

GLOBAL INFORMATION SOCIETY WATCH 2014

Communications surveillance in the digital age

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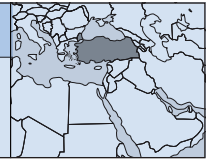
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TURKEY

So you want a surveillance state?



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Introduction

In May 2010, the leader of Turkey's main opposition party, the Republican People's Party (CHP), resigned after footage showing him intimately involved with a deputy of his party was published.¹ One year later, in May 2011, there was another sex-tape scandal, at the end of which ten deputies of the Nationalist Movement Party (MHP) had to resign.² No serious investigation was carried out into who was responsible for the recordings, and Turkish politics has since been shaped by legally or illegally obtained recordings, wiretapped phone conversations or intercepted electronic communications. Four years after Deniz Baykal's resignation, a model gave an interview to a government-friendly newspaper³ regarding allegations that a gang that eavesdropped on the country's prime minister also monitored her communications. She was furious, but not because she felt violated; rather, because the violation had come from what she believed to be an unauthorised authority. She said: "Only official agencies can eavesdrop on me when they deem necessary." She was reciting the Turkish government's newest narrative.

Policy and political background

"If you do nothing wrong, if you have no illegal business, don't be afraid of wiretapping," Binali Yıldırım, who was at the time minister of transportation and communication, told Parliament in 2009.⁴

Five years later, the Justice and Development Party (AKP) government would pass law after law to grant state intelligence units nearly unlimited powers of surveillance with little accountability or oversight over how they are used.⁵ Ironically, the AKP government has become the victim of a major wiretapping scandal⁶ itself, which has revealed alleged government corruption. What makes the issue even more convoluted is that some in the overly polarised country claim that the voice recordings on AKP were obtained through court warrants, although the government alleges their illegality. Against this political backdrop, the citizenry remains mainly apathetic to, if not supportive of, the creation of what has been described as a "complete security apparatus" to control the population.⁷

A tale of many surveillance centres

Turkey's recent political history makes it clear there is a tape on everyone that can be leaked at the opportune moment, and the perpetrators usually do not have to suffer any legal consequences regarding privacy violations. Turkey's recent attempted coup trials, publicly known as the Sledgehammer and Ergenekon trials,⁸ in which hundreds of high-ranking military officials as well as civilians stood trial on charges of attempting to overthrow the AKP government, have shown that there are no secrets in this new era; not even personal ones. During the course of the investigation some of their highly private conversations were also leaked to the media. However, these cases have not led to a public debate over the current legislation on privacy and rights violations.

1 (2010, May 11). CHP leader Baykal resigns. *Today's Zaman*. www.todayszaman.com/tz-web/news-209896-103-chp-leader-baykal-resigns-puts-blame-on-ruling-party.html

2 Hurriyet Daily News. (2011, May 22). Turkish politics tainted by sex tape conspiracy. *Hurriyet Daily News*. www.hurriyetdailynews.com/default.aspx?pageid=438&n=turkish-politics-tainted-by-sex-tape-conspiracy-2011-05-22

3 Yazdir, H. (2014, June 15). Turkiye baronlar tarafından hortumlanacakti (Barons were going to drain out Turkey's wealth). *Yeni Şafak*. yenisafak.com.tr/pazar-haber/turkiye-baronlar-tarafindan-hortumlanacakti-15.06.2014-658542

4 Korkmaz, O. (2014, February 27). Why fear wiretapping if you have no illegal business? *Hurriyet Daily News*. www.hurriyetdailynews.com/why-fear-wiretapping-if-you-have-no-illegal-business.aspx?pageID=449&nID=62975&NewsCatID=497

5 Jones, D. (2014, April 18). Turkish law gives spy agency controversial powers. *Voice of America*. www.voanews.com/content/turkish-law-gives-spy-agency-controversial-powers/1896418.html

6 DW. (2014, March 21). Erdogan defies quagmire of scandal in Turkey. *DW*. www.dw.de/erdogan-defies-quagmire-of-scandal-in-turkey/a-17511672

7 Smith, D. (2014, April 26). New Law In Turkey Expands Surveillance State And Cracks Down On Journalists. *Jonathon Turley*. jonathanturley.org/2014/04/26/new-law-in-turkey-expands-surveillance-state-and-cracks-down-on-journalists/

8 Tisdall, S. (2012, September 25). Turkey's Sledgehammer Coup verdict: justice or Soviet-style show trial? *The Guardian*. www.theguardian.com/world/2012/sep/25/turkey-sledgehammer-coup-trial-verdict

Another major wiretapping scandal broke after 17 December 2013 when prosecutors made public a major graft investigation that reached the government and Prime Minister Recep Tayyip Erdoğan's inner circle.⁹ In March of this year, voice recordings purportedly obtained during the course of the graft investigation were released on Twitter by a user account, which has since been withheld in Turkey by Twitter.¹⁰ The recordings allegedly featured the voices of some ministers, businessmen close to the AKP government, as well as several alleged conversations between Erdoğan and his son Bilal Erdoğan, in which the two spoke about hiding large amounts of cash in their home.¹¹ In response to the corruption investigation and the leaks, the government has carried out purges in the police force and the judiciary and public agencies.¹² It has claimed that what Erdoğan calls a "parallel organisation" – which it associates with its former political ally, the religious-minded social movement Hizmet, inspired by the Islamic preacher Fethullah Gülen, and which has been able to expand its presence in the country's police force and other state agencies with the support of the AKP – was behind the corruption allegations in a plot against his government. Later on, it emerged that some of the recordings leaked were based on court warrants, but the government so far has been able to effectively stonewall the graft probe.

As part of its efforts to exert more control over the internet, the AKP government has also amended Turkey's Law No. 5651 on the Regulation of Internet Publications and Prevention of Crimes Committed through these Publications.¹³ The amendments were found to be a violation of free speech, and criticised both domestically and internationally.¹⁴

Initially, the amendments had sought to oblige all access providers to form a union in order to be able to operate in the country, and to store the traffic and browsing data of users for a two-year period, to be shared with state authorities upon court orders or administrative requests. However, this was later repealed and the law was amended to limit data storage by access providers strictly to communications traffic when there are street protests.

However, more internet restrictions were to follow. In response to the graft scandal, the AKP banned Twitter in March 2014. Twitter had already angered Prime Minister Erdoğan, who has publicly expressed his dislike of the social media platform many times for its role during the 2013 anti-government Gezi protests. In fact, several Gezi protesters were detained over posts shared on their personal Twitter or Facebook accounts.¹⁵ Some analysts said the amendments followed by the Twitter ban are indicative of further rights violations to come.¹⁶ And they were proven right. In less than a month after the Twitter ban, the government banned access to YouTube through the Telecommunications Authority (TİB). YouTube was banned after another leak, this time of a high-level secret meeting between the state's top security officials recorded at the Foreign Ministry building, in which the speakers spoke about starting a war with Syria. The access ban could only be lifted through a Constitutional Court order,¹⁷ an action which Erdoğan criticised as being "unpatriotic". Lower court orders to lift both the Twitter and YouTube bans were earlier ignored by TİB. To date, the perpetrator of the security summit leak still has not been found, although the government has accused, with no evidence, the aforementioned parallel structure of being behind it.

Users were able to circumvent the YouTube and Twitter bans through DNS server changes, and later via virtual private networks (VPNs), as there were reports that the user-changed DNS servers were intercepted by Turkish internet service providers

9 Today's Zaman (2014, February 16). Chronology of Dec. 17: The stones are settling into place... *Today's Zaman*. www.todayszaman.com/news-339508-chronology-of-dec-17-the-stones-are-settling-into-place-.html

10 Today's Zaman. (2014, April 20). Twitter freezes two accounts. *Today's Zaman*. www.todayszaman.com/news-345673-twitter-freezes-two-accounts-after-meeting-with-officials.html

11 An English translation of the transcript can be found at: www.liveleak.com/view?i=9f6_1393289511

12 Üstütağ, G. (2014, June 14). Erdoğan's witch hunt turns key state institutions upside down. *Today's Zaman*. www.todayszaman.com/news-350367-erdogans-witch-hunt-turns-key-state-institutions-upside-down.html

13 Euronews. (2014, February 18). Turkey's controversial internet law gets presidential approval. *Euronews*. www.euronews.com/2014/02/19/turkey-s-controversial-internet-law-gets-presidential-approval

14 Today's Zaman. (2014, February 25). Amnesty criticizes internet law, treatment of journalists in Turkey. *Today's Zaman*. www.todayszaman.com/news-339334-amnesty-international-criticizes-internet-law-treatment-of-journalists-in-turkey.html; Uras, U. (2014, February 25). New internet law in Turkey sparks outrage. *Al-Jazeera*. www.aljazeera.com/indepth/features/2014/02/new-internet-law-turkey-sparks-outrage-201422312144687859.html. For a legal analysis on the potential dangers of the law, see: www.thelawyer.com/analysis/opinion/turkeys-new-internet-law-increases-state-control/3016906.article

15 Today's Zaman. (2014, February 24). Gezi protests' Twitter suspects demand Erdoğan testify as victim. *Today's Zaman*. www.todayszaman.com/news-340332-gezi-protests-twitter-suspects-demand-erdogan-testify-as-victim.html

16 Andrew Gardner, Amnesty International (AI) researcher on Turkey, has said of the Twitter ban: "It is very indicative of how policy is made in Turkey and how rights are violated. I think this is going to have long-term implications." *Today's Zaman*. (2014, March 25). Government toughens war on Twitter, bans more sites. *Today's Zaman*. www.todayszaman.com/news-343039-government-toughens-war-on-twitter-bans-more-sites.html

17 Al-Jazeera. (2014, May 29). Turkey's top court rejects YouTube ban. *Al-Jazeera*. www.aljazeera.com/news/middleeast/2014/05/turkey-top-court-rejects-youtube-ban-2014529195032711672.html

(ISPs),¹⁸ a further rights violation, if the allegations are true.

Recently, hundreds of police officers who have participated in the graft investigation into the government have also been detained on espionage charges.¹⁹

These developments have deepened polarisation in society, making it easier for the increasingly draconian surveillance laws to find acceptance. The AKP has also been able to retain its votes in the 30 March local elections²⁰ and later have its presidential candidate, none other than Prime Minister Erdoğan himself, get elected in the first round of the country's first-ever popular presidential election on 10 August, in spite of serious graft allegations, harsher internet controls, and Orwellian powers being granted to the country's spy agency.

Conclusions

Internet users and the global public are increasingly more sensitive about unchecked government surveillance, particularly following Edward Snowden's revelations about the extent of US National Security Agency (NSA) surveillance – which was not a secret for many concerned with surveillance²¹ prior to Snowden's leaks. Now world governments seem to be finding ever more intrusive ways of intercepting communications. Globally, we can forget about privacy.

However, the situation in Turkey seems to be more alarming, as there is little public discussion on the effects of unchecked surveillance. To the contrary, an overwhelming majority of the public seems to be content with the stricter powers of the government, if the outcomes of the two recent elections are any indication. Debate on how to protect citizens from unnecessary and unchecked government surveillance has taken place in Turkey, but only among civil society groups, rights organisations and academics. International bodies, including the European Union (EU), have reacted to Turkey's stricter surveillance laws, but these have had little effect on the government's plans to centralise surveillance powers.

In addition to this depressing milieu, it should be noted that in some of the ongoing wiretapping cases, it is not yet clear who has done the eavesdropping. Although legally the telecoms body TİB has the right to wiretap phone lines based on court orders, intelligence units of the police force and the gendarmerie also have some technical capabilities to monitor communications, although the extent of these capabilities is debated.²² Jurists and lawyers have offered different interpretations as to what is legal, usually depending on their political stance and level of partisanship. Ambiguity concerning who is authorised to monitor real-life or electronic communications in Turkey is a direct consequence of the increasing polarisation, which helps the administration justify and acquire consent for going after “parallel structures”, or other imagined enemies, to consolidate Erdoğan's supporters.

History has shown time and again that even the most democratic government will abuse widespread surveillance powers if it has them. In the Turkish case, the unchecked access to the personal data of citizens for what some say are “warring factions” nested within the state hierarchy makes the issue even more complicated. It is very difficult at this time to pinpoint the perpetrators of warrantless wiretapping. Certainly, there are many challenges of attempting to maintain control over the population;²³ however, there is no indication as of yet that challenges from political groups might actually work against the government in the end. Currently, political opposition, human rights groups and generally disadvantaged groups are extremely distressed about Turkey's descent into a police or surveillance state. However, systematic rights violations are undeniably a major threat to everyone, including the members of the majority. Another potential victim of unchecked state surveillance are the power holders, a fact that the AKP government has seen first-hand already.

18 Statement from Google: Turkish ISPs block access to Google DNS servers (in Turkish), T24 website, 31 March 2014. t24.com.tr/haber/google-dnsleri-turk-servis-saglayicilar-engelliyor,254845

19 AP story on what is known as the “July 22 Operation” in Turkey: Fraser, S. (2014, July 22). Turkey detains police for ‘spying’ and wiretaps. AP. bigstory.ap.org/article/turkey-police-involved-graft-probe-detained

20 The Economist. (2014, April 5). Erdoğan on a roll. *The Economist*. www.economist.com/news/europe/21600161-ak-party-wins-convincingly-what-next-erdogan-roll

21 Unseen.org founder Chris Kitze interview with RT: https://www.youtube.com/watch?v=CvMiKT4R_Fo#t=20

22 One of the former police chiefs accused of spying on the government claims it is technically impossible for the police force to eavesdrop on the encrypted phone lines of the prime ministry, although the prosecution – which has the blessing of the AKP government – claims that this was exactly what the police officers have done. Interview with Yakub Saygılı: Akman, N. (2014, August 11). ‘I’m ready to serve many years in prison if what I did was illegal’. *Today's Zaman*. www.todayszaman.com/interviews_im-ready-to-serve-many-years-in-prison-if-what-i-did-was-illegal_355343.html

23 Darren Smith notes that “maintaining a complete security apparatus in controlling a population is expensive in terms of resources, money, and political backing.” Smith, D. (2014, April 26). Op. cit.

Action steps

Turkish civil society organisations have been even more active than before about reminding users of their rights to privacy and raising their voices against internet surveillance and monitoring. For example, in 2012, the Chamber of Computer Engineers (BMO) released a comprehensive User Rights Manifesto²⁴ backed by eight organisations including professional chambers, anti-censorship and internet rights groups. However, these efforts have had little outreach, given the politically tense situation in the country. Activists should continue their efforts in creating awareness on state surveillance, but perhaps make certain modifications:

- Street protests against internet censorship are increasingly seen as anti-government actions in Turkey. Organisations should find ways to communicate with parts of society that are sceptical of groups that they associate with the Gezi protests.
- All civil society organisations must find a way to convince the AKP administration to reduce the political polarisation in the country. Hostility among a divided public breeds less transparency, which in turn facilitates unlawful or legal but unnecessary state surveillance.
- Educational institutions at all levels should make internet freedoms a part of their curricula and teaching programmes.

- All civil society organisations, even if they are not in the field of technology or communications freedoms, should treat internet liberties as a basic human right and include this freedom in their wider agenda. Rights activists should focus on communicating with civil society groups from other fields.
- Although independent media and journalist freedoms are increasingly threatened in Turkey,²⁵ journalists should be braver and more outspoken on the subject of state surveillance.
- The international community has been extremely critical of Turkey's increasingly dictatorial expansion of surveillance laws. It might be helpful if international bodies and organisations such as the Organization for Security and Co-operation in Europe (OSCE), the UN or the EU also concentrated on reaching out to the majority that seems to approve of the government's surveillance policies.

Fighting for democracy and transparency in times of political repression takes not only courage but innovation and reinventing ideas to make sure that the public understands that dissenters and government critics are not the country's enemies. Populist authoritarianism can be defeated only by gaining the support of government supporters, not antagonising them.

²⁴ BMO Manifesto, in Turkish: www.bmo.org.tr/2012/04/18/internet-kullanici-haklari-bildirgesi-yayinlandi

²⁵ Kramer, D., Robbins, C., & Schenckan, N. (2014). *Democracy in Crisis: Corruption, Media, and Power in Turkey*. Washington, DC: Freedom House. www.freedomhouse.org/sites/default/files/Turkey%20Report%20-%20Feb%203%2C%202014.pdf