

**P E N  
N O R W A Y**

# **Social Media as criminalizing tool**

**PEN Norway Turkey Indictment Project**

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## About the Author

Kemal Göktaş graduated from the Ankara Law Faculty in 1999 and gained his MA in journalism from Ankara University's Social Sciences Institute, where he continues to read for his PhD. Göktaş has worked as a journalist at Radikal, Sabah, Vatan, Milliyet and Cumhuriyet newspapers and for the news platform Diken. He is the recipient of numerous grants and a total of nine prizes, including those of the Journalists' Association of Turkey, and the Metin Göktepe and Abdi İpekçi memorial prizes for journalism. Göktaş has authored two books and many magazine articles. He continues to run his internet media business 'Kısa Dalga', 'Short Wave'.

## Advent of the 'new' Public Arena

The first prison sentence for posting insults and threats on Twitter was delivered in Istanbul on 15 February 2013.<sup>1</sup> Eight years later, on 15 May 2021, the Economist magazine cautioned tourists heading for Turkey to refrain from tweeting about Recep Tayyip Erdoğan.<sup>2</sup>

In the intervening six years, social media has become a medium where criticism of the government is punished severely. According to a 2018 report from Oxford University's Reuters Institute for the Study of Journalism, 65% of participants expressed, "Concern that openly expressing their political views online could get them into trouble with the authorities". Turkey had the highest percentage of 37 countries in this respect.<sup>3</sup>

Following their success in the Constitution Referendum of 2010, the AKP (together with the Gulenists) were able to institutionalise their power over the judiciary, hence seizing control of a crucial means of repression. The "rise" of the internet and social media in Turkey corresponded with the "rise" in the AKP's authoritarianism in the early 2010s.

The Gezi Resistance, more than anything else, showed the government that subduing the media would not be enough. As other media outlets floundered, social media became the "main medium" of resistance, through which people exercised their right to access news, while also using it to organise and build the opposition.<sup>4</sup>

The advent of this new public arena, where everyone could "freely" have their say, left the government faced with the inadequacy of legislation and a lack of preparation among security services. Consequently, banning social media platforms was the first measure it turned to. Social media had become a danger to the then prime minister, Recep Tayyip Erdoğan, who expressed this in his own words by saying, "Twitter and whatever else, we'll root them all out. The international community can say what they like, I don't care."<sup>5</sup>

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<sup>1</sup> <https://www.cumhuriyet.com.tr/haber/twitterdan-tehdit-ve-hakarete-ilk-ceza-404150>

<sup>2</sup> <https://yaziyor.org/2021/05/14/turistlere-tavsiye-tek-yapmaniz-gereken-erdogan-hakkinda-tweet-atmamak/>

<sup>3</sup> <https://www.gazeteduvar.com.tr/cumhurbaskanina-hakaret-mahkumlari-cocuk-gazeteci-avukat-haber-1510280>

<sup>4</sup> <https://www.evrensel.net/haber/59472/gezi-direnisi-ve-sosyal-medya-iletisim-orgutlenmektir>

<sup>5</sup> <https://www.cumhuriyet.com.tr/haber/erdogan-twitterin-kokunu-kaziyacagiz-52603>

The Constitutional Court revoked the complete ban on social media platforms, such as Twitter and YouTube, finding it contrary to the Constitution and the European Convention on Human Rights.<sup>6</sup> Temporary restrictions on platforms like WhatsApp, Twitter and Facebook were blocked by the judiciary, and more importantly, the government realised they were not sustainable. Nevertheless, the government did not change tack when considering the measures essential for its own "survival". Wikipedia was blocked in April 2017 after it refused to remove pages claiming that Turkey had provided support for jihadists in Syria. It remained out of bounds until three years later when the ban was revoked by the Constitutional Court as a violation of rights.<sup>7</sup>

### **'Big brother' surveillance on social media: virtual patrols**

The practice of "virtual patrols" was a main arm of the state's strategy to prevent the spread of potentially damaging criticism and news on social media.

Following a cabinet ruling in 2011, the "Department for Combating IT Crime" was set up within the police force. The organisation, whose name was changed to the "Department for Combating Cybercrime" in 2013, not only kept close surveillance on social media, but also waged a "psychological war". The IT Systems Section, which was established as part of the Office of Public Order, aimed to "... combat websites that adversely affect the general morality and order of society, even if they are not breaking the law."<sup>8</sup>

In 2017, the police force announced that *social media accounts* were being monitored by the Department for Combating Cybercrime, simultaneously calling on citizens to become informants, by emailing the police if they came across any shared material they thought to be criminal.

The "virtual patrols" were unconstitutional and illegal, but their de facto implementation was placed on a legal footing in 2018. Firstly, Statutory Decree No.680, part of the state of emergency legislation issued after the attempted coup, gave the police "...**the authority to**

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<sup>6</sup> [https://tr.wikipedia.org/wiki/Twitter%27a\\_T%C3%BCrkiye%27den\\_eri%C5%9Fimin\\_engellenmesi#cite\\_note-11](https://tr.wikipedia.org/wiki/Twitter%27a_T%C3%BCrkiye%27den_eri%C5%9Fimin_engellenmesi#cite_note-11)

<sup>7</sup> [https://tr.wikipedia.org/wiki/Vikipedi%27ye\\_T%C3%BCrkiye%27den\\_eri%C5%9Fimin\\_engellenmesi](https://tr.wikipedia.org/wiki/Vikipedi%27ye_T%C3%BCrkiye%27den_eri%C5%9Fimin_engellenmesi)

<sup>8</sup> <https://dergipark.org.tr/tr/download/article-file/157433>

*investigate in the virtual environment.*” When the state of emergency came to an end, this regulation was subsumed into the Law on Police Duties and Powers.<sup>9</sup>

In 2018, 2,700 police were involved in the virtual patrols. While the email addresses for those wishing to report their suspicions to the police receive an average 3,000 messages a day, at times of “terror attacks, bombs and protests” the number can rise to 30,000.<sup>10</sup>

The Ministry of the Interior began publishing the weekly outcomes of these virtual patrols in 2018, changing to monthly in 2019. Clearly, the aim of regularly sharing this data with the public was more to do with sending a “message” about the scope of social media surveillance and oversight than any commitment to “transparency”, “communication” and “accountability”.

According to data from the Ministry of the Interior, between 2018 and 2020, 146,712 social media accounts were scrutinised by the police and 68,672 were subjected to further investigation.<sup>11</sup>

The Constitutional Court revoked the regulations that formed the legal basis for the virtual patrols on the grounds that they contravened, both Article 20 of the Constitution, stating that personal data can be processed only in cases stipulated by the law, and Article 13, stating that fundamental rights and freedoms can only be subject to restriction for the reasons specified in the relevant articles of the Constitution and by means of statute.<sup>12</sup>

The Minister of the Interior, Süleyman Soylu, bluntly denounced the Constitutional Court, describing how he had called the Chair of the Constitutional Court about the matter despite such interference being contrary to the constitution. But this annulment decision was not actually implemented; virtual police patrols continue to this day and the Ministry of the Interior regularly announces the outcomes.<sup>13</sup>

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<sup>9</sup> <https://bianet.org/bianet/ifade-ozgurlugu/223745-sanal-devriye-faaliyetiyle-suclu-aramak>

<sup>10</sup> <https://www.hurriyet.com.tr/gundem/45-milyon-sosyal-medya-hesabina-siber-goz-40868004>

<sup>11</sup> [https://ifade.org.tr/reports/EngelliWeb\\_2019.pdf](https://ifade.org.tr/reports/EngelliWeb_2019.pdf)

<sup>12</sup> <https://normkararlarbilgibankasi.anayasa.gov.tr/Dosyalar/Kararlar/KararPDF/2020-10-nrm.pdf>

<sup>13</sup> <https://abcgazetesi.com/aym-kararina-uyulmadi-sanal-devriye-ile-erdogana-hakaret-davasi-acildi-377728>

## Access denied

The state's prohibitive approach to the internet, especially social media, does not stop there. Statistics show that Turkey is among the top countries in the world when it comes to blocking access to both news sites and social media accounts.

Between 29 May and the end of 2020, 54 separate criminal prosecutions resulted in access being blocked to over 3,150 Twitter accounts, over 3,400 tweets, over 600 pieces of Facebook content and over 1,850 YouTube videos.<sup>14</sup>

According to Twitter Transparency Reports, 7,070 (57%) of all 12,499 court rulings they received worldwide between 2012 and 2020 came from Turkey.

In terms of removal requests received from all over the world, 42,455 of a total 169,190 requests came from Turkey, the second highest after Japan. Turkey also sent the second highest number of "account closure" requests, after Indonesia, making up 107,221 of the total 500,325 requests received worldwide. Turkey ranked top for the number of accounts closed or rendered invisible, accounting for 2,527 (75%) of all such actions.<sup>15</sup>

## Social Media as a tool of enemy criminal law

It could be said that social media became one of the most crucial tools of public opposition and independent journalism at a time when mainstream media was in free fall and opposition media was on its knees; but equally, social media provided tremendous opportunities for the government's aim of suppressing dissent.

Social media functions as a data bank where actions serviceable for charges and prosecutions sought by the government and the associated judiciary can be effortlessly found. In fact, thanks to the comparatively less demanding technique of trawling social media for "serviceable" evidence, these days there is little need for the former methods of obtaining it through torture,

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<sup>14</sup> [https://ifade.org.tr/reports/EngelliWeb\\_2019.pdf](https://ifade.org.tr/reports/EngelliWeb_2019.pdf)

<sup>15</sup> [https://ifade.org.tr/reports/EngelliWeb\\_2019.pdf](https://ifade.org.tr/reports/EngelliWeb_2019.pdf)

as was the case until the end of the 1990s, or through the more hands-on solutions used with great proficiency by the Gulenist judicial and security bureaucracy, such as electronic surveillance, phone tapping, secret witnesses and evidence planting.

Potentially incriminating posts are “hunted down” among the social media accounts of people earmarked for punishment, before being sent to the prosecutors. The prosecutors have neither the power nor the inclination to reject these requests, and police investigation reports turn into legal proceedings. From then on, the decisions of the courts, and appellate mechanisms will depend on the status of the person concerned and the gravity of the “incident” in relation to current government strategy and tactics. Due to the changing balances of power and incidental positionings that come about, even in an authoritarian system (especially in Constitutional Court decisions), the government does not win every law suit, but this fact has not discouraged the use of social media as a tool of enemy criminal law, nor lessened the effects of its social and political outcomes.

### **Trolls as a tool for manipulating public space**

The minimal “legitimacy” of implementing this enemy criminal law can be asserted in public debate when targeting the person who is being punished, rather than the crime. This legitimacy is provided by pro-government Twitter accounts and campaigns in the government press.

The government’s use of troll accounts to manipulate public debate is a well-known phenomenon in Turkey. It came as no surprise when Twitter announced, in June 2020, that it had closed 7,340 accounts linked to the AKP for violation of Twitter policies to prevent manipulation.

Twitter's decision was based on a report by Stanford University Internet Observatory, which stated that the closed accounts had been set up between 2008 and 2020. These state-sponsored accounts ran campaigns in favour of the AKP and against the Republican People’s

Party (CHP) and the People's Democracy Party (HDP), frequently accusing the latter of terrorism. During the 2017 Constitution Referendum, these accounts organised posts in favour of transition to a presidential system. According to the report, many of these closed accounts were part of an extremely centralised and organised retweet network of AKP supporters. It also stated that they shared the same content, used audience-building tactics and tried to make their hashtags look popular.<sup>16</sup>

## **Applying enemy criminal law on social media**

It should be remembered that the judicial processes of the AKP government, which are triggered by the investigations, detentions and arrests of those who post on social media, are in themselves a significant means of pressure. Almost all the judiciary bodies act as part of this oppressive apparatus, mostly meeting the demands of the security bureaucracy regarding social media.

The Constitutional Court's occasional decisions in favour of freedom of expression are no deterrent to the government and ignored by the local courts.

The application of this enemy criminal law by the AKP government, along with the compliant security bureaucracy and judiciary, is so blundering that even their own words can constitute a "crime" when repeated by someone belonging to the "enemy" category.

The depths to which this goes are exemplified by the indictment against former CHP deputy leader, Zeynep Altıok, who was accused of insulting President Erdoğan on social media. One of the posts in the charges against her quoted the President's own words: "I will absolutely not allow anyone to take advantage of my office, not even my family. This authority is not for the use of liars and fraudsters."<sup>17</sup>

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<sup>16</sup> <https://www.evrensel.net/haber/406925/twitter-akp-ile-baglanti-7-bin-340-hesabi-kapatti-trolleri-ifsati>

<sup>17</sup> <https://tele1.com.tr/erdoganin-sozlerine-bile-cumhurbaskanina-hakaret-davasi-478178/>



In another example before the constitutional referendum on introducing a presidential system to Turkey in 2017, a social media user was arrested on an indictment from Erdoğan's lawyers for sharing a video on social media, saying. "If this 'no' (to the presidential system) video is a hit, they will arrest me." The video had gone viral.<sup>18</sup>

Enemy criminal law is not only applied in the political playing field, it is also used against people the government is targeting for their culture or lifestyle.

Selen Pınar Işık, one of Turkey's first social media phenomenons, who used her account with the username of "Pucca" to make posts that challenged the usual stereotypes about her private life as a woman, was prosecuted for "promoting the use of drugs". The resulting prison sentence of 5 years and 10 months is one example of enemy criminal law being applied simply because of "lifestyle".<sup>19</sup> The wording of the court's reasoned decision summarises the state's social media phobia: "In consideration of the impact of social media: its potential has been used in different countries all over the world to organise around particular ideologies, and the consequences have gone as far as overthrowing governments."<sup>20</sup>

Pucca's tweet, "I've watched so many gay films, one after the other. No, no, no! I still fancy the miserable, characterless gender referred to as male," prompted a lawsuit on the grounds that she had defamed men. Her sentence of 5 months on the grounds of "... flagrantly defaming a group of people based on gender difference." showed that the judiciary had been systematically following this social media phenomenon.<sup>21</sup>

Genco Erkal, a famous 83-year-old actor, who shared dissenting posts, is a typical example of how enemy criminal law works. It was not until 2012 that an informant report made in 2016 about Erkal was processed. However, it was not just the reported posts that were scrutinised, but all his past social media posts. A lawsuit was filed against Erkal, accusing him of insulting the president, based on two posts he made in 2017 and one in 2021.

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<sup>18</sup> <https://www.cumhuriyet.com.tr/haber/bu-hayir-videosu-tutarsa-beni-tutuklarlar-dedi-erdogan-sikayet-etti-tutuklandi-703871>

<sup>19</sup> <https://t24.com.tr/foto-haber/sosyal-medyada-twitter-paylasimi-sebebiyle-7-yil-hapis-cezasi-alan-pucca-ya-destek,8173>

<sup>20</sup> <https://www.dha.com.tr/istanbul/puccanin-aldigi-hapis-cezasinin-gerekcesi-aciklandi/haber-1688352>

<sup>21</sup> <https://www.cumhuriyet.com.tr/turkiye/puccaya-erkeklere-hakaretten-5-ay-18-gun-hapis-cezasi-1878730>

These three tweets contained criticisms of President Erdoğan, but no insults, and in fact one of them was a criticism of the presidential system rather than the president himself.<sup>22</sup>

Social media posts have turned into more than a means of punishment under criminal law, becoming a vehicle for sanctions against those snared by the outreach of “enemy criminal law” into private law. The Supreme Court ruled in favour of terminating the employment contract, without compensation, of a worker who had liked and retweeted Twitter posts criticizing the killing of unarmed soldiers who surrendered during the attempted coup on 15 July. Despite the fact that the local court had ruled, “The contents of tweets are shared within the scope of freedom of thought”, the Supreme Court overruled them, saying: “The liked and shared words clearly criticize the resistance to the attempted coup on 15 July. Considering that the defendant’s workplace is also part of the public sector, the plaintiff’s behaviour has clearly had a negative effect on the workplace.”<sup>23</sup>

Not just posting, but also liking and retweeting on social media have become a crime under enemy criminal law. After being reported for retweeting a film recommendation posted by a famous journalist, the CEO of HSBC Turkey was brought to trial charged with insulting Erdoğan, six years after sharing the post, only evading the accusation after an acquittal decision.<sup>24</sup>

Journalist Hakan Aygün was detained for a month pending trial after retweeting a post saying, “Oh thou IBAN givers...”, poking fun at the aid campaign started by President Erdoğan announcing an IBAN for public donations during the pandemic. Aygün’s retweet earned him a sentenced of 7 months and 15 days in prison, but a year later, the Constitutional Court ruled that the prison sentence was a violation of his human rights.<sup>25</sup>

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<sup>22</sup> <https://m.bianet.org/bianet/sanat/249210-genco-erkal-a-cumhurbaskani-na-hakaretten-4-yil-8-ay-hapis-istemi>

<sup>23</sup> Yargıtay 9. Hukuk Dairesi E:2017/20987, K:2018/4197

<https://www.hukukmedeniyeti.org/amp/ictihat.asp?id=2048261>

<sup>24</sup> <https://www.cumhuriyet.com.tr/haber/erdogana-hakaretten-yargilaniyordu-hsbcnin-genel-muduru-icin-karar-verildi-1340157>

<sup>25</sup> <https://www.diken.com.tr/gazeteci-hakan-aygune-twitter-paylasimi-nedeniyle-hapis-cezasi/>

In their decision on Selma Melike v. Turkey, the ECHR ruled: “The dismissal of public employees due to liking a Facebook post is a violation of their freedom of expression.”<sup>26</sup>

It wasn’t just retweeting or liking that could land social media users in trouble, even simply following “particular” accounts was counted as evidence of guilt. Five students at Amasya University stood trial accused of terror crimes partly on the basis that they were following the account of Selahattin Demirtaş, the HDP’s presidential candidate.<sup>27</sup>

## **Social media as a means of purging political opponents**

Social media also presents the state with ideal material for criminalising political opponents for the purposes of purging or rendering them effective.

In a lawsuit launched after Turkey’s failure to implement an ECHR ruling that the former co-leader of the HDP, Selahattin Demirtaş, should be released, a tweet was the most important piece of evidence against Demirtaş, who is still imprisoned, and other HDP politicians. Claimed to have been sent from HDP Headquarters, the tweet called on people to organise protests against the siege of Kobanê by ISIS.<sup>28</sup>

The CHP Istanbul area chair, Canan Kaftancıoğlu, who played a huge role in the CHP victory in the Istanbul Municipal Council elections, was targeted by government media and trolls in the run up to her trial for a tweet she had posted 7 years ago. The appeal court approved her sentence of 9 years 8 months for, “... defaming the state, insulting a public official and the President, inciting hatred and hostility and spreading terrorist propaganda.”<sup>29</sup>

## **Social media as a means of suppressing journalists**

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<sup>26</sup> <https://anayasagundemi.com/2021/07/08/ihamin-selma-melike-v-turkiye-kararinin-ozet-cevirisi-kamu-personeli-basvurucunun-bir-facebook-gonderisini-begenmesi-nedeniyle-isten-cikarilmasi-ifade-ozgurlugunun-ihlalidir/>

<sup>27</sup> <https://www.hurriyet.com.tr/gundem/begenili-teror-davasi-40947690>

<sup>28</sup> <https://www.trthaber.com/haber/turkiye/demirtas-hakkindaki-iddianameden-carpici-detaylar-296916.html>

<sup>29</sup> <https://www.birgun.net/haber/kaftancioglu-na-7-yil-onceki-tweetleri-nedeniyle-verilen-9-yillik-ceza-onandi-305727>

The crackdown on press freedom continued with numerous investigations and court cases against journalists due to social media posts.

Journalists, whose profession tends towards more use of social media, were convicted on the grounds of their social media posts, even in the absence of any other evidence.

Cumhuriyet newspaper writers and executives received heavy sentences after being accused of “aiding terrorist groups”, in a case that presented their social media posts as part of the evidence of guilt.<sup>30</sup>

T24 writer Hasan Cemal was accused of “insulting President Recep Tayyip Erdoğan” and investigated on the grounds of two retweets he had sent from other accounts and one made from his own account, saying, “Opposing an attempted military coup is not the only criterion for being a democrat, another is saying no to the intensifying ‘Erdoğan coup!’”<sup>31</sup>

Meltem Oktay and Uğur Akgül were arrested while reporting from Nusaybin during the ‘curfew’ period. Based on social media posts, they were accused of “being a member of an illegal organisation” and “spreading terrorist propaganda”, resulting in a 4-year prison sentence.<sup>32</sup>

Five years after sharing a photograph from the Newroz celebrations in Diyarbakır in 2015, journalist Melis Alphan was accused of “sharing terrorist propaganda” due to a “terrorist flag” appearing in the picture. The prosecutor’s demand for a sentence of up to 7.5 years in prison is a good example of the potential for social media to be used as evidence of guilt by the ruling powers. Alphan was acquitted by a local court, but the Istanbul Chief Prosecutor objected to the decision, sending it to the appeals court.<sup>33</sup>

## **Investigations as a means of hindering public debate at times of crisis**

Under AKP rule, mass investigations into social media, arrests and detentions have become a routine practice aimed at silencing public debate at times of economic, political and social turmoil. This goes beyond the government’s known taboo subjects, like cross-border military

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<sup>30</sup> <https://tr.sputniknews.com/20190918/cumhuriyet-gazetesi-davasinin-gerekcesi-tamamlandi-1040202905.html>

<sup>31</sup> <https://www.gazeteduvar.com.tr/hasan-cemal-cumhurbaskanina-hakaretten-ifade-verdi-haber-1537892>

<sup>32</sup> <https://gazetekarinca.com/gazeteci-oktay-ve-akgule-sosyal-medya-paylasimi-cezasi-4er-yil-hapis/>

<sup>33</sup> <https://medyagozlemveritabani.org/melis-alphana-terror-orgutu-propagandasi-yapmak-suclamasi/>

operations and 'terror' attacks, for which any critical voices are labelled as enemies. Mass investigations and arrests are also employed at times of governmental crisis, such as the pandemic, rises in the exchange rate, refugee incidents and forest fires.

According to the Ministry of the Interior's 2019 report, 452 people were arrested and 78 detained in relation to 1,297 accounts claimed to be "spreading terrorist propaganda" by opposing the military operations against Syria in October of that year.

Similarly, there was no hesitation about launching mass investigations and detentions for those who shared critical posts in connection to the forest fires in the summer months of 2021.<sup>34</sup> Social media users who criticised the government's pandemic response also received their share of investigations and arrests.<sup>35</sup>

Thousands of archives testify to the fact that social media is one of the vehicles through which criminal enemy law is implemented. And lastly, aside from the small proportion of examples given above, legal proceedings following social media trawls intended to curb secularism and place religion above criticism are also significant.

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<sup>34</sup> [https://kisadalga.net/haber/detay/orman-yanginlariyla-ilgili-paylasim-yapan-66-kisi-hakkinda-sorusturma\\_12032](https://kisadalga.net/haber/detay/orman-yanginlariyla-ilgili-paylasim-yapan-66-kisi-hakkinda-sorusturma_12032)

<sup>35</sup> <https://icisleri.gov.tr/basin-aciklamasi233>