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1-18-2023

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Recommended Citation

Rojas Navarro, Zaira A., "Free Speech: A Right in Crisis as Turkish Parliament Passes New “Disinformation” Bill" (2023). *CICLR Online*. 64.

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Free Speech: A Right in Crisis as Turkish Parliament Passes New “Disinformation” Bill

By: Zaira Rojas Navarro



Shards of glass and plastic flew across the floor as legislator Burak Erbay, a member of the Republican People’s Party, hammered and smashed a smartphone Wednesday night while addressing the Turkish parliament in opposition to president Recep Tayyip Erdoğan proposed Disinformation Bill.[1] Erbay argued the Bill’s clampdown on social media would make smartphones obsolete.[2]

Turkish authorities reported to the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe that the principal goal of the new legislation is to “prevent the spread of fake, untrue, baseless, and false information designed to create a specific perception, and ensure that anonymous accounts can be associated with real persons.”[3] The General Justification of the Draft Law states the law “is designed to protect Turkish citizens’ rights online

while combating ‘disinformation’ and ‘illegal content’ produced by ‘false names and accounts.’”[4] However journalists and media organizations within Turkey argue the Bill fails to remedy issues of disinformation because journalists and media organizations were never consulted in the drafting process.[5] Instead journalism organizations in Turkey argue the Bill will lead to one of the heaviest censorship and self-censorship mechanisms in the history of the Republic.[6] The opinion drafted by the Venice Commission echo this fear.

Though the Commission agrees the spread of fake news is a global issue and in fact has encouraged European nations propose adequate measures to counteract the phenomena of disinformation, propaganda and fake news, the Council of Europe has warned there needs to be proper consideration towards free speech.[7] The Council specifically warns against the criminalization of disinformation.[8] The Council argues criminalization as a consequence of disinformation should be abolished because such laws are “incompatible with international standards for restrictions on freedom of expression.”[9] Yet, the Justice and Development Party (AKP) and junior coalition partner the Nationalist Movement Party (MHP) drafted the Bill to be an amendment of Article 217/A to the Turkish Penal Code.[10]

Specifically, the Bill subjects individuals found guilty of publicly disseminating “false or misleading information” to between one and three years in prison and increases the penalty by half for those who hide their identity or act on behalf of an organization.[11] This means any individual that is acting under a username on social media platforms where it is common not to use your real name are at risk for the most severe punishment available under the new law. In a time where re-posting information from other sources to your own page is a standard form of engaging with social media, everyday people in Turkey now run a high risk of being jailed when they may not even know that what they are re-posting is untrue.[12]

President Erdoğan may have proposed the bill to “protect the country from 'rising digital fascism and fake news,'” but instead will likely stifle free speech.[13] Not only is this Bill yet another step towards the government’s control over the media, but it also comes as Turkey prepares for presidential and parliamentary elections next June.[14] The vague language of the law leaves prosecutors significant room to punish individuals severely in a country that already has a high reputation for jailing journalists.[15] The drafters of the Bill purposefully excluded a definition for “false or misleading information” and have instead left the question of what constitutes as such to the Turkish courts.[16] This leaves journalists and even the everyday person using social. Media platforms at great risk to receive years of jail time when simply expression a personal opinion, such high risks will make individuals self-censor and cause an overall step back from healthy discourse over issues that matter to the public.

Zaira Rojas Navarro is a Staff Editor at CICLR.

[1] Zeynep Bilginsoy & Suzan Fraser, *Turkish Parliament Oks Disputed Bill To Fight Disinformation*, ABC News (Oct. 13, 2022, 4:39 PM), <https://abcnews.go.com/International/wireStory/turkish-parliament-oks-disputed-bill-fight-disinformation-91473285> [<https://perma.cc/C6WJ-K2MY>]; Emma Woollacott, *Turkey Cracks Down On Dissent With Sweeping 'Disinformation' Bill*, Forbes (Oct. 14, 2022 5:20 AM), <https://www.forbes.com/sites/emmawoollacott/2022/10/14/turkey->

cracks-down-on-dissent-with-sweeping-disinformation-bill/?sh=2e54f34c167d [https://perma.cc/TLM2-DCQB].

[2] Bilginsoy & Fraser, *supra* note 1.

[3] Venice Commission and Directorate General of Human Rights and Rule of Law of The Council Of Europe, *On The Draft Amendments To The Penal Code Regarding The Provision On “False Or Misleading Information”*, 5 U.N. Doc. No. 1102 / 2022 (Oct. 7, 2022), available at [https://perma.cc/9P3T-QXFX].

[4] *Id.*

[5] *Disinformation Law: Withdraw This Bill Or It Will Aggravate Censorship*, TGS (May 27, 2022), <https://tgs.org.tr/disinformation-law-withdraw-this-bill-or-it-will-aggravate-censorship/>.

[6] *Id.*

[7] Venice Commission, *supra* note 3, at 10; Eur. Consult. Ass., *The Protection of Editorial Integrity*, 2nd Sess., Res. No. 2212 (2018), available at [https://perma.cc/97BN-WS7F].

[8] Eur. Consult. Ass., *supra* note 7; Venice Commission, *supra* note 3, at 11.

[9] Venice Commission, *supra* note 3, at 11.

[10] SCF, *Turkey’s ‘Disinformation’ Bill Could Irreparably Harm Free Speech Prior To 2023 Elections: PACE*, Stockholm Ctr. for freedom (Oct. 12, 2022), <https://stockholmcf.org/turkeys-disinformation-bill-could-irreparably-harm-free-speech-prior-to-2023-elections-pace/> [https://perma.cc/222X-8TUA].

[11] *Id.*; Venice Commission, *supra* note 3, at 4.

[12]. Consult. Ass., *supra* note 7; Woollacott, *supra* note 1.

[13] Woollacott, *supra* note 1.

[14] *Id.*

[15] Firat Kozok and Beril Akman, *New Turkey Law Mandates Jail Time for Spreading ‘Disinformation,’* Bloomberg, (Oct. 13, 2022, 11:24 AM), <https://www.bloomberg.com/news/articles/2022-10-13/turkey-criminalizes-spread-of-false-information-on-internet> [https://perma.cc/AE7D-34K6]; Venice Commission, *supra* note 3, at 13.

[16] Venice Commission, *supra* note 3, at 13.