[TR] Constitutional Court Rules that Twitter Ban Violates Freedom of Expression

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On 2 April 2014 the Turkish Constitutional Court held that the decision of Presidency of Telecommunication and Communication (Telekomünikasyon İletişim Başkanlığı, herein after "TIB"), regulatory authority of telecommunications, on blocking access to Twitter infringed freedom of expression.

The ban on Twitter was imposed by a PTC decision of 20 March 2014 on account of interference with personal rights and privacy of Turkish citizens. This decision was based on numerous injunctions for protection (koruma tedbiri) concerning some URL addresses in Twitter already given by different domestic courts. The PTC's decision, however, did not prohibit access only to these URL addresses but to the full Twitter website instead. The Union of Turkish Bars initiated proceedings against the PTC's decision instantly. On 25 March 2014 Ankara Administrative Court granted a stay of execution on the matter. This, however, was not implemented by the PTC. Moreover, having determined that Twitter was still being used through changing DNS settings despite the ban, the PTC further blocked Google DNS addresses.

Against this background, on 25 March 2014, the applicants, who are users of Twitter, lodged a case before the Constitutional Court (CC) by using the individual complaint mechanism. As a general rule, the individual complaint, which was introduced to Turkish law in 2012, can be made only after exhausting all prior domestic remedies. However, the applicants requested for an immediate decision from the CC by claiming that there was no effective remedy applicable to their case on the basis of non-implementation of the stay of execution granted by Ankara Administrative Court. Having accepted the applicant's request, the CC declared the case admissible and examined it on the merits.

In their submissions, the applicants, relying on the corresponding articles on freedom of expression in the Turkish Constitution as well as the case law of the European Court of Human Rights (ECHR), asserted that the ban had no legal basis. They also claimed that the ban not only constituted an interference with the right to access to information but also the right to disseminate it.

Underlining the requirement of having a court decision for fully blocking internet access, the CC decided that the PTC acted in ultra vires while issuing the ban and

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the decision thus had no legal basis. Furthermore, the CC stated that internet had become an important medium for freedom of expression and that it could not be blocked in a democratic society. It therefore found a violation of freedom of expression.

Following the CC judgment, the ban on Twitter was lifted on 3 April 2014 accordingly.

T.C.Anayasa Mahkemesi, Başvuru Numarası: 2014/3986, Karar Tarihi: 2/4/2014

http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/472bbf6e-ce2c-4c83-a402-6bdd44702537?wordsOnly=False

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