[TR] Constitutional Court declares that YouTube ban is unconstitutional

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On 29 May 2014 the Turkish Constitutional Court decided the ban imposed by the regulatory authority of telecommunications *Telekomünikasyon İletişim Başkanlığı* (Presidency of Telecommunication and Communication - TIB), on blocking access to YouTube is a violation of freedom of expression.

The YouTube ban was imposed by a TIB's decision of 27 March 2014 in response to the posting of a two-part voice recording that purported to disclose a top-secret discussion by high-ranking State Officials about a strike inside Turkey's southern neighbor, Syria. While reasoning its decision, TIB stated that this ban is an injunction for protection (koruma tedbiri) so as to prevent the disclosure of state secrets of which were disseminated through some 15 URL links on YouTube. Following TIB's decision, the Union of Turkish Bars initiated proceedings before the Ankara Criminal Court (herein after "ACC") to lift the injunction order. On 9 April 2014 ACC rendered its decision holding that the restriction on accessing the indicated 15 URL links must be enforced. It however found that the ongoing ban for accessing the full YouTube webpage is disproportionate and thus, must be lifted instantly. Despite this judgment, the TIB did not execute the judgment by relying on the fact that the 15 URL addresses can still be accessed from abroad, even if they are no longer accessible in Turkey. On 2 May 2014 Ankara Administrative Court further granted a stay of execution on the matter. YouTube, nevertheless, remained blocked.

Against this background, the applicants, YouTube LLC Corporation Service Company and users of YouTube, lodged individual complaints before the Constitutional Court (CC). On the procedural limb, the CC held that the decision of the ACC was definitive and that there was no effective remedy applicable to the applicants' case on the basis of non-implementation of the stay of execution granted by Ankara Administrative Court. It thus 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 (ECtHR), asserted that the ban had no legal basis. They also claimed that the ban not only constituted an interference with the right of access to information but also the right to disseminate it.

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Similar to its reasoning in its decision on a Twitter ban (see IRIS 2014-6/35) in April 2014, underlining the requirement of having a court decision for fully blocking internet access, the CC decided that the TIB acted ultra vires while issuing the ban decision and 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 YouTube was lifted accordingly.

T.C.Anayasa Mahkemesi, Başvuru Numarası: 2014/4705, Karar Tarihi: 29/5/2014

http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/e08bbc9d-6949-4951-9bac-3b51ddf0004c?higllightText=youtube&wordsOnly=False

Decision of the Constitutional Court, case number 2014/4705, 29 May 2014

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