



Blocking without a legal basis users' access to YouTube infringed the right to receive and impart information

In today's **Chamber judgment**¹ in the case of **Cengiz and Others v. Turkey** (applications nos. 48226/10 and 14027/11) the European Court of Human Rights held, unanimously, that there had been

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the blocking of access to YouTube, a website enabling users to send, view and share videos.

The Court found in particular that the applicants, all academics in different universities, had been prevented from accessing YouTube for a lengthy period of time and that, as active users, and having regard to the circumstances of the case, they could legitimately claim that the blocking order in question had affected their right to receive and impart information and ideas. The Court also observed that YouTube was a single platform which enabled information of specific interest, particularly on political and social matters, to be broadcast and citizen journalism to emerge.

The Court also found that there was no provision in the law allowing the domestic courts to impose a blanket blocking order on access to the Internet, and in the present case to YouTube, on account of one of its contents.

Principal facts

The applicants, Serkan Cengiz, Yaman Akdeniz and Kerem Altıparmak, are Turkish nationals who were born in 1974, 1968 and 1973 respectively and live in İzmir, Istanbul and Ankara (Turkey). They all occupy academic positions in different universities, where they teach law.

Pursuant to a Law regulating Internet publications and combating Internet offences, 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, under the legislation, were insulting to the memory of Atatürk. Arguing that this restriction interfered with their right to freedom to receive or impart information and ideas, Mr Cengiz, Mr Akdeniz and Mr Altıparmak, in their capacity as users, applied to have the decision set aside and the blocking order lifted. They also alleged that the measure had had an impact on their professional academic activities and that there was a public interest in having access to YouTube. They further specified that six of the ten pages concerned had been deleted and that the other four could no longer be accessed from Turkey.

The Ankara Criminal Court of First Instance rejected their application 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 such decisions. It observed that the videos in question could no longer be accessed from Turkey but had not been deleted from the website's database and could therefore still be accessed by users worldwide. The Ankara Criminal Court upheld that decision.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Subsequently a further blocking order was imposed by the Ankara Criminal Court of First Instance on 17 June 2010. Mr Akdeniz and Mr Altıparmak applied to have the decision set aside, but it was upheld by the Ankara Criminal Court.

In total the YouTube website was blocked from 5 May 2008 to 30 October 2010, when the blocking order was lifted by the public prosecutor's office following a request from the company owning copyright of the videos in question.

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 20 July 2010 and 27 December 2010.

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicants complained of an infringement of their right to freedom to receive and impart information and ideas.

Relying on Article 6 (right to a fair hearing), they also complained that they had not had an effective judicial remedy enabling them to have the blocking order reviewed by the courts and have possible abuse by the authorities censured.

Relying on Article 46 (binding force and execution of judgments), the applicants requested the Court to indicate to the Turkish Government which general measures could be taken to put an end to the situation complained of.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,
İşıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Ksenija **Turković** (Croatia),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),
Stéphanie **Mourou-Vikström** (Monaco),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 10 \(Freedom of expression\)](#)

The Court observed that the blanket blocking order in respect of YouTube of 5 May 2008 imposed by the Ankara Criminal Court of First Instance had not directly targeted Mr Cengiz, Mr Akdeniz and Mr Altıparmak. Their appeals against the order had therefore been dismissed by the domestic courts. As active users, they complained of the impact of the blocking order on their right to freedom to receive and impart information and ideas.

The Court first considered it necessary to determine whether the applicants had victim status as required by the Convention. In that connection it noted that Mr Cengiz, Mr Akdeniz and Mr Altıparmak had actively used YouTube for professional purposes, particularly downloading or accessing videos used in their academic work. It also observed that YouTube was a single platform which enabled information of specific interest, particularly on political and social matters, to be broadcast. It was therefore an important source of communication and 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 Mr Cengiz, Mr Akdeniz and Mr 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. It observed that the Constitutional Court had also recognised that Mr Akdeniz and Mr Altıparmak had victim status, in their capacity as active users, in the context of the blocking order in respect of YouTube, after the introduction of the present applications.

In the Court's view, that blocking order could be regarded as an interference by a public authority with the exercise of the rights guaranteed by Article 10.

The Court went on to observe that the blocking order had been imposed under section 8(1) of Law no. 5651. The Court reiterated on that point that in its judgment in the case of *Ahmet Yıldırım v. Turkey* (no. 3111/10), it had already found that Law no. 5651 did not authorise the blocking of access to an entire Internet site on account of one of its contents. Under section 8(1), a blocking order could only be imposed on a specific publication where there were grounds for suspecting an offence. It therefore emerged that in the present case there had been no legislative provision allowing the Ankara Criminal Court of First Instance to impose a blanket blocking order on access to YouTube. The Court accordingly concluded that the interference had not satisfied the condition of lawfulness required by the Convention and that Mr Cengiz, Mr Akdeniz and Mr Altıparmak had not enjoyed a sufficient degree of protection.

Article 6 (Right to a fair trial)

Considering that it had examined the main legal issues under Article 10, the Court found that there was therefore no need to rule separately on the admissibility or the merits of the complaint under Article 6.

Article 46 (Binding force and execution of judgments)

The Court observed that after the introduction of the present applications Law no. 5651 had been amended and now allowed blocking orders to be imposed on an entire Internet site where the conditions set out in section 8 A 3) were met. As the new Act was not of concrete application in the present case, the Court did not consider it necessary to rule on Article 46 of the Convention.

Article 41 (Just satisfaction)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage suffered by Mr Cengiz. It rejected the claim for just satisfaction lodged by Mr Akdeniz and Mr Altıparmak.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.