

European Court of Human Rights: Ahmet Yildirim v Turkey

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*Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy*

The European Court of Human Rights has reinforced the right of individuals to access the internet in a judgment against wholesale blocking of online content. A Turkish PhD student named Ahmet Yildirim claimed before the European Court that he had faced “collateral censorship” when his Google-hosted website was shut down by the Turkish authorities as a result of a judgment by a criminal court order to block access to Google Sites in Turkey. The court injunction was promulgated in order to prevent further access to one particular website hosted by Google, which included content deemed offensive to the memory of Mustafa Kemal Atatürk, the founder of the Turkish Republic. Due to this order Yildirim’s academically-focused website, which was unrelated to the website with the allegedly insulting content regarding the memory of Atatürk, was effectively blocked by the Turkish Telecommunications Directorate (TIB). According to TIB, blocking access to Google Sites was the only technical means of blocking the offending site, as its owner was living outside Turkey. Yildirim’s subsequent attempts to remedy the situation and to regain access to his website hosted by the Google Sites service were unsuccessful.

The European Court is unanimously of the opinion that the decision taken and upheld by the Turkish authorities to block access to Google Sites amounted to a violation of Article 10 of the European Convention on Human Rights and Fundamental Freedoms, guaranteeing the freedom to express, receive and impart information and ideas ‘regardless of frontiers’. The Court is of the opinion that the order, in the absence of a strict legal framework, was not prescribed by law. Although the order might have had a legitimate aim, as it was aimed at blocking a website allegedly insulting the memory of Atatürk, the order was not sufficiently based on a strict legal framework regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses. The Court clarifies that a restriction on access to a source of information is only compatible with the Convention if a strict legal framework, containing such guarantees, is in place. The judgment further makes clear that the Turkish courts should have had regard to the fact that such a measure would render large amounts of information inaccessible, thus directly affecting the rights of internet users and having a significant collateral effect. It is also observed that the Turkish law had conferred extensive powers to an administrative body, the TIB, in the implementation of a blocking order originally issued in relation to a specified website. Moreover, there

was no evidence that Google Sites had been informed that it was hosting content held to be illegal, or that it had refused to comply with an interim measure concerning a site that was the subject of pending criminal proceedings. Furthermore, the criminal court had not made any attempt to weigh up the various interests at stake, in particular by assessing whether it was necessary and proportionate to block all access to Google Sites. The European Court observes that the Turkish law obviously did not require the court to examine whether the wholesale blocking of Google was justified. Such a measure that renders large amounts of information on the internet inaccessible must be considered however to effect directly the rights of Internet users, having a significant collateral damage on their right of access to the Internet. As the effects of the measure have been arbitrary and the judicial review of the blocking of access to internet websites has been insufficient to prevent abuses, the interference with Mr. Yildirim's rights amounts to a violation of Article 10 of the Convention by the Turkish authorities.

With this judgment the European Court of Human Rights has explicitly reinforced the right of individuals to access the internet, as in its ruling against the wholesale blocking of online content, it asserted that the internet has now become one of the principal means of exercising the right to freedom of expression and information.

Arrêt de la Cour européenne des droits de l'homme (deuxième section), affaire Ahmet Yildirim c. Turquie, requête n° 3111/10 du 18 décembre 2012

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115401>

Fact sheet of December 2012 on the European Court's case law on New Technologies

http://www.echr.coe.int/NR/rdonlyres/CA9986C0-BF79-4E3D-9E36-DCCF1B622B62/0/FICHES_Nouvelles_technologies_EN.pdf

