Information Note on the Court's case-law No. 173

April 2014

Akdeniz v. Turkey (dec.) - 20877/10

Decision 11.3.2014 [Section II]

Article 10

Article 10-1

Freedom to receive information

Application by frequent user concerning measures blocking access to Internet music providers: *inadmissible*

Article 34

Victim

Application by frequent user concerning measures blocking access to Internet music providers: *absence of victim status*

Facts – In June 2009 the media division of the public prosecutor's office ordered the blocking of access to the websites "myspace.com" and "last.fm" on the ground that these sites were disseminating musical works in breach of copyright. There was no evidence in the file that the websites in question or the Internet service providers based in Turkey had contested that decision. The appeals lodged by the applicant against the measure in question were dismissed in September and October 2009 by the lower and higher criminal courts, respectively. The courts, finding that the applicant did not have victim status, took the view that the blocking measure had been based on additional section 4 of Law no. 5846 on artistic and intellectual works, that it had been adopted on account of the failure by the websites in question to comply with copyright rules and that it had, in particular, followed steps taken by the Professional Union of Phonogram Producers, which had unsuccessfully served notice on the websites concerned.

Law – Article 10: The applicant had lodged his application with the Court as a user of the websites which had been blocked. As a regular user, he had mainly complained about the collateral effect of the measure taken under the law on artistic and intellectual works.

The rights of Internet users nowadays constituted a matter of primary importance for individuals, since Internet had become an essential tool for the exercise of freedom of expression. However, the mere fact that the applicant – like the other Turkish users of the websites in question – had been indirectly affected by a blocking measure against two music-sharing websites could not suffice for him to be regarded as a "victim" for the purposes of Article 34 of the Convention.

The sites affected by the impugned blocking measure were music sharing websites and they had been blocked because they did not comply with copyright legislation. As a user of these sites, the applicant had made use of their services and he had been deprived of only one means of listening to music among many others. He could thus without difficulty have had access to a range of musical

works by numerous means without this entailing a breach of copyright rules. In addition, the applicant had not alleged that the websites in question disseminated information which could present a specific interest for him or that the blocking of access had had the effect of depriving him of a major source of communication*. Accordingly, the fact that the applicant had been deprived of access to those websites had not prevented him from taking part in a debate on a matter of general interest.

The present case could be distinguished from that of *Ahmet Yıldırım v. Turkey* (3111/10, 18 December 2012, Information Note 158), where the applicant, as owner and user of a website, had complained that he was unable to access his own site on account of a blocking measure affecting a Google module. The Court had found that any measure blocking access to a website had to be part of a particularly strict legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent possible abuse, because it could have significant effects of "collateral censorship". Moreover, while Article 10 § 2 of the Convention did not allow much leeway for restrictions of freedom of expression in political matters, for example, States had a broad margin of appreciation in the regulation of speech in commercial matters**, bearing in mind that the breadth of that margin had to be qualified where it was not strictly speaking the "commercial" expression of an individual that was at stake but his participation in a debate on a matter of general interest. In this connection, as regards the balancing of possibly competing interests, such as the "right to freedom to receive information" and the "protection of copyright", the domestic authorities were afforded a particularly wide margin of appreciation***. In the light of that case-law, the Court was not convinced that the present case raised an important question of general interest.

Having regard to the foregoing, the applicant could not claim to be a "victim" of a violation of Article 10 of the Convention on account of the impugned measure.

Conclusion: inadmissible (incompatible *ratione personae*).

The Court also found the application inadmissible for being incompatible *ratione personae* in respect of the complaint under Article 6 of the Convention, given that the applicant's lack of victim status for the purposes of Article 10 of the Convention likewise applied in respect of the Article 6 complaint.

* *Khurshid Mustafa and Tarzibachi v. Sweden*, 23883/06, 16 December 2008, Information Note 114.

** *Mouvement raëlien v. Switzerland* [GC], 16354/06, 13 July 2012, Information Note 154.

*** *Ashny Donal and Others v. France*, 36769/08, 10 January 2013, Information Note 159.
