

TO ISTANBUL CHIEF PROSECUTION OFFICE

Complainant: Veysel Ok

Attorneys: Merve Kurhan, Emine Özhasar

Between: -

Republic of Turkey

Istanbul Chief Public Prosecutor's Office

Prosecution

- and -

**Authorised Officials of all GSM Operators (Turkcell, Vodafone, Türk Telekom) and
authorised officials of the Information Technologies and Communication Authority (BTK)**

Suspects

EXPERT OPINION

BY

ARTICLE 19: Global Campaign for Free Expression

London

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Introduction and summary

1. This expert opinion has been prepared by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation promoting and protecting the right to freedom of expression globally, in accordance with Article 67/6 of the Turkish Code of Criminal Procedure (Law No. 5271). We have been asked by Merve Kurhan and Emine Ozhasar, the lawyers representing Veysel Ok (the Complainant), who is bringing the legal action against bandwidth throttling and GSM operators' service outage in Turkey in February 2023, to advise on alleged violations of international and European standards on freedom of expression in the present. We understand that this opinion can be relied upon in the assessment of the case.
2. In this expert opinion, ARTICLE 19 addresses:
 - The facts and arguments of the parties in the case, relevant for the subsequent analysis;
 - Key international and European standards on freedom of expression applicable in the case, including the relevant standards on internet shutdowns.
 - The impact of internet shutdowns, including through bandwidth throttling, in February 2023 on human rights in Turkey.
3. This submission is based on a comprehensive approach to “internet shutdowns” and recognises that shutdowns come in a wide range of forms. These include bandwidth throttling to slow internet access, blocking of specific apps such as social media or messaging services, and the partial or complete shutdown of access to the internet.¹
4. ARTICLE 19 concludes that the internet shutdowns and the bandwidth throttling violate Turkey's obligations under international human rights law. In particular, they constitute an unnecessary interference with the right to freedom of expression under Article 19(3) of the ICCPR and Article 10(2) of the European Convention. ARTICLE 19 hence urges the Istanbul Chief Public Prosecutor's Office to conduct proper investigations into these shutdowns and ensure those responsible are held to account.

ARTICLE 19's expertise on freedom of expression and internet shutdowns

5. This expert opinion draws on ARTICLE 19's extensive legal analysis and expertise. Over the years, ARTICLE 19 has produced several standard-setting documents and policy briefs based on international and comparative law and best practices, including on freedom of expression and internet shutdowns. ARTICLE 19 also regularly intervenes in domestic and regional human rights court cases and comments on legislative proposals as well as existing laws that affect the right to freedom of expression. ARTICLE 19 has specific expertise of restrictions to access the internet that affects freedom of expression. This

¹ C.f. UN Human Rights Office of the High Commissioner, [Explainer: Internet shutdowns and human rights](#), 01 April 2021.

includes the analysis of the violations occurred in Iran² and interventions in several high-profile internet shutdown cases.

Key facts of the case

6. On 6 February 2023, the Pazarcık district of Kahramanmaraş and the Elbistan district of Kahramanmaraş province were hit by two earthquakes, 7.8 and 7.5-magnitude respectively. The earthquakes and the aftershocks that followed resulted in irreparable destruction, deaths and injuries in many provinces, districts and villages, especially in Kahramanmaraş, Malatya, Diyarbakır, Kilis, Şanlıurfa, Adıyaman, Hatay, Osmaniye and Adana. As of 21 February 2023, 42,310 people were killed, making it the deadliest earthquake in Turkish history.³
7. At the same time, it has been reported that in the aftermath of the earthquake, on 8 February 2023, access to Twitter⁴ and TikTok platforms⁵ were temporarily restricted.⁶ Open Observatory of Network Interference (OONI) data collected from Turkey provides evidence that the block was implemented through targeted throttling and DNS interference.⁷ Subsequently, Twitter and TikTok became unavailable across the entire territory of Turkey.⁸ So far, there has been no official announcements or communication from the Turkish authorities about this interruption. However, it has been alleged that these platforms became inaccessible on major Turkish mobile providers as online criticism mounted of the government's response to the disaster.⁹ On 9 February 2023 at 01.51, Ömer Fatih Sayan, Deputy Minister of Transport and Infrastructure, made a statement on his Twitter account and said that they had a meeting with Twitter officials and reminded Twitter executives of their obligations regarding disinformation.¹⁰ A few hours after the Minister's statement, the access restriction imposed on Twitter and TikTok in Turkey was lifted.¹¹
8. The Complainant and his lawyers are requesting the necessary investigation to be conducted and a public lawsuit to be filed against those responsible for the interruptions to the internet. They argue that these interruptions could have prevented rescue efforts and caused further serious damage to individuals and communities. In its expert opinion, ARTICLE 19 outlines relevant international and regional standards and contextual information that should be considered in the assessment of the case.

² ARTICLE 19, [Tightening the Net](#), 2020.

³ Bianet, [Türkiye's earthquake death toll climbs to 42,310](#), 21 February 2023.

⁴ OONI, [Turkey: Throttling and DNS blocking of Twitter following deadly earthquake](#), 15 February 2023.

⁵ The Washington Post, [Turkish residents struggle to access Twitter in earthquake aftermath](#), 8 February 2023.

⁶ OONI, *op.cit.*

⁷ *Ibid.*

⁸ The Washington Post, *op.cit.*

⁹ See e.g. [Twitter Down in Turkey as Quake Response Criticism Mounts](#), VOA, 8 February 2023; or The Wall Street Journal, [Aid Arrives in Turkey After Earthquakes but Anger Grows](#), 12 February 2023.

¹⁰ See [the tweets from Ömer Fatih Sayan](#), Deputy Minister of Transport and Infrastructure, from 8 February 2023.

¹¹ See e.g. Netblocks, [Twitter restricted in Turkey in aftermath of earthquake](#), 9 February 2023; or The Washington Post, *op.cit.*

Applicable international and regional standards on internet shutdowns

The right to freedom of expression

9. Turkey is a party to and has ratified, both the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (European Convention). The rights enshrined in these instruments form part of Turkish law. The right to freedom of expression is also protected in the Turkish Constitution (Article 26). The Constitution also provides that international agreements that duly come into effect have the force of law; in case of a conflict between international agreements and domestic laws, the provisions of international agreements shall prevail (Article 90). Hence, the Turkish authorities are required to consider the international and European standards on freedom of expression in the context of internet shutdowns.
10. Under international and European human rights law, the right to freedom of expression is not an absolute right. Any restrictions on the right must be scrutinised under so-called three-part test, requiring that:
 - The restriction must be **provided by law**: This means that it must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable individuals to regulate their conduct accordingly.¹²
 - The restriction must **pursue a legitimate aim**, exhaustively enumerated in Article 10(2) of the European Convention and Article 19(3) of the ICCPR.
 - The restriction must be **necessary in a democratic society and proportionate to the aim sought**: This demands an assessment of, first, whether the proposed limitation satisfies a “pressing social need;”¹³ and, second, it must be established whether the measures at issue are the least restrictive to achieve the aim. Assessing the proportionality of an impugned measure requires careful consideration of the particular facts of the case. The assessment should always take as a starting point that it is incumbent upon the State to justify any restriction on freedom of expression, including freedom of the press.¹⁴

Internet shutdowns under freedom of expression standards

11. Internet shutdowns are generally understood as measures taken by governments, or on behalf of them, to intentionally disrupt access to, and the use of, information and telecommunication systems online. This includes either restricting internet connectivity at large or obstructing the accessibility and usability of services that are necessary for interactive communications, such as social media or messaging services.¹⁵ “Throttling,”

¹² European Court, *The Sunday Times v UK*, [App. No. 6538/74](#), 26 April 1979, para 49.

¹³ European Court, *The Observer & Guardian v the UK*, [App. No. 13585/88](#), 26 November 1991, para 59.

¹⁴ European Court, *Lingens v Austria*, [App. No. 9815/82](#), 8 July 1986, para 41.

¹⁵ Human Rights Council (HRC), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [A/HRC/35/22](#), 30 March 2017, para. 8; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, [A/HRC/47/24/Add.2](#), 15 June 2021, para 7.

which occurs when the flow of data through a communication network is artificially restricted but not stopped, is a form of internet shutdown. During throttling, the internet access may seem available, but not usable due to the interference.¹⁶

12. Internet shutdowns, including through throttling, seriously disrupt access to the internet which has been widely recognised by international and regional human rights bodies and courts as an indispensable enabler of a broad range of human rights, including the right to freedom of expression.¹⁷ Importantly, international human rights standards mandate states to promote and facilitate the enjoyment of the right of access to the internet. Accordingly, any interference with access to the internet and digital communication platforms must comply with requirements of these standards. When reviewed under the three part test for restricting the right to freedom of expression, the aims of the internet shutdown will never fall within the legitimate aims of Article 19(3) of the ICCPR or Article 10(2) of the European Convention.
13. International human rights bodies issued a number of recommendations on the lack of compatibility of shutdowns with human rights obligations. In particular:
 - In June 2016, the **UN Human Rights Council** explicitly condemned “measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law’ and called on all States to refrain from and cease such measures.¹⁸ In two resolutions adopted by consensus in 2018, the Human Rights Council further expressed concern about “the emerging trend of ... undue restrictions preventing Internet users from having access to or disseminating information at key political moments”¹⁹ and deep concern at “measures in violation of international human rights law that aim to or that intentionally prevent or disrupt access to or dissemination of information online,” has “condemn[ed] unequivocally measures in violation of international human rights law that prevent or disrupt an individual’s ability to seek, receive or impart information online.”²⁰ It has called upon States to “refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online.”²¹
 - The **UN Human Rights Committee**, body responsible for interpretation of the ICCPR, has also taken a very critical stance on internet shutdowns. In General Comment No.

¹⁶ Access Now, [Taxonomy of a shutdown: 8 ways governments restrict access to the internet, and how to #KeepItOn](#), 2 June 2022

¹⁷ HRC, Resolution 47/16 The promotion, protection and enjoyment of human rights on the Internet, [A/HRC/RES/47/16](#), 13 July 2021; and UN General Assembly, Promotion and protection of the right to freedom of opinion and expression, [A/66/290](#) 10 August 2011, para 12.

¹⁸ See HRC, The promotion, protection and enjoyment of human rights on the Internet, UN Doc A/HRC/32/L.20, 27 June 2016, para 10.

¹⁹ HRC, Resolution on the Promotion and Protection of Human Rights in the Context of Peaceful Protests, 6 July 2018, UN Doc. A/HRC/RES/38/11, para 2.

²⁰ HRC, The Promotion, Protection and Enjoyment of Human Rights on the Internet (5 July 2018), UN Doc. A/HRC/RES/38/7, para 3.

²¹ *Ibid.*

34, it stated that the generic bans on the operation of certain internet sites was incompatible with Article 19(3) of the ICCPR.²²

- The 2011 Joint Declaration on Freedom of Expression and the Internet, issued by four **international freedom of expression mandates**, warned that “[c]utting off access to the Internet, or parts of the Internet, for 13 whole populations or segments of the public (shutting down the internet) can never be justified, including on public order or national security grounds.”²³ Hence, an internet shutdown, in various forms, is a disproportionate interference with the right to freedom of expression as well as other human rights.
- The **Constitution of the International Telecommunication Union (ITU)**, whose aim is to facilitate international connectivity in communication networks, does leave room for countries to justify shutdowns and has been relied on by some States as granting legal authority to block communications, including to implement internet shutdowns. Articles 34 and 35 of the ITU Constitution gives states the right to cut off access to telecommunication services or “international telecommunication services” if they prove “dangerous to the security of the State.” Regardless of the ITU Constitution, states must be held accountable for their human rights violations.²⁴ The values set out in the ITU’s own strategic plan include recognition of the “overarching pre-eminence of human rights,” including the rights to freedom of expression and privacy.²⁵ At the same time, the ITU Constitution requires any member states, who undertake the “stoppage of telecommunication,” such as an internet shutdown, to meet certain criteria, which includes informing the ITU and other members about the action. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has recommended that ITU issues guidance clarifying that those provisions should never be understood as authorising internet shutdowns.²⁶
- On a **regional level**, the European Court of Human Rights (European Court) has also recognised access to the internet as part of the freedom to receive and impart information and ideas and therefore, protected by Article 10 of the European Convention in its case law.²⁷ In Africa, in 2020, the Economic Community of West African States (ECOWAS) Community Court issued a pivotal decision in a shutdown case against Togo. It ruled that by the internet shutdown during the anti-government

²² Human Rights Committee, General Comment No. 34, 12 September 2011, para 43.

²³ [Joint Declaration on Freedom of Expression and the Internet](#), 1 June 2011, issued by the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; the Organization of American States (OAS) Special Rapporteur on Freedom of Expression; and the African Commission on Human and Peoples’ Rights (ACHPR).

²⁴ HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, [A/HRC/47/24/Add.2](#), 15 June 2021, paras 65 – 66.

²⁵ ITU, Plenipotentiary Conference of the International Telecommunication Union (Dubai, 2018), [ITU Strategic Plan for the Union 2020–2023](#), §1.3: Values, 5.

²⁶ HRC, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, [A/HRC/47/24/Add.2](#), 15 June 2021, para 67.

²⁷ See e.g. the European Court, *Cengiz and Others v Turkey*, App. Nos. 48226/10 and 14027/11, 2015; or *Ahmet Yildirim v Turkey*, App. no. 3111/10, 2012.

protests in 2017, the Togolese government violated human rights. Moreover, the Court found Togo's national security arguments unpersuasive, and insufficient to justify the internet shutdown under local nor under international law.²⁸

- Additionally, the legitimacy of the shutdowns have been considered by several **domestic courts**. There is a growing number of courts expressing concerns relating to shutdowns. For instance, courts in Zimbabwe and Sudan have found past shutdowns illegal, ordered the reinstatement of internet connectivity in cases of ongoing shutdowns or enjoined an authority from imposing shutdowns in the future.²⁹ In India, the Supreme Court has also ordered the release and publication of all shutdown orders.³⁰
- Last but not least, the report of the **Office of the UN High Commissioner for Human Rights** in May 2022 explicitly warned that internet shutdowns have a profound effect on humanitarian efforts as they can impede the ability of humanitarian actors to provide assistance.³¹ The report stated that “given their indiscriminate reach and broad impacts, internet shutdowns very rarely meet the fundamental requirements of necessity and proportionality. Their adverse impacts on numerous rights often extend beyond the areas or periods of their implementation, rendering them disproportionate, even when they are meant to respond to genuine threats.” It recommended that “States should always provide thorough public information, in a timely manner, regarding any Internet shutdowns that they may impose, including bandwidth throttling, limiting access to certain communication services, platforms or virtual private network blocking.”

14. Telecommunication companies also have responsibility to take certain steps to prevent and respond to the shutdown requests by state authorities. In particular, before implementing access disruption orders, telecommunications companies should explore all legal options for challenging requests for shutdowns.³² They should also promptly inform the public about any disruptions and provide regular updates on their efforts to reestablish communications whenever communications are blocked.³³ Finally, the companies should carry out human rights due diligence with regard to potential adverse

²⁸ ECOWAS, [Amnesty International Togo and Ors v. The Togolese Republic](#), ECW/CCJ/JUD/09/20, 25 June 2020.

²⁹ See, for example, the [decision of the Khartoum District Court in the Sudan](#), November 2021; or High Court of Zimbabwe, *Zimbabwe Lawyers for Human Rights and Media Institute for Southern Africa v The Minister of State in the President's Office Responsible for National Security and others*, case No. HC 265/19, judgment of 21 January 2019; or High Court for Zambia, *Chapter One Foundation Limited v. Zambia Information and Communications Technology Authority*, case No. 2021/HP/0955, consent judgment of 21 March 2022.

³⁰ Supreme Court of India, *Anuradha Bhasin v Union of India*, judgment of 10 January 2020. It should be noted, however, that the review mechanism is subject to criticism because of its lack of independence from the Executive branch of the Government; see submission by the Internet Freedom Foundation and the Software Freedom Law Center.

³¹ Internet shutdowns: trends, causes, legal implications and impacts on a range of human rights, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/50/55, 13 May 2022.

³² The Office of the UN High Commissioner for Human Rights, [Internet Shutdowns and Human Rights](#), April 2021.

³³ *Ibid.*

impacts from network shutdowns when entering or renegotiating licence agreements with governments at all levels.³⁴

Impact of internet shutdowns in Turkey in February 2023

15. The strong stance against interference in connectivity and internet access is particularly acute in situations following natural disasters, such as in Turkey now, following the earthquake, when access to the internet and social media platforms was crucial in rescue efforts.
16. It has been argued that disruptions in internet access in Turkey in February 2023 has made it impossible to call for vital services and rescue teams. There are numerous reports that many people trapped under the rubble caused by the earthquake used their mobile phones and social media platforms to reach rescue teams and operations. Thousands of people posted on various social media, especially Twitter and TikTok, posts such as "I am under the rubble" and shared their locations. People who survived but who had their family members under the rubble, also shared locations and asked for help for their loved ones or for themselves as many were struggling under freezing temperatures without sufficient emergency aid, water, food and shelter.³⁵ Even on 20 February 2023, two weeks after the earthquakes, survivors of the quakes reportedly continued to face huge accommodation problems.³⁶ Moreover, it is estimated that at least two million people cannot be supplied with electricity.³⁷
17. It can be argued that the February shutdown in Turkey has interfered with mobilising urgent medical care and disrupted the delivery of humanitarian aid.³⁸ For instance, a government official who spoke to Reuters said that the blocking of Twitter interrupted real calls for help.³⁹ A volunteer who coordinated extensive aid and rescue efforts in earthquake hit areas stated that they have been using Twitter for the most of their aid coordination and since the access restriction they went down by 70%.⁴⁰ Moreover, the interference with the connectivity prevented journalists and others from sharing information and from reporting about the situation.
18. The timing of the interference was also critical as it came at the time when human lives could have been saved with a timely response in the first 72 hours. The first 72 hours

³⁴ *Ibid.*

³⁵ See e.g. Duvar English, [Main opposition CHP files criminal complaint against top gov't officials over Twitter restriction](#), 11 February 2023.

³⁶ Duvar English, [Criticism mounts on Turkish government as Feb. 20 quakes reveal accommodation problems](#), 21 February 2023.

³⁷ Duvar English, [CHP deputy chair says two million people cannot access to electricity in quake-zone](#), 21 February 2023.

³⁸ The Conversation, [Twitter cutoff in Turkey amid earthquake rescue operations: A social media expert explains the danger of losing the microblogging service in times of disaster](#), 09 February 2023.

³⁹ Reuters, [Anger over Turkey's temporary Twitter block during quake rescue](#), 09 February 2023.

⁴⁰ The Conversation, [Twitter cutoff in Turkey amid earthquake rescue operations: A social media expert explains the danger of losing the microblogging service in times of disaster](#), 09 February 2023.

after the earthquake was a crucial time window that is considered to be most important to find people alive.⁴¹ This is not a hypothetical claim; for example, a group of thousands of developers and tech analysts from Turkey collected thousands of Tweets to create a map showing where the calls for help from survivors were concentrated in this crucial time period.⁴²

Conclusions

19. On the basis of foregoing, ARTICLE 19 supports the Complainant's case. We believe that it is exactly in situations such as natural disasters when internet shutdown and other forms of intentional disruption in access to the internet cannot be justified. We cannot conceive any reasons under which this interference could be considered proportionate. Hence, we support the argument of the Complainant that the interruption of the access to the internet in February 2023 in Turkey went against Turkey's obligations under international and regional standards on the right to freedom of expression. We fully support the efforts to ensure that a proper and speedy investigation is conducted into the circumstances that led to execution of the shutdown and that those responsible are held to account.

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⁴¹ The New York Times, [Remembering the Lives Saved Drives Rescuers in Turkey to Push On](#), 21 February 2023.

⁴² Time, [Twitter's Internal Chaos Is Slowing Turkey Earthquake Relief Efforts, Volunteers Say](#), 11 February 2023.