[TR] Constitutional Court Overturns Recent Amendments to the Internet Act

IRIS 2015-1:1/37

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On 2 October 2014, the Turkish Constitutional Court (CC) held that the amendments to the Internet Act, Law No. 5651 (see IRIS 2007-7/32), which were adopted on 10 September 2014, are unconstitutional and therefore, must be annulled (for other recent decisions of the CC on freedom of expression and the Internet see IRIS 2014-7/33 and IRIS 2014-6/35).

The controversial amendments, which were adopted as a part of an omnibus bill, introduced fundamental changes concerning internet data rendition. According to the amendments, the Telekomünikasyon İletişim Başkanlığı (Presidency of Telecommunication and Communication - TIB), the regulatory authority of telecommunications in Turkey, was given more authority to block websites swiftly and without a court order, as well as to collect and retain Internet users' data.

The older version of the Act required TIB to address an application to a court within 24 hours and to obtain a court decision in 48 hours after blocking a website with an executive order. Although this procedure has been retained, the amendments extended TIB's authority to block websites by establishing further grounds for restrictions and, hence, entitling the head of TIB to order the blocking of a website within four hours for the purpose of "protecting national security and public order, as well as preventing crime". Furthermore, before the amendments, TIB had limited powers in the collection of Internet traffic data with regard to pinpointing certain users and could request identifying information from the Internet service providers (ISPs) only by referring to a court order or a criminal investigation. However, following the amendments, TIB was allowed to store Internet traffic data. In addition, a court order was only deemed necessary when TIB sends particular data to a public institution that requests it. Lastly, the amendments decreased the maximum time allowed to ISPs to comply with TIB's blocking orders to a mere four hours.

Against this background, the Republican People's Party (CHP), the main opposition political party in Turkey, lodged a case before the CC for the annulment of the amendments after they came into force on 11 September 2014. In its decision of 2 October 2014, the CC held that the amendments, which expanded the grounds that enable TIB to block websites to protect the national security and the public order, as well as to prevent crimes and allowed TIB the use of Internet traffic data, were unconstitutional and hence, should be annulled.

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On the other hand, the decrease of maximum time allotted to ISPs to abide by the TIB's blocking order to a mere four hours was declared constitutional.

2 Ekim 2014 PerÇembe Günü Saat 09.30'da Yapılan Mahkeme Toplantısında GörüÇülen Dosyalar ve Sonuçları

http://www.anayasa.gov.tr/Gundem/Detay/632/632.pdf

Summary of the decision of the Turkish Constitutional Court (the reasoned decision is still not available)

İnternet Ortamında Yapılan Yayınların Düzenlenmesi ve Bu Yaynlar Yoluyla İşlenen Suçlarla Mücadele Edilmesi Hakkında Kanun

http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5651.pdf

Amendments to the Internet Law (Law No. 5651)

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