Policy Note
17 February 2014
This policy note has been prepared by the Checks and Balances Network.
The policy note evaluates the Bill on Amendments to Law 5651 Concerning the Regulation of Broadcasts Made in the Internet Medium and the Fight against Crimes Committed through such Broadcasts adopted by the Plenum of the Grand National Assembly of Turkey (GNAT) and its possible effects from the point of checks and balances.

The Internet Law to Have a Direct Effect on the Lives of 55 Million People

In 2007, the “Law Concerning the Regulation of Broadcasts Made in the Internet Medium and the Fight against Crimes Committed through such Broadcasts” numbered 5651 came into effect and the Law led to much discussion then in terms of its content. The Bill concerning the Internet currently adopted by the Plenum of the Grand National Assembly of Turkey (GNAT) introduces amendments to that Law. One of the issues debated most in the public in relation to the Bill is the fact that it enables the administration to prevent access, without the need for a court decision, “in cases where delay would be prejudicial in connection with breaches of privacy.” The administration that may prevent access is the Telecommunications Office affiliated to the Information Technologies and Communication Authority (ITCA).

The Process of Making the Law Concerning the Internet to Affect the Lives of 55 Million People is not Sufficiently Participatory

We consider the protection of our privacy very important. We believe that this issue, which directly concerns each of us but which is also very sensitive and complicated, should be discussed with broad participation. It is very positive in terms of participation that certain information experts, legal experts, and organizations representing the business community were consulted while the Internet Bill, including also the protection of our privacy, was being debated at the Constitutional Committee. In the 21st century, everything relating to the Internet, which has become an integral part of our daily life, directly concerns and affects each of us. For this reason, we must all become part of this process.

According to international standards, civic participation is a process where the people are involved in the control of public policies that directly affect their own lives and society:

- Before starting the consultation process, decision-makers inform citizens, make a plan for the process and share this plan with the public.
- Decision-makers ensure that the consultation process is transparent.
- Decision-makers ensure that the consultation process is inclusive and accessible.
- Decision-makers allow citizens sufficient time to prepare for and participate in the consultation process.
- Decision-makers provide feedback at the end of the consultation process to those who were consulted.

The Judge’s Work must be Done by the Judge

It is against the principle of checks and balances for a state institution (the executive) to make a decision by acting like a court on a matter which requires a court decision (that is, which falls under the competence of the judiciary). The Internet Law states: “In cases where delay would be prejudicial in connection with breaches of privacy, access shall be prevented by the Telecommunications Office [TO] directly upon order by the President of the [TO].” It is against the principle of separation of powers included in the Constitution of 1982 for an order to prevent access to be given at his own initiative by the President of the TO, which is a state institution, on a matter which requires a court decision, whatever the reason may be.

1 For the Bill on Amendments to Law 5651 Concerning the Regulation of Broadcasts Made in the Internet Medium and the Fight against Crimes Committed through such Broadcasts, see http://www2.tbmm.gov.tr/d24/2/2-1914.pdf
Another point contrary to the principle of checks and balances is the following expression in the Internet Law: “Any criminal prosecution to be started against staff members of the Office for offences arising from the nature of the duty or claimed to have been committed by them during the performance of the duty shall be subject to the permission of the relevant Minister in the case of the President of the Telecommunications Office or the permission of the President of the Authority in the case of other staff members.” It is against separation of powers to subject a criminal prosecution (which falls under the competence of the judiciary) to the permission of the Minister (a member of the executive), who is a state officer.

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<th>The system of checks and balances means that the powers of:</th>
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<td>Legislative;</td>
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<td>Organized civil society and active citizens</td>
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Balance and check each other’s power for a democratic social order in the framework of their respective duties and responsibilities. The system of checks and balances prevents one power from dominating the others, upholds separation of powers, protects the minority from the majority, and considers gender equality.

Why is the Internet Law Important for Us?
The Internet, which has become part of the daily lives of many of us, is not just a means of communication. It is also a means of trade, media and exchange. According to the Household Information Technologies Use Survey of the Turkish Institute of Statistics (TIS), the proportion of households with access to the Internet has risen to 49.1% in Turkey.2 This means that one household out of every two has access to the Internet. At the same time, it is stated that the number of Internet users in our country has reached 55 million.3

While making a law that includes highly important provisions on the Internet, which concerns all of us and which has become an integral part of our lives, every person not included in the process will think that he/she has no influence whatsoever in decisions affecting his/her country, and his/her consciousness of citizenship will suffer damage.

The fact that in the Internet Law, the executive encroaches upon the sphere of the judiciary or, in other words, the balance among the powers is disturbed will pave the way for such practice in other laws. For the culture of democracy to extend and become established, it is essential that state institutions check and balance each other in a harmonious manner within their respective frames of authority! Above all, such practice creates serious confusion not only among state institutions but also in the minds of citizens. The Constitution of 1982 guarantees what state institution is responsible for what and to what extent. Failure to respect these balances will diminish our confidence in state institutions and seriously hurt our sense of justice.

Our Proposals as the Checks and Balances Network

- The law concerning the Internet, which affects the lives of 55 million, should be reconsidered so as to encompass all sections of the public.
- The role and structure of the Information Technologies and Communication Authority (ITCA) should be autonomous, its personnel and budget should be subject to inspection, and it should be accountable. To increase participation, representatives of civil society and specialist academics should also be included in the ITCA.
- A procedure should be created for a decision to be made urgently and directly by a judge on administrative decisions to remove content from broadcasting.
- The “Bill on the Protection of Personal Data” should be made a constitutional right in conformity with the legislation of the EU (European Union) and with international standards.

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- To obtain results from the Internet at the highest level and to minimize problems that may be faced, the infrastructure for an effective Internet education should be created and citizens should be informed of the international practices and the practices in our country.
- Considering that Internet technology forms an economic, fast and extensive area, possibilities should be offered for a more intensive use of the Internet to ensure checks and balances.
- Turkey should accede to the Council of Europe Convention on Cyber Crimes.