

European Court of Human Rights: Kabis v. Russia

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On 30 April 2019, the European Court of Human Rights (ECtHR) found that the blocking by Russian authorities of an activist's social networking account and entries on his blog had breached his right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The applicant, Grigoriy Kabis, had called for participation in a 'people's assembly' at a square in Syktyvkar, the capital of the Komi Republic, after the local authorities had already refused Kabis' request to organise a public event at that venue, and had proposed another specially designated location for holding public events. The ECtHR also found that Kabis' right to freedom of peaceful assembly as guaranteed by Article 11 ECHR has been violated, as well as his right to an effective remedy under Article 13 ECHR. The most important part of the judgment concentrates on the blocking measures as a form of prior restraint on Kabis' right to freedom of expression. The Court's judgment is a clear warning against too vague and overbroad legislation leaving too much power to the Public Prosecutor's office or other authorities to block social networking accounts or to remove alleged illegal material from the Internet without sufficient guarantees on effective and prompt judicial review.

In 2015, the Governor of the Komi Republic and several high-ranking officials were arrested and criminal proceedings were opened on suspicion of their membership of a criminal gang and of them having committed fraud. After a refusal by the local authorities to organise a 'picket' to discuss the arrest of the Komi Republic Government, Kabis posted a message on his blog calling for participation in the unauthorised public event. He also published a post with similar content on VKontakte, a popular online social networking service. The next day, Kabis' VKontakte account was blocked following an order by the Federal Service for Supervision of Communications, Information Technology and Mass Media and a deputy Prosecutor General of the Russian Federation, because Kabis had been campaigning for participation in an unlawful public event in breach of the Public Events Act, justifying the blocking of the account pursuant to section 15.3(1) of the Information Act. Kabis was also informed by the administrator of the Internet site that hosted his blog that access to the blog entries campaigning for the announced picket had been restricted on the order of the Prosecutor General's office. Kabis challenged the decisions of the Prosecutor General's office, but his complaint was dismissed at all domestic levels.

Kablis lodged an application before the ECtHR, complaining that the blocking of his social networking account and entries on his blog calling for participation in an unauthorised public event had breached his right to freedom of expression. The ECtHR first of all disagrees with the Russian authorities' argument that there was no restriction of Kablis' right to freedom of expression, as his account could have been unblocked if he had deleted the unlawful content and he could also have created a new social networking account and written new Internet blogs. The ECtHR leaves no doubt that the blocking of Kablis' social networking account and of the entries on his blog amounted to 'interference by a public authority' with Kablis' right to freedom of expression. Next, the ECtHR focuses on the fact that the blocking order has been taken before a judicial decision was issued on the illegality of the published content, and that therefore the interference with Kablis' right to freedom of expression amounted to a prior restraint. Although Article 10 ECHR does not prohibit prior restraints on publication as such, the dangers inherent in prior restraints call for the most careful scrutiny on the part of the ECtHR and are justified only in exceptional circumstances. This approach of 'careful scrutiny' is especially applicable as far as the press is concerned, 'for news is a perishable commodity and to delay its publication, even for a short period, may well deprive it of all its value and interest'. The ECtHR clarifies that this danger 'also applies to publications other than periodicals that deal with a topical issue' and it reiterates that 'in cases of prior restraint, a legal framework is required, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse of power'. The Court is of the opinion that the blocking order was based on a 'too broad and vague' provision in law, while the law does not require the Prosecutor General's office to examine whether the wholesale blocking of the entire website or webpage, rather than of a specific information item published on it, was necessary, having regard to the criteria established and applied by the ECtHR under Article 10 ECHR. The Court, referring to its judgments in *Ahmet Yıldırım v. Turkey* (IRIS 2013/2-1) and *Cengiz and Others v. Turkey* (IRIS 2016/2-1) emphasises that 'Article 10 requires the authorities to take into consideration, among other aspects, the fact that such a measure, by rendering large quantities of information inaccessible, is bound to substantially restrict the rights of Internet users and to have a significant collateral effect on the material that has not been found to be illegal'. The ECtHR recognises that the exercise of the Prosecutor General's powers to block Internet posts is subject to judicial review, but that it is 'likely to be difficult, if not impossible', to challenge effectively the blocking measure on judicial review and it concludes that the blocking procedure provided for by section 15.3 of the Information Act 'lacks the necessary guarantees against abuse required by the Court's case law for prior restraint measures, in particular tight control over the scope of bans and effective judicial review to prevent any abuse of power'.

Finally, the ECtHR observes that the fact that Kablis breached a statutory prohibition by calling for participation in a public event held in breach of the established procedure is not sufficient in itself to justify an interference with his

freedom of expression. It takes into account a number of considerations, including that (a) the aim of the public event was to express an opinion on a topical issue of public interest, namely the recent arrest of the regional government officials; (b) approval of the public event had been refused on formal grounds, rather than on the grounds that the event in question presented a risk of public disorder or public safety; (c) the impugned Internet posts did not contain any calls to commit violent, disorderly or otherwise unlawful acts; (d) in view of the event's location, small size and peaceful character, there is no reason to believe that it would have been necessary for the authorities to intervene to guarantee its smooth conduct; and (e) as Kabis explicitly stated on his blog that the public event had not been duly approved, he did not try to mislead prospective participants by making them believe that they were going to participate in a lawful event. According to the ECtHR, it follows that the breach of the procedure for the conduct of public events in the present case was minor and did not create any real risk of public disorder or crime. On these grounds, the Court is not convinced that there was 'a pressing social need' to apply prior restraint measures and to block access to the impugned Internet posts calling for participation in that event and thereby expressing an opinion on an important matter of public interest. The ECtHR concludes unanimously that Russian law lacks the necessary guarantees against abuse required by the Court's case law for prior restraint measures, and that the standards applied by the domestic courts were not in conformity with the principles embodied in Article 10 ECHR. As the Russian courts did not provide 'relevant and sufficient' reasons for the interference with Kabis' right to freedom of expression, the ECtHR finds that there has been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Third Section, case of Kabis v. Russia, Application no. 48310/16 and 59663/17, 30 April 2019

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