

Chapter 4.7

Telecommunications Interception in Turkey: Rights to Privacy vs. Discourses of Security

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ABSTRACT

The paper discusses telecommunication interceptions in Turkey as a state surveilling itself as well as its citizens. While surveillance of state officials including the judiciary indicates a perception of threat from inside the state, these perceptions overlap with the 'deep state' phenomenon in Turkey. Despite the 2005 legal reforms which introduce strict legal standards for communications surveillance, current political developments reveal that wiretapping remains as a commonly used micro-power application. The paper, by utilizing Foucault's theory, aims to uncover the 'conditions of possibility' for the use of this disciplinary technique in Turkey with a certain focus on the actual power relations and discourses of truth.

I. INTRODUCTION

In recent years, wiretapping has become a scandalous issue in Turkey in a period surprisingly following the 2005 legal reforms regarding surveillance over communications and despite the fact that the legal standards set by the new national regulations are similar and in some respects even higher than

the European standards. Both the phenomenon of wiretapping and its dilemmatic timing may be elaborated thoroughly only if telecommunications interception as a commonly used method in Turkey is situated within the socio-cultural, political and historical background which have contributed to its *raison d'être*. The complexity of the mentioned background which is obscured further by the never-ending power-conflicts and the nature of surveillance as a micro-power application, make

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a Foucauldian approach to the issue even more valuable since it provides the necessary guiding light to the details which are mostly neglected in the relevant theoretical debates.

Telecommunication interceptions may be perceived as a side-product of the collaboration between technology and law for the sake of security and it may be claimed that it repeats its well-known global pattern in Turkey as well. Within this context, it straightforwardly poses the challenge to find a delicate balance between the rights to privacy and public interest. Yet, the direct link between surveillance and criminal law complicates, if not prevents, an effective democratic or international control over the wiretapping as an administrative tool. That becomes the point where the political and the personal coincide and where the private becomes a public concern. It may be maintained for some extreme cases that the ‘intimacy’ of security forces overcomes the intimacy of the individual.

While a state surveilling its own citizens is already quite challenging for the privacy debate, this paper is a modest attempt to discuss the telecommunication interceptions in Turkey as a state surveilling itself as well as its citizens. A state surveilling its political, judicial and administrative officers probably refers to a state which perceives security threats from inside and these threat perceptions overlap with the “deep state” phenomenon of Turkey as if it is a self-fulfilling prophecy. The first section of the paper purely concentrates on its legal dimension and lays down the current domestic legal reforms and the related jurisdiction in detail, and concludes with a brief comparison of the regulations in other countries with Turkey. At the end of the section, the international standards laid down by the European Union and by the case-law of the European Court of Human Rights will be discussed critically.

The second section deals with the political developments of the last two years which paved the way to the sensational outbreak of wiretapping practice directed to the judiciary among

the others. This part is by and large based on the newspaper articles due to the lack of sufficient academic resources as well as to the better reflection of political sentiments in the media discourse. Unfortunately, it has not been possible to present it with a comparison of the conflicting discourses of different newspapers, which may be an interesting subject for further work in this field. In the same section, the infamous court case on the Turkish ‘deep state’ network is briefly introduced with a special emphasis on its criminal evidence collecting method which is largely based on the wiretapping.

The third section is more than a debate on the conclusions of the previous sections through the Foucauldian lenses. It is, rather, an endeavor to unveil the local circumstances which are rooted in the past and have led to the events summarized in the second section and to resolve the apparent inconsistency between the legal (the first section) and the political (the second section), by utilizing Foucault’s theory. In other words, its modest objective is to uncover the ‘conditions of possibility’ for the widespread practice of legal/illegal wiretapping in Turkey by focusing on the actual power relations, whether in conflict or in collaboration, through elucidating the ‘techniques of power’ and the discourses of truth used and developed by these powers at the intersection of the rights to privacy and to security.

II. REGULATION OF TELECOMMUNICATION INTERCEPTIONS BY LAW: TURKEY AND THE WORLD

a) Telecommunications Surveillance in Turkish Law and Jurisdiction

The right to privacy is a constitutionally protected right in Turkey. Article 20 of the Turkish Constitution regulating Privacy of Individual Life states that “[e]veryone has the right to demand

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