European Court of Human Rights: RFE/RL Inc. and Others v. Azerbaijan

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The European Court of Human Rights (ECtHR) delivered another landmark judgment on the wholesale blocking of online media outlets and the right to freedom of expression and information. Azerbaijani courts had decided to block access to a series of media websites on the grounds that certain articles published on them had featured allegedly unlawful content under Azerbaijan's media laws. The ECtHR found a violation of Article 10 of the European Convention on Human Rights (ECHR) because the legal provisions on which the blocking orders were based awarded unlimited scope for unchecked arbitrariness by the domestic authorities. It found that the discretion afforded to the authorities was essentially expressed in terms of unfettered power and was not circumscribed with sufficient safeguards against arbitrariness.

The case concerns the authorities' decisions to completely block access to four online media outlets since 2017-18. The online media outlets are azadliq.org, anaxeber.az, az24saat.org and xural.com. In particular azadliq.org, the website of Radio Free Europe/Radio Liberty was found to have published "information promoting violence and religious extremism and calling for, among other things, mass riots", while all four websites were found to have published "false, misleading and libellous information". Before the ECtHR the applicants complained about a violation of their rights under Article 10 ECHR (right to freedom of expression and information). They also relied on Article 6 (right to a fair trial), Article 13 (right to an effective remedy) and Article 18 (limitation on use of restrictions on rights) ECHR. The online media outlets argued in particular that the blocking orders were imposed because they were critical of the government and had exposed abuse of power and corruption.

First the ECtHR rejected the request of the Azerbaijani Government to declare the applications inadmissible, as the applicants had not suffered a significant disadvantage (Article 35 paragraph 3 (b) ECHR) because some of their content had remained accessible online through VPN software or alternative web browsers. The ECtHR agreed with the applicants that the mere fact that the restrictions on access could be bypassed by individual users using VPN services or alternative web browsers could not, in reality, significantly alleviate the overall effect of the blocking measures. The ECtHR explained that it would be reasonable to assume that the average internet user (whose knowledge of various software

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options may not be as extensive as that of a more advanced user), when confronted with the fact that a news website which he or she was trying to access was in fact inaccessible, would not necessarily seek to learn about, download and use VPN services or any alternative lesser-known web browsers in order to try to circumvent the access restrictions. Moreover, he or she might not even be aware that the website was inaccessible because of a judicial blocking order, rather than simply being defunct or non-functional due to technical problems. As for those users who were aware of such options and alternatives, the ECtHR agreed with the applicants that some or many of them might indeed refrain from using those services for various privacy or other reasons, including the need to pay for fully functional versions of VPN services and the inferior performance of certain alternative web browsers. The ECtHR also found that even though some internet users had apparently accessed their websites, either from Azerbaijan, using a VPN, or from abroad in an unrestricted manner, the websites had lost upwards of 90% of their previous traffic after the blocking measures, which had significantly restricted their ability to impart information to their usual website audiences in Azerbaijan.

Next, the ECtHR reiterated the general principles which should be applied on the matter at issue, that “owing to its accessibility and capacity to store and communicate vast amounts of information, the internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information. The internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, it enhances the public’s access to news and facilitates the dissemination of information in general. Article 10 of the Convention guarantees 'everyone' the freedom to receive and impart information and ideas. It applies not only to the content of information, but also to the means of its dissemination, for any restriction imposed on the latter necessarily interferes with that freedom.” Measures blocking access to websites are bound to have an influence on the accessibility of the internet and, accordingly, engage the responsibility of the respondent state under Article 10 ECHR.

The ECtHR found that the domestic law did not afford sufficient safeguards against arbitrary interferences involving temporary blocking measures imposed by the Ministry of Transport, Communication and High Technology (MTCHT) in the absence of a judicial decision, and that moreover, the safeguards which were actually provided for by law had not been respected in this case. The ECtHR also referred to the fact that the relevant provision of the Law on Mass Media provided that only individuals and legal entities whose honour and dignity had been discredited by publications of a libellous nature had the right to demand a retraction, correction or reply and the right to apply directly to a court with a defamation claim. Hence, the Law on Mass Media did not give public authorities such as the MTCHT the right to make claims of this type on behalf of such

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individuals or legal entities, and did not confer jurisdiction on a domestic court to find that a certain publication was libellous in the absence of a direct relevant claim lodged by the individual or legal entity whose rights had been affected. Also the relevant provisions in the Law on Information, Informatisation and Protection of Information (IIPI Law) as interpreted and applied by the domestic courts, was not sufficiently foreseeable as to its effects to enable the applicants to regulate their conduct, and did not indicate with sufficient clarity the scope and manner of exercise of the discretion afforded to the authorities in the field it regulated. The provisions at issue were expressed in terms of unfettered power without sufficient safeguards against arbitrariness. Hence the legal provisions the blocking orders were based on were applied in an unforeseeably broad, arbitrary and manifestly unreasonable manner.

In view of these considerations, the ECtHR found that the wholesale blocking of the media websites failed to meet the "prescribed by law" requirement under Article 10 paragraph 2 ECHR. This finding was sufficient to conclude that the blocking orders at issue had violated Article 10 ECHR. Having reached that conclusion, the ECtHR did not need to satisfy itself whether the other requirements of Article 10 paragraph 2 ECHR (legitimate aim and necessity of the interference) had been complied with. Having dealt with the main legal questions raised under Article 10 ECHR, the ECtHR also decided that there was no need to give a separate ruling on the admissibility and merits of the applicants' remaining complaints under Articles 6, 13 and 18 ECHR.

Judgment by the European Court of Human Rights, First Section, in the case of RFE/RL Inc. and Others v. Azerbaijan, Application No. 56138/18 and 3 others, 13 June 2024

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