Turkish Constitutional Court's Wikipedia decision

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Wikipedia has not been accessible in Turkey since 2017 upon a decision given by the Information Technologies and Communication Authority (*Bilgi Teknolojileri ve İletişim Kurumu* - BTK) based on Article 8/A of Law No. 5651 on Regulating Broadcasting on the Internet and Fighting Against Crimes Committed through Internet Broadcasting. The procedure was initiated by the General Directorate of Security Affairs of the Prime Ministry on 28 July 2017 when it requested BTK to order Wikimedia Inc. to remove two Wikipedia articles entitled “State-Sponsored Terrorism” and “Foreign involvement in the Syrian Civil War”, based on a statement that these articles were kept online against the said law.

According to the General Directorate, the two articles contained information that was either taken from unverified sources - with several political claims without supporting evidence - or written using offensive language against the Republic of Turkey.

BTK, by law, has the competence to remove URLs containing illegal content in cases where the broadcaster does not remove the content which has been found to be illegal. It also has the competence to fully block any website containing such illegal contents in case it is technically impossible to remove only the URLs. After the 14 hours given to Wikimedia to remove the content had elapsed, BTK blocked acces to Wikipedia in Turkey.

Wikimedia Inc. filed a plea against BTK'sdecision with two Ankara Criminal Courts of Peace, who adopted the General Directorate's position. Besides Wikimedia Inc., three more applicants (an NGO and two academics) applied to the court, presenting themselves as victims, but their applications were also rejected.

In 2017, the Turkish Constitutional Court received four individual applications (the owner of Wikimedia Inc. and the three applicants mentioned above) requesting a revision of the Ankara Court’s decision. Although the applicants had filed separate cases, they mutually claimed that IBTK's decision represented a breach of freedom of expression. On 26 December 2019, the General Council of the Turkish Constitutional Court made its decision on the case, which takes legal precedence.

In its reasoning released on 15 January 2020, the Constitutional Court gave a detailed explanation of the method it had followed to analyse the case. Firstly, the court stated that the decision to block the site could not be evaluated as it was a

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wrongly made decision taken in the context of the state of emergency situation (announced after the coup attempt in July 2016 and removed in July 2018). The court made this statement based on the point that blockage was related neither to one of those reasons requiring a declaration nor to the elimination of the causes of the state of emergency. Secondly, the court rejected the NGO's application based on the ground that it had failed to prove its victim status within the application. The court further explained its decision on the applications of the owner of Wikimedia Inc. and the two academics in which they claimed that the blockage was contrary to freedom of expression. In the analysis of the two academics' applications, the question of whether they were victims was raised. In order to clarify that point, the court applied a victim status test consisting of several criteria and stated that their status should be evaluated under the victim status since they used Wikipedia in their professional activities and they therefore lacked Wikipedia as such a unique information resource after the blockage. Furthermore, the court made a principal evaluation and decided that there had been an interference with the freedoms of the owner of the Wikimedia Inc. as a content provider, and on the freedoms of the two academics as users. The question of the legality of this interference was also analysed and conceptualised with several elements such as testing the compliance of the interference with the requirements of a democratic society. In this sense, the court evaluated the freedom of expression and the Internet's role as a safeguard of freedom of expression, and referred to Wikipedia's content as an encyclopedia created by individual users. By blocking those users' access to Wikipedia, their freedom of expression and right to access information had been interfered with. The court also pointed out that the platform was blocked for an unlimited amount of time, which is not a proportionate decision.

It was noted that independent and voluntary Wikipedia users had updated and modified the content concerned in a more objective way before the case was ongoing.

Following a legal analysis in addition to the points reported above, the court decided to send the case back to the Ankara Criminal Court of Peace for revision. The decision was accepted by 10 out of 16 votes of the Council members.

Wikimedia Foundation Inc. ve Diğerleri, Başvuru No: 2017/22355, Karar Tarihi: 26/12/2019 R.G. Tarih ve Sayı: 15/1/2020 - 31009

https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/22355

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