European Court of Human Rights: *Akdeniz and others v. Turkey*

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The European Court of Human Rights (ECtHR) has delivered another judgment finding Turkey in breach with the right to freedom of expression and information as guaranteed by Article 10 of European Convention on Human Rights (ECHR). The case concerns an interim injunction ordered by the domestic courts banning the dissemination and publication in the press, television and radio and on the Internet of any information on a parliamentary inquiry into allegations of corruption against four former ministers.

The applicants in this case are Banu Güven who is a well-known TV-journalist in Turkey, and Yaman Akdeniz and Kerem Altıparmak, two law professors and experts on online freedom of expression who are also popular bloggers and users of social media platforms. They requested the lifting of the ban in question, relying on their right to freedom to impart information and ideas, as well as their right to receive information. The Constitutional Court dismissed their request on the grounds of their lack of victim status, since they were not concerned by the criminal investigation, nor directly or personally affected by the injunction.

Before the ECtHR Güven, Akdeniz and Altıparmak complained of a violation of their rights under Article 10 ECHR. The Turkish government argued that the subject matter of the present case was the confidential conduct of a criminal investigation. The government submitted that the principle of the secrecy of judicial investigations was set out in international law and that the impugned measure aimed to ensure the observance of that principle. And furthermore, according to the government, the case did not involve any issue regarding freedom of expression or freedom of the press. The ECtHR observes that the need to protect the secrecy of investigations is not ignored in its case-law, but it disagrees with the government's argument. Indeed, it considers that in itself, a measure consisting in prohibiting the possible publication and dissemination of information via any medium raised an issue under the freedom of expression. It notes that the impugned injunction, which had a very broad scope, covering not only printed and visual material but also any type of information published on the Internet, had amounted to a preventive measure adopted in the framework of a parliamentary inquiry intended to prevent the possible publication and dissemination of information. It observes that that measure had covered virtually all the aspects of the ongoing parliamentary inquiry. The ECtHR refers to Article 285 of the Turkish Penal Code punishing ex post facto violations of the secrecy of

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investigations, albeit without imposing any general ban on publishing the content of the measures adopted during an individual investigation. Thus that provision guaranteed the right to publish information on a pending criminal investigation, respecting the boundaries on the right to impart information.

The ECtHR unanimously declares Banu Güven's application admissible, as she as a journalist, political commentator and TV news presenter, could legitimately claim that the impugned prohibition had infringed her right to freedom of expression. She could therefore claim victim status. In that connection, the Court said that it should not be overlooked that the gathering of information, which is inherent in the freedom of the press, is also considered as a vital precondition for operating as a journalist. In the context of the debate on a matter of public interest the impugned preventive measure was liable to deter journalists from contributing to public discussions of issues important to community life. The ECtHR accepts that her freedom to impart information and ideas had been affected inasmuch as she had been unable, even for a fairly short period, to publish or disseminate information or to share her ideas on a topical issue which would have attracted considerable public attention.

The ECtHR holds that there has been a violation of Article 10 ECtHR in respect of Banu Güven. It finds that the impugned injunction, which had amounted to a preventive measure aimed at prohibiting any future dissemination or publication of information, had had major repercussions on Güven's exercise of her right to freedom of expression as a journalist on a topical issue. Such interference however had lacked a "legal basis" for the purposes of Article 10 ECHR, and has therefore prevented Güven from enjoying a sufficient level of protection as required by the rule of law in a democratic society.

With regard to the two other applicants, Akdeniz and Altıparmak (see also IRIS 2016-2/1), the ECtHR is of the opinion that they have not demonstrated how the impugned prohibition had affected them directly. The Court considers that the mere fact that the two academics – like all other Turkish citizens – have sustained the indirect effects of the impugned measure is insufficient to claim victim status within the meaning of Article 34 ECHR. Clearly, in view of the fact that the decision to issue an interim injunction had been aimed not only at traditional media professionals but also at Internet users, such as bloggers and popular social media users, Akdeniz and Altıparmak could legitimately claim to have sustained the indirect effects of the impugned measure. Nevertheless, the ECtHR reiterates that "purely hypothetical risks" of an applicant suffering a deterrent effect are insufficient to amount to an interference within the meaning of Article 10 ECHR. As regards the right of access to information, the ECtHR repeats that university researchers and the authors of works on matters of public interest also benefit from a high level of protection. Moreover, academic freedom is not confined to university or scientific research, but extends to the right of academics to freely express their viewpoints and opinions, even controversial or unpopular

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ones, in their fields of research, professional expertise and competence. However, the ECtHR finds that in the present case the two law professors did not complain of having been refused access to any specific information they might have required. Furthermore, there was nothing to suggest that the impugned measure had targeted or infringed their academic freedom. The ECtHR is of the opinion that Alkeniz and Altıparmak lacked victim status in the instant case, and therefore it declares their application inadmissible by majority. In his dissenting opinion Judge Egidijus Kūris sharply disagrees with the majority's finding that Alkeniz and Altıparmak lacked victim status. He argues that apart from journalists, academics who are popular bloggers and are active in the field of human rights also have an interest to be able to impart and receive information about a parliamentary inquiry of major public interest. This, within the limitations imposed by law in order to protect the confidentiality of the criminal investigations and the rights of others. Kūris considers both journalists and academics as Alkeniz and Altıparmak as 'public watchdogs' that are hindered in their rights guaranteed by Article 10 ECHR due to the preventive measure *contra mundum* imposed by the Turkish courts. According to the dissenting opinion it is ironic that in this case the complaint of human right defenders is dismissed by the ECtHR, while the complaint of a journalist has been accepted with regard to the same facts in relation to a human rights' violation: "It is a sad irony that the Chamber, which is the judicial arm of a human rights court, has rejected applications by human rights defenders for incompatibility *ratione personae* with the provisions of the Convention in a case in which it agreed to consider the merits of a factually identical application by a journalist."

Arrêt de la Cour européenne des droits de l'homme, (deuxième section), rendu le 4 mai 2021 dans l'affaire Akdeniz et autres c. Turquie, requêtes nos 41139/15 et 41146/15

European Court of Human Rights, Second Section, Akdeniz and others v. Turkey, Applications nos. 41139/15 et 41146/15, 4 May 2021

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