no. 5651 obliged social network providers to prepare and submit their first report to the ICTA in June 2021 and also publish the report on their websites. It is specified by the law that social network providers that do not fulfill their reporting requirements will be imposed an administrative fine of 10 million TL by the ICTA Head.

To sum up, the existing censorship and restrictions were expanded with the new regulation in July 2020. On top of the frequently used access blocking, the new regulation introduced sanctions about content removal. Likewise, a sanction was added for eliminating links to contents on the grounds of violation of personal rights as a result of searches through search engines. In this context, the legislation in Turkey contains very comprehensive sanctions.

³⁷ See Engelliweb 2020: Fahreheit 5651Sansürün Yakıcı Etkisi. İfade Özgürlüğü Derneği, Ağustos 2021. https://ifade.org.tr/reports/EngelliWeb_2020.pdf

The expected regulation about social media

It is deemed useful to mention a social media regulation that is currently on the agenda and is expected to be discussed in the Turkish Grand National Assembly although its content is not clear yet. In his statements about the social media regulation to be discussed at the Parliament, the President emphasized that the regulation would be prepared considering examples from various countries and the main goal of the regulation would be to combat fake news effectively. Statements by various representatives of the ruling party indicated that the German model outlined above and examples from other EU countries were used to prepare the new regulation in Turkey.

Content of the regulation to be discussed in the near future is as follows, to the extent it was covered by the press:

- 1 Establishment of a supervisory and regulatory authority that will define what disinformation is and establish that disinformation has been made; appointment of a court to decide on the sanctions to be given for content containing disinformation.
- 2 Inclusion of social media crimes (disseminating false information that creates fear and panic in the society or contains hate speech on social media) in the Turkish Penal Code and imposing an imprisonment of up to 5 years to those who make disinformation on social media and up to 2 years of imprisonment to those who make insults on social media.
- 3 According 24 hours to social network providers so that they can remove criminal content, and imposing a fine of up to 5 million TL if they fail to do so. Stopping operations of social network providers in Turkey if they do not remove the content despite the fines imposed to them.
- 4 Applying different sanctions to disinformation made by individuals and institutions.
- 5 According to the press coverage, the new regulation will cover not only social media platforms but also internet media. The part

of the regulation on internet media includes matters such as press card of the internet media, distribution of announcements, taxation etc.

- 6 Making the employees of internet news sites that employ a certain number of employees subject to the Press Law, paving the way for these employees to be given press cards.
- 7 Imposing certain obligations on news sites regarding false news or comments made on news, and sanctions for those who violate them.

Articles of the social media regulation that are outlined above and expected to come to the agenda are not clear yet. As the Checks and Balances Network, we consider it an opportunity, and not a problem. A social media regulation that includes the above-mentioned articles has the potential to make an extremely negative impact on the vital components of democratic regimes such as the freedom of expression, independent and impartial media, and fair and free elections.

How fit are social media regulations in other countries for Turkey?

When the second social media regulation came to the agenda, models in many western countries, particularly Germany were discussed. We believe it is vital to focus on these different models and on the necessary structural factors so that these models are not implemented in a way to further cause a decline in the freedom of expression in Turkey. First of all, it is useful to see how these regulations are justified by decision-makers in Turkey.

In this framework, justification of the regulation in Turkey is rather similar to justifications in the cases of authoritarian regimes. For example, in one of his speeches in which the President Erdoğan underlined that “the opposition party made terror of lies the only substance of its policy, and the situation in Turkey is more serious and is a greater threat to the Turkish democracy”. Emphasis placed on the opposition party in this discourse, in which combatting lie and disinformation is given as the main justification resembles the discourse within authoritarian regimes.

Regulatory and Supervisory Authorities

Considering their potential impact on the freedom of expression, access to alternative sources of information, and free/fair elections the organizational structures of institutions that regulate social media and their relations with the executive power are vital. The independence of these regulatory agencies that are authorized to regulate social media from the executive is a critical requirement for a democratic social media regulation.

Looking at the structure of CAS, the French social media supervisor, and its relations with the executive power, one can see that it is composed of 7 members appointed for a term of 6 years. One of these members is appointed by the President and chairs CAS. 3 of the other 6 members are appointed by the Head of the Senate and the 3 others by the President of the Assembly. Appointments are carried out in a way to ensure equal representation of women and men. One third of the members except the chair is renewed every two years. Mandates are not renewable and members cannot be removed by the government. Members who are found to commit acts that do not comply with their duty can be removed upon majority by two thirds of the members.³⁸

Ofcom, the UK regulatory agency in this field, has a board of directors composed of maximum 12 members, the majority of whom are non-executive members. Non-executive members and the chair are appointed by Secretary of State for Digital, Culture, Media and Sports (DCMS).³⁹ The appointment

process is open to competition and is subject to parliamentary approval. CEO and other executive members are selected by non-executive members. Decisions are made by consensus. In case of lack of consensus, decisions can be made by majority of votes. Ofcom is responsible to the parliament. Although it is independent from the government, it has connections with and is responsible for making annual reporting to the Department of Digital, Culture, Media and Sports (DCMS). Ofcom's annual report must be submitted to the parliament by the Secretary of State for DCMS, who is also authorized to remove Ofcom members from the office under certain circumstances.⁴⁰ Ofcom is financed by fees collected from companies operating in the sector it regulates.⁴¹

Although regulatory and supervisory institutions of the above-mentioned countries have organizational differences, these institutions are autonomous from the executive to some extent, and they are responsible to the parliament. On the other hand, examples from authoritarian countries reveal a different picture. For example, the Central Cyberspace Affairs Commission, to which Cyberspace Administration of China, the regulator, is responsible, directly reports to the president of China. Members of the Commission come from various organs of the Communist Party of China.⁴² Likewise, the way the Russian Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) is constituted shows that this regulatory agency is not independent from the executive. Roskomnadzor is managed by a chair who is appointed and can be removed by the government upon recommendation

³⁸ See "Le fonctionnement du CSA". (2018). Conseil Supérieur de l'Audiovisuel. <https://www.csa.fr/Informer/Qu-est-ce-que-le-CSA/Le-fonctionnement-du-CSA>

³⁹ See Engin Saygın. Türkiye Ve İngiltere'de Radyo Ve Televizyon Yayıncılığı Alanındaki Düzenleyici Ve Denetleyici Kurumlar Ve Bu Kurumlara Verilen Yeni Bir Görev: Medya Okuryazarlığının Geliştirilmesi. Türkiye Adalet Akademisi Dergisi, (27), 409-436.

⁴⁰ See "What does Ofcom do?". <https://www.politics.co.uk/reference/ofcom/>

⁴¹ See Engin Saygın. Türkiye Ve İngiltere'de Radyo Ve Televizyon Yayıncılığı Alanındaki Düzenleyici Ve Denetleyici Kurumlar Ve Bu Kurumlara Verilen Yeni Bir Görev: Medya Okuryazarlığının Geliştirilmesi.

⁴² See Lotus Ruan. (2019). "Regulation of the internet in China: An explainer".

of the Minister of Communications and Mass Media. The chair is individually responsible for execution of the powers of the institution. In addition, there are 5 vice-chairs that are appointed and can be removed by the Minister of Communications and Mass Media upon recommendation of the Roskomnadzor’s Chair.⁴³

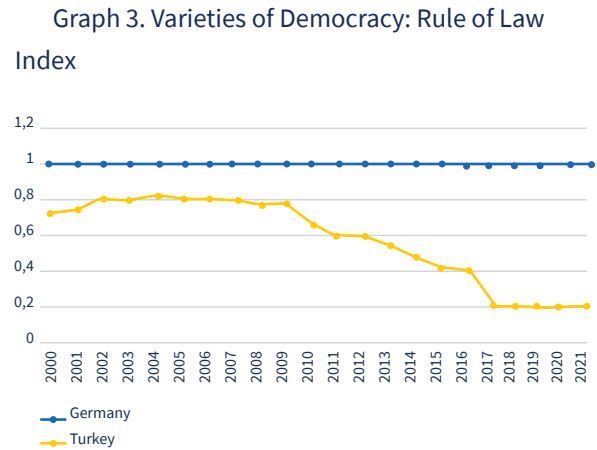
Particularly upon the transition to the presidential system, there has been a remarkable decline in Turkey in the context of independence and impartiality of regulatory and supervisory authorities from the executive.⁴⁴ As mentioned above, it is stated that a supervisory and regulatory authority will be established with the new social media regulation. Current regulatory agencies in Turkey including the Press and Advertising Agency (BİK) and the Radio and Television Supreme Council are not independent from the executive power, and do not have the capacity to supervise this field impartially.

Judicial Independence and Impartiality

Existence of independent and impartial courts for the implementation of social media regulations and decisions about punishments is very important for preventing a deterioration in fundamental rights and freedoms. Even a regulatory framework present in a democratic country with independent judiciary is taken and implemented in a country with weak judiciary independence there will be high prospect for democratic decline. In this context a comparison between Germany and Turkey reveals the negative potential of such a regulation in Turkey. Even though there is the risk of restriction in

freedom of expression, judicial independence and impartiality in democratic countries with judiciary independence partly reduces such a potential.

Varieties of Democracy Index data clearly indicate the levels of rule of law and judicial independence in these countries (Graph 3).



Source: V-Dem, <https://www.v-dem.net/en/>

Description: In the graph 3, level 1 indicates the level at which the rule of law principle is applied at the highest level.

⁴³ See “Statute of Roskomnadzor”. The Government of the Russian Federation Regulation No. 228 Of March 16, 2009 on the Federal Service for Supervision Of Communications, Information Technology, and Mass Media. https://eng.rkn.gov.ru/about/statute_of_roskomnadzor/

⁴⁴ As the Checks and Balances Network, we are working on a report in which we examine the damage done by this decline on other checks and balances components.

CONCLUSION AND CONCRETE RECOMMENDATIONS

Different applications that come out as a result of the rapid progress of information technologies convert the relations between conventional institutions, societies and individuals. In this framework, social media platforms have an important impact in many fields as an important output of this technological transformation. Although initial emphasis was on the democratic potential of social media, currently it can be observed that social media platforms free from supervision, transparency and accountability aggravate the impact of many social problems. In addition, social media platforms may have a function that strengthens authoritarian practices. Due to such a dual potentiality regulation of social media platforms has become an important topic in many countries. In this study, the goal is to contribute to this discussion as the world continues to seek answers to this question, and to examine and determine the current supervision on social media in Turkey with comparative examples from the world.

Our analysis shows that the current application and the expected regulation in Turkey has some similarities with some examples both from democratic and authoritarian countries. The main aspect that should be emphasized at this point is that there must be some important structural prerequisites so that social media regulations and regulatory practices do not impact the freedom of expression and democratic competition negatively. The most important ones among these structural prerequisites are that regulatory and supervisory authorities regulating this field must be independent from the executive power, and that the judiciary that decides on penal sanctions must be independent and impartial.

Concrete Recommendations:

There is no single good model to take as reference for democratic social media regulation. Regulations in democratic countries are also heavily criticized due to the risks they pose towards freedom

of expression. As the Checks and Balances Network, we share our concrete recommendations below about supervision of social media without harming fundamental rights and freedoms and democratic competition:

- 1 Effective supervision of social media platforms requires well-established judicial independence and impartiality, and independence of the related regulatory and supervisory authority from the executive power and from the field it supervises. Unless these structural elements are secured, replication of social media regulations applied even in democratic countries will cause a decline in fundamental rights and freedoms.
- 2 Leaving the decision to moderate and remove content to social media platforms may cause a decline in the freedom of expression, which is a fundamental right in a democracy. To prevent this, users should be informed on decisions about content moderation in the framework of the above-mentioned independent and impartial judiciary, and recourse to judicial remedy should be kept open with respect to these decisions.
- 3 There must be transparent rules as to which social media content shall face content removal sanction in a way not to leave any room to subjective decision-making. Regulations should clearly include provisions that the essence of democratic competition shall not face any sanctions under social media regulation. The regulation that came to the agenda in the UK sets a good example in this respect.
- 4 Publication of content moderation decisions of social media platforms periodically is very important in terms of transparency and accountability.
- 5 Obligation of data localization (keeping user data of social media platforms in their country of residence) should be secured through encryption methods to safeguard privacy of users. Privacy is a fundamental human right and it is vital for the sustainability of democratic societies. If this encryption guarantee is not provided, such a regulation will result in uncontrolled monitoring

of user data by governments and cause a decline in fundamental rights and freedoms.

- 6 Data surveillance should be implemented proportionately to the purpose, and only in the way the laws and international human rights standards permit. For good practices in this field, the International Principles of Human Rights to Communication Surveillance framework can be referred to.
- 7 Diversification of social media platforms is very important to protect the democratic potential of this field. To enable this, transition between

platforms should be facilitated and platforms should be diversified (on the condition that these platforms are independent from the government).

In the framework of these concrete recommendations, we share with the interested parties a visualized summary of main components of a regulation that can regulate social media effectively without causing a decline in the freedom of expression and access to alternative sources of information (Figure 1).





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