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PARENTAL INTERNET RESTRICTIONS AND THE PERSONALITY RIGHTS OF CHILDREN: A COMPARATIVE STUDY OF TURKISH AND GERMAN LAW

The increasing accessibility of the internet through various digital devices has significantly changed children's online experiences. While internet access offers children opportunities for learning and social interaction, it also exposes them to potentially harmful content. In response, many parents impose access restrictions. This paper examines how such parental restrictions impact the personality rights of children from a comparative legal perspective, focusing on Turkish and German law. The study discusses the legal balance between parental authority and the rights of children to digital participation, privacy, and development. It argues that the German legal approach may serve as a model for Turkish regulatory efforts. By bridging child protection, internet freedom, and digital media regulation, the paper offers recommendations for legal frameworks that prioritize the best interests of the child.

Key words: *Children's rights. – Digital media. – Parental control. – Personality rights. – Legal comparison.*

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1. INTRODUCTION

The rapid development of technology has led to internet and technology use starting at a lower age. Children use the internet intensively, sometimes with parental permission and sometimes without parental permission. If there are no restrictions on a child's internet access, it is possible for them to access any site on the internet they want while their parents are eating or doing something else. If there are no restrictions on the child's access to the internet, they can access any website they want and what they see can sometimes make them feel scared or unsafe.

The safest way for children to use the internet comfortably and safely is for parents to impose internet restrictions, filtering and most importantly – for the State to take measures and impose sanctions. How do internet restrictions imposed on the child by the parent affect the personal rights of the child? What are the criteria that parents should pay attention to? When determining the criteria, it is important to identify the principles adopted in Turkish and German law and to determine which changes should be made in Turkish law.

2. PERSONALITY RIGHTS OF THE CHILD'S

2.1. Personal Rights of the Child under Turkish Law

In Turkish law, the personal rights of the child are protected under the Constitution, the Turkish Civil Code (TCC) and international conventions (e.g. the United Nations Convention on the Rights of the Child). All legal regulations aim to protect the child and ensure the physical, mental, moral, social and emotional development of the child, on the basis of not violating the rights of the child (Serozan 2017; Dural, Öğüz, Gümüş 2024; Özdemir 2024; Oğuzman, Seliçi, Oktay Özdemir 2024), with the concept of the child referring to persons under the age of eighteen.

In Turkish law, the main personal rights of the child are the right to life, physical and psychological inviolability, the right to name and identity, the right to education and development, the right to privacy and confidentiality of private life, the right to freedom of thought and expression, the right to protection and not to be abused, and the right to property and inheritance (Jäggi 1960).

The duty to protect the personal rights of the child is primarily assigned to the parents, and Article 41 of the Constitution further stipulates that the State has the responsibility to protect the child if the parents fail to fulfill this duty.

Children accessing the internet and the restrictions imposed on such access may lead to the violation of multiple personal rights of the child. However, the personality right that will be most affected is the right to privacy and confidentiality of private life.

2.2. Personal Rights of the Child under German Law

In German law, the concept of “child” is mentioned in different laws, but within the framework of each law, different age limits and different elements are taken into consideration. However, instead of a single general definition, the meaning of a child is determined in line with the purpose of the relevant law and the subject of regulation. Although the German Civil Code (*Bürgerliches Gesetzbuch* – BGB) does not directly define a child, it determines the status of the child with provisions on age limits and legal capacity. BGB§104 is based on the age limit of seven years and recognizes that these children do not have the capacity to act. BGB§106 recognizes the limited legal capacity of children between the ages of seven and eighteen. BGB§1626 regulates that persons under the age of eighteen must be under guardianship and considers persons under the age of eighteen as children (Dethloff, Kroll 2018; Pintens *et al.* 2010).

The Child and Youth Welfare Act (*Kinder- und Jugendhilfegesetz* – KJHG / SGB VIII) is the basic legislation regulating social services for children and youths. The law divides child and youth services into different age groups and clearly defines the concept of a child. §7 Abs. 1 Nr. 1 SGB VIII considers anyone under the age of fourteen to be a child. §7 Abs. 1 Nr. 2 SGB VIII considers people between the ages of fourteen and eighteen to be juveniles. §7 Abs. 1 Nr. 3 SGB VIII refers to young adults between the ages of eighteen and twenty-one as young adults (Schwab, Dutta 2024; Kindler, Drechsel, 2003).

According to the German Civil Code (BGB), children’s personal rights are based on the development of their identity as individuals, the protection of their physical and moral integrity and respect for their private life. Parents have an obligation to uphold their child’s rights and support their personal development. Depending on the age and maturity of the child, these rights may be exercised more broadly. Children’s personality rights are specifically

addressed in the framework of the general right to personality (*Allgemeines Persönlichkeitsrecht*). These rights include provisions that protect the dignity, privacy, physical integrity and freedoms of the child as an individual. Children have the same rights to personality as adults, but the protection, exercise and limitations of these rights must be regulated depending on the age and maturity of the child and the responsibilities of the legal representatives (parents or guardians).

According to §1626 of the German Civil Code, the personal rights of children are balanced with the parental rights of custody. When exercising parental rights, parents must ensure the child's welfare and protect the child's personal rights. In their decision-making, parents are also obliged to consider the physical and mental development of the child. The individual and personality characteristics of the child should also come to the fore in the decision-making process of the parents. Parents must consider the views of their children during their care and education.

As of recently, German law considers access to social media and digital rights to be the personal rights of children. The personal rights of children come to the fore to the extent of the restrictions imposed by the parents (Swinen 2019; Besson 2007).

3. THE CHILD'S RIGHT OF ACCESS TO THE INTERNET AND LIMITATION OF THE RIGHT

3.1. In General

In Turkish law, the child's right to access the internet is not explicitly regulated directly by a legal rule. It is indirectly protected within the scope of the child's personal rights. The child's right to access the internet should be evaluated especially within the scope of education, access to information, freedom of expression and the right to development. However, this right may be limited by the supervision and supervision obligation of the parents or legal representatives, balanced with the safety and best interests of the child.

In German law, the right of a child to access the internet is not directly regulated by an article of law. However, children's access to the internet is dealt with within the framework of personal rights, freedom of expression and the right to information. At the same time, a balance is struck between parental custody rights (*Sorgerecht*) and the best interests of the child.

3.2. Legal Basis of the Child's Right to Access the Internet

3.2.1. Turkish Law

In Turkish law, the child's right to access the internet is evaluated in accordance with Article 42 of the Constitution on the right to education, Article 22 on the freedom of communication, and Article 41 on the protection of the family and contributing to the social, cultural and educational development of the child (Akyüz 2016). This is due to the fact that the child's right to access the internet is not regulated by special law or provision of law. Furthermore, these regulations indicate that the family should take precautions in case of situations affecting the development of the child (Ayaz, Işıklı 2020).

The United Nations Convention on the Rights of the Child, to which Turkey is a party, guarantees the child's right of access to information. Article 13 of the Convention regulates freedom of expression and Article 17 regulates the right of access to information (Öngören 2022).

Article 335 of the Turkish Civil Code regulates the rights and obligations of parents towards their children under the right of custody. Although not directly stated in the law, it is accepted that parents have the right to regulate the child's access to technological resources within the scope of parental authority. Article 339 of the TCC states that parents, who have the right to custody, are obliged to take into consideration the education and living conditions of the child. The child's access to modern resources, such as the internet, can be considered as a part of these rights. The child's right to access the internet should not be considered as an unlimited right. This right may be limited for the protection and safety of the child.

3.2.2. German Law

In German law, the personal rights of the child (*Allgemeines Persönlichkeitsrecht*) include the free development of the individual and the right to information in public life. This right is protected by Article 2 (personal freedom) and Article 5 (freedom of expression and the right to information) of the German Basic Law (*Grundgesetz* – GG). Children have the right to access information and use technology. This includes access to digital tools and the internet. The child's access to the internet is considered part of their freedom of expression and right to education (Cerf, 2011). This right may be limited by parental supervision and depending on factors such as the child's age, maturity level and the content of the internet use (Dethloff 2005; Lee 2022).

According to Article 1626 of the German Civil Code (BGB), parents are obliged to care for and educate their children in the best interests of the child (Sacker 2024). This obligation includes the right to control and direct the child's access to the internet. BGB §1626 (Parental Responsibility), Parents must take the necessary measures to supervise the child's use of the internet and to prevent harm to the child. According to §1631 BGB (Non-violence and protection in education), parents have a duty to protect the physical and mental development of the child. In this context, it is the parents' obligation to protect the child from possible harm from the internet (e.g. harmful content, cyberbullying) (Bucher 1999). Rather than completely restricting the child's access to the internet, parents have the responsibility to supervise and guide the child in terms of duration of use, content and platforms (Hahn 2004).

The German Youth Protection Act (*Jugendschutzgesetz* – JuSchG) aims to protect children from harmful content. This law indirectly interferes with children's use of the internet. The restrictions are shaped differently depending on the age, physical and mental development of the child.

The right of the child to education is protected by Article 7 of the German Basic Law, with internet access playing an important role in the fulfillment of this right. Depriving the child of internet access must not be to the detriment of their education or personal development, especially as the use of digital tools is encouraged in schools (Fritzsche, Knapp 2019).

§1626(2) of the German Civil Code provides that the child's views must be taken into account in accordance with their age and maturity. This means that the child's wishes regarding the use of the internet must also be considered by the parents. Adolescents in particular can demand more freedom, in accordance with their rights, including the right to access the internet. Parents have the right to limit their children's use of the internet. However, this restriction should not be arbitrary, in a way that hinders the child's development. For example, if parents completely prevent the child from accessing the internet for educational purposes or restrict it in such a way as to cut the child off from social contact, this may harm the child's rights. In such cases, the child can seek help from a youth welfare office (*Jugendamt*) or the family court.

In German law, the views of the child are as important as the views of the parents. The child's right to access the internet is not directly regulated, but is protected in the context of personal rights, right to education, freedom of information and freedom of expression. Parents have the responsibility to guide their child's use of the internet and protect them from possible harm.

The child's right to access the internet expands depending on the age and maturity of the child and is shaped according to the best interests of the child (Rue 2011).

3.3. Parental Restrictions on the Child's Internet Access

3.3.1. Turkish Law

In Turkish law, the main provision for children's access to the internet and parental control of internet access stems from the fact that the parents have parental authority over the child.

The responsibility and authority of the parents to meet the child's needs, such as care, education, health, moral and social development, is considered under the right of custody. While exercising the right of custody, the parents must prioritize the best interests of the child. It is the responsibility of the family towards both the child and society to ensure that the child develops in the best way possible and continues their life as a healthy individual.

The right to custody is regulated under the Turkish Civil Code. The authority to make decisions on issues such as the child's care, education, health, morals, ethics, cultural development, choice of profession and management of the child's assets is considered within the scope of the right of custody (Beder, Ergün 2015; Avşar 2022).

According to Article 336/1 of the Turkish Civil Code, if the parents are married, the right of custody is exercised jointly by the mother and the father. As long as the marriage union continues, the mother and father must together take decisions about the child. In the event of the divorce of the parents or the death or absenteeism of the parents, the right of custody belongs only to the mother or only to the father. In case of divorce, custody, which is exercised jointly within the marriage union, is granted to the party that is in the best interest of the child. The right to custody can be removed or changed by a court decision if a situation that harms the best interests of the child arises.

The Turkish Civil Code does not regulate joint custody. However, the Constitutional Court and the Court of Cassation have stated that joint custody should be implemented, making joint custody applicable.

The custody of a child born outside the marriage union belongs to the mother. According to the Turkish Civil Code, if the father recognizes the child as his own through legal means, such as recognition or a paternity suit, custody can also be given to the father.

The right of the parents to restrict or have the right to restrict the child's access to the internet is based on the parental rights and responsibilities that parents have over the child under Turkish law. However, the child is also an individual, separate from the parents, and the child also wants to have the right to access the internet without any restrictions. In this case, the wishes of the parents and the child will come into conflict, and a conflict of interest may arise. Should the restriction of the child's right to access the internet be based on the principle of the parents' protection of the child's best interests, or should it be considered a violation of the child's personal rights? The question also comes to the agenda (Çakmak 2013).

Although it is in the best interest of the child for the parents to restrict the child's access to the internet, another issue that needs to be examined is how the rights of the child will be protected if some parents encourage the child to use the internet in order to benefit from the child.

Parents are obliged to take the necessary measures for the education and development of the child. Although it is accepted that the child has the right to access the internet, within these obligations of the family, the family may limit the child in this regard by considering the best interest and future of the child.

In Turkey, the Internet Law supports the provision of family assistance services to prevent content that can harm children through the internet (Üçer 2021).

Child Protection Law requires the State to take necessary measures to restrict or block access to online content that may cause physical or mental harm to children (Avşar 2022).

Although access to the internet and digital rights can benefit the child, some practices detrimental to the child can affect the physical and mental development of children, and it is imperative that these issues be regulated by a separate and special law.

3.3.2. German Law

In German law, the main basis for parents to restrict their children's right to access the internet is the right of custody. The primary regulation regarding the right of custody is based on §1626 BGB. According to this provision, parents are obliged to take care of minor children. The parent's right of custody over the child is regulated as a broad right that includes both the custody of the child and the management of the child's assets.

In Germany, the right of parental custody over a child is interpreted broadly, therefore, within the scope of parental custody, parents can also decide on the digital rights of the child.

§1666 of the German Civil Code stipulates that the state must intervene in cases where the parents are unable to make sound decisions regarding the child or are unable to exercise their parental authority sufficiently (Dörner, Schulze 2014). If the physical, mental or emotional health of the child or their property is endangered and the parents are unwilling or unable to prevent the threat, the family court must take the necessary measures to prevent the threat (Ernst 2008). The legislator has also regulated the measures that can be taken under this article. If the court considers that the parents are abusing their parental rights, the same paragraph also stipulates that the court may take measures, such as making use of public institutions such as child and youth welfare services and health services, prohibiting the child from using the family home or another home temporarily or permanently (Baltz 2000; Belling, Eberl 1995), imposing prohibitions on communicating with or seeing the child, and partial or total revocation of parental custody.

One of the most important legal provisions in German law regarding access to the internet is the Youth Media Protection Act (*Jugendschutzgesetz – JuSchG*). Article 10/a of the said law mentions what the protection of youths or children in the field of media entails. Accordingly, the first protection is the protection against media that may hinder the development of children or adolescents and their development into a socially capable person, the second protection is the protection against media that may jeopardize the development of children or adolescents and their development into a socially capable person, and the last protection is the protection of the personal integrity of children and adolescents in the use of media. Media that may affect children's development are media that are excessively frightening, advocate violence, or violate social ethical values (Dreyer 2013). In addition to these media, it is stated that the conditions regarding the use of the media, as well as the effect of the media content and whether they are a permanent part of the media, should also be assessed in the evaluation of the impairment in the development of children or youths. In terms of watching movies, the legislator has also stipulated that informative and educational movies should be watched, with age limits imposed on movies in a way that minimizes the impact on children, and that children must be accompanied by a parent when viewing some movies (Uerpmann-Wittzack, Prechtel 2020). In the digital world, computer games are another area where children are affected as much as by movies. Digital games played by children are also subject to age limits or other warnings. In order to protect children and youths from digital content, the Federal Review Board for Media Harmful

to Young Persons was established by this law. The Board is tasked with taking the necessary measures and conducting the necessary examinations to ensure that children and youths are protected from harmful content in the media, as well as identifying harmful media content (Behrend, Jopt 2009). It is stated that the Board should consist of a maximum of twelve members dedicated to the development of children and youths. The legislator has clearly determined how and in what way members are recruited during the formation of the Board, and which associations can nominate candidates (Livingstone, Haddon 2008). The legislator has also regulated in detail the procedure by which content, such as movies and games on digital media, may be banned.

Another legal basis for parental restriction of children's access to the internet is the Digital Services Act (*Digitale- Dienste- Gesetz*, DDG), which Germany has implemented to comply with the EU Digital Services Act (DSA), the general framework established by the European Union. The DSA is intended to ensure that online platforms, social media companies and digital service providers operate in a more transparent, secure and responsible manner. The main objectives of this legislation are the protection of users, transparency and accountability, removal of illegal content, advertising and data protection regulations, and additional responsibilities for major platforms (Kindler 2012). This regulation is based on EU Directive 2022/2065 (Regulation (EU) 2022/2065). These legal regulations show that strict practices in the best interest of the child are in place in Germany in accordance with the provisions of the EU Directive (Wiesner 2011).

3.3.3. *A Comparison of Turkish Law and German Law*

3.3.3.1. Common Aspects

While children's rights to access the internet in Germany and Turkey are based on fundamental human rights and children's rights, there are similarities in the regulations to protect these rights in both countries. The commonalities are based on both the requirements of the digital age and universal principles of child protection. Both countries are signatories to the United Nations Convention on the Rights of the Child and recognize the right of the child to access information and education. The internet is seen as an important means of access to information and a platform that supports the rights of the child to education, culture and participation in social life. Germany and Turkey have adopted regulations to protect children from harmful content (such as violence, pornography, hate speech) that they may encounter online. Both countries use age-appropriate filtering systems to keep

children safe online (Janzen 2002). Digitalization in education is an area that promotes children's right to access the internet in both Germany and Turkey. Both countries encourage parental guidance and supervision of children's internet use. In Germany, parents are urged to provide their children with access to age-appropriate content and teach digital media literacy. In Turkey, awareness-raising campaigns and filtering tools are offered to parents for monitoring and protecting children's online behavior. Germany and Turkey comply with international norms on protecting children's rights online (Hanke, Meergans, Jarolimek 2017). Both countries aim to comply with the recommendations of the Council of Europe and the United Nations on the protection of children online. A child rights-based approach, protection from harmful content, digitalization in education and the fight against cyberbullying are commonalities between the two countries. However, while Germany regulates children's digital rights more comprehensively, Turkey focuses more on protective and restrictive measures (Bussmann 2002).

3.3.3.2. Differences

In Germany and Turkey, children's right to access the internet and policies to protect this right are influenced by the social, cultural and legal structures of the countries (Gehle 1997; Steenkamp, Stein 2017). Germany aims to secure children's digital rights while at the same time protecting them from harmful content. In Turkey, on the other hand, children's access to the internet is mostly regulated within the framework of youth safety and moral values.

Germany recognizes children's access to the internet as a fundamental right. It supports children exercising this fundamental right, by establishing legal regulations and commissions to protect children's rights in the digital world. In Turkey, children's access to the internet is not explicitly recognized as a fundamental right; it is indirectly recognized through the right to education and access to information. Good legal arrangements have not been made to protect children's rights in the digital world, and only a law on the prevention of harmful content and regulation of internet access has been enacted.

Germany supports children's right to access the internet through education policies. Public schools provide free internet access and offer curricula to develop digital skills. Considering children's right to access the internet as part of digital equality, Germany facilitates children's access to technological devices through support programs for low-income families.

In Turkey, the state supports children's access to the internet through educational platforms. However, the lack of strong internet infrastructure in rural areas limits children's right to access the internet.

In Germany, age-appropriate filtering systems are in place for children's access to the internet. Responsibilities are also placed on service providers to prevent children from being exposed to inappropriate content on the internet. In Turkey, children's right to access the internet is priority with family protection filters and content control. The state provides free filtering systems to prevent children from being exposed to harmful content.

Beyond considering children's access to the internet as a right, Germany has adopted the principle of empowering children as digital citizens. In Turkey, policies on children's internet use are associated with content restrictions rather than child protection.

Since the right of the child to access the internet is recognized as a constitutional right in Germany, it is evident that the state, rather than parents, imposes restrictions on children's access to the internet and that the principle of the best interest of the child is the priority in the imposed restrictions. As a result, the observed approach is transparent, structured and child oriented.

The indirect recognition of children's right to access the internet in Turkey reveals a more restrictive approach: the aim is to protect them from harmful content. For this reason, there are still not yet as comprehensive regulations on equal access and digital rights as in Germany.

3.3.4. Approach of Court Decisions to the Subject

An examination of court decisions shows that, under Turkish law, cases concerning children's access to the internet generally focus not on ensuring a safe online environment, but rather on parental control measures and restrictions in public settings — for example, preventing a child from entering an internet café. Similarly, Turkish law states that social media or internet usage restrictions imposed by the family on their child must be implemented by considering the child's best interests, otherwise the judge may request intervention.

In Germany, the decision by the German Federal Court of Justice (*Bundesgerichtshof* – BGH) in the *Morpheus* case (15 November 2012, I ZR 74/12), which involved a thirteen-year-old child using the Tauschbörse filesharing platform that they accessed via the internet, stated parents should warn and inform the child that they may encounter dangerous content during

internet use – but they do not have an obligation to constantly warn the child. In the Higher Regional Court (*Oberlandesgerichte* – OLG) in Frankfurt (15 June 2018, 2UF41/18) decision, in a dispute that arose due to the separation of the mother and father of an eight-year-old girl and the mother blocking restricting access to a phone or tablet belonging to the child, the court ruled that the child's internet access should be restricted, otherwise the child could access the website of their choice when the mother or father could not control the child, and this situation could cause negativities when the child's best interests were taken into account. It was emphasized that the mother and father could restrict the child's internet access, but these restrictions should be assessed by taking into account the child's best interests.

Although Germany and Turkey have accepted parental control systems for internet access, the court may also request intervention when necessary.

4. CONCLUSION

Recognizing the importance of access to information and the use of resources, Germany and Turkey recognize access to the internet as a right of the child, but also that children's access to the internet must entail various protections and safeguards due to age, social factors and the possibility of harmful content on the internet. Restrictions imposed by parents on their child's access to the internet should not be considered as an access barrier to the child's personal rights. Parents should be expected to impose access restrictions by considering the best interests of the child. In today's world, where access to technology and information is increasing by the day, it is necessary to raise the awareness of parents and children. Despite raising awareness, training, warnings and various bans imposed on the internet in certain circumstances it is also apparent that children can access harmful content on the internet, especially outside the control of parents. It therefore becomes clear that parental control alone is not enough and that filtering systems for children should be continuously controlled by the State or State mechanisms.

Germany and Turkey attach importance to the concept of the right to personality and include regulations in this regard in their laws. The personality rights of the child have not been subject to separate legal regulations, but it is stated that the child will benefit from this protection since they are also considered a person. Granting the right of personality to the child does not mean that this right should be exercised without limitations or restrictions. On the contrary, the best interests of the child should be taken into consideration, and restrictions should be imposed on internet access, as

well as any issues that are deemed to harm the child. Restrictions imposed by parents should not be arbitrary and should be protective of the child. The child's personal rights should be taken into consideration, and awareness-raising activities for children should be increased.

Since Germany guarantees children's access to digital rights in its Basic Law, the State control of access and the categorization of children according to age groups is the most important regulation to be considered in Turkish law. Children may think that their personal rights are violated unless the restrictions imposed on internet content, the reasons for these restrictions and how harmful content can affect children are explained to them and they are made aware of these restrictions. For this reason, raising the awareness of both parents and children, with the aim of protecting children's personal rights, and legally regulating the restrictions imposed on their internet access, are the main issues to be considered in Turkish law.

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