European Court of Human Rights: Cengiz and others v. Turkey

IRIS 2016-2:1/1

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On 1 December 2015, the European Court of Human Rights (ECtHR) delivered a judgment dealing with a blocking order in Turkey of the popular video-sharing website YouTube. The Court found that the blocking of access to YouTube amounted to a violation of the right to receive and impart information under Article 10 of the European Convention of Human Rights (ECHR). The Court observed that YouTube, as an Internet platform, enabled information on political and social matters to be broadcast and citizen journalism to emerge. The Court found that there was no provision in the Turkish law allowing domestic courts to impose the blanket blocking order of YouTube at issue.

Pursuant to a law regulating Internet publications and combating Internet offences, in May 2008 the Ankara Criminal Court of First Instance ordered the blocking of access to YouTube on the ground that the website contained some ten videos which it was claimed were insulting to the memory of Atatürk. Arguing that this restriction interfered with their right to freedom to receive or impart information and ideas, Serkan Cengiz, Yaman Akdeniz and Kerem Altıparmak challenged the decision and requested, in their capacity as users, that the measure be lifted. They also alleged that the measure had an impact on their professional academic activities, as all three occupied academic positions in different universities, where they teach law. The Ankara Criminal Court of First Instance rejected their request on the ground that the blocking order had been imposed in accordance with the law and that the applicants did not have standing to challenge the blocking order. In total the YouTube website was blocked for a period of two and a half years. On 30 October 2010, the blocking order was lifted by the public prosecutor's office following a request from the company owning copyright of the videos in question.

The three law professors lodged an application before the Strasbourg Court, mainly relying on Article 10 ECHR. As active users, they complained about the impact of the blocking order on their right to freedom to receive and impart information and ideas. Relying on Article 46 (concerning the binding force and execution of judgments), they also requested that the Court indicate to the Turkish Government which general measures could be taken to put an end to the situation complained about.

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The Court first considered it necessary to determine whether the applicants had victim status as required by the Convention. It noted that although the applicants were not directly affected by the blocking order, they had actively used YouTube for professional purposes, particularly downloading or accessing videos used in their academic work. It also observed that YouTube was an important source of communication and that the blocking order precluded access to specific information which it was not possible to access by other means. Moreover, the platform permitted the emergence of citizen journalism which could impart political information not conveyed by traditional media. The Court accordingly accepted that in the present case YouTube had been an important means by which Cengiz, Akdeniz and Altıparmak could exercise their right to receive and impart information or ideas and that they could legitimately claim to have been affected by the blocking order even though they had not been directly targeted by it. In the Court's view, the blocking order at issue could be regarded as an interference by a public authority with the exercise of the rights guaranteed by Article 10 ECHR. The Court went on to observe that the blocking order had been imposed under Section 8(1) of Law no. 5651, while in its judgment in the case of Ahmet Yıldırım v. Turkey (see IRIS 2013-2/1) concerning a blocking order of Google Sites, it had already found that this law did not authorise the blocking of access to an entire Internet site on account of one element of its content. Under Section 8(1), a blocking order could only be imposed on a specific publication, hence there was no legislative provision allowing the Turkish judicial authorities to impose a blanket blocking order on access to YouTube. Therefore the interference with the applicants' rights had not satisfied the condition of lawfulness required by Article 10 § 2 ECHR. The European Court also found that Cengiz, Akdeniz and Altıparmak had not enjoyed a sufficient degree of protection. Finally the Court did not consider it necessary to rule on Article 46 of the Convention, as it observed that Law no. 5651 has been amended and now allowed, under certain conditions, blocking orders to be imposed on an entire website. However, as the new Act was not of concrete application in the present case, the Court did not consider it necessary to elaborate and rule on this aspect of the case.

Arrêt de la Cour européenne des droits de l'homme rendu dans l'affaire Cengiz et autres c. Turquie, requêtes nos 48226/10 et 14027/11 du 1er décembre 2015

https://hudoc.echr.coe.int/eng?i=001-158948

Judgment by the European Court of Human Rights, case of Cengiz and others v. Turkey, Application nos. 48226/10 and 14027/11 of 1 December 2015

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