



## Ruling on an application by the Wikimedia Foundation concerning a blocking order against its website, the Turkish Constitutional Court acknowledged the violation of Article 10 of the Convention and afforded appropriate redress

In its decision in the case of [Wikimedia Foundation, Inc. v. Turkey](#) (application no. 25479/19) the European Court of Human Rights has, by a majority, declared the application inadmissible.

The case concerned a request by the Telecommunications and Information Technology Directorate for the removal of certain pages from the applicant's website and the subsequent order blocking access to the entire website as it was not technically feasible to block only certain pages.

The Court observed that it had found, in numerous cases concerning freedom of expression, that an application to the Constitutional Court was to be regarded as a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention in respect of such complaints.

The Court took note of the systemic nature of the problem raised in the present case. Nevertheless, it did not have sufficiently relevant information to suggest that the Turkish Constitutional Court was not capable of remedying the problem. That court had delivered several judgments concerning the blocking of websites, establishing numerous criteria to be followed by the national authorities and the courts called upon to examine blocking orders.

The Court found that in ruling on the individual application before it the Constitutional Court had acknowledged in substance the violation of Article 10 of the Convention and had afforded appropriate and sufficient redress for the damage sustained by the applicant foundation. It therefore held that the applicant foundation could no longer claim victim status and that the application was incompatible with the provisions of the Convention.

The decision is final.

### Principal facts

The applicant, Wikimedia Foundation, Inc., is a foundation based in San Francisco. It is dedicated to the free sharing of knowledge through the Wikimedia projects, which are aimed at developing a collective, universal and multilingual online encyclopaedia available free of charge.

On 28 April 2017 the Directorate General of Security attached to the Prime Minister's office requested the Telecommunications and Information Technology Directorate ("the TİB") to order the removal of two pages from the Wikipedia website, under section 8/A of Law no. 5651. Alternatively, if this were not possible, the Directorate General requested that access to the entire website be blocked. The pages concerned bore the titles "State-sponsored terrorism" and "Foreign involvement in the Syrian civil war".

On the same day the Wikimedia Foundation received five emails from the TİB requiring it to remove five URLs within four hours.

The TİB ordered that access to the entire website be blocked on the grounds that the pages entitled "State-sponsored terrorism" and "Foreign involvement in the Syrian civil war" had not been taken down within the specified time-limit and that it was technically impossible to block access only to those pages.

In accordance with section 8/A § 2 of Law no. 5651, the TİB's order was submitted within 24 hours to the Ankara 1st Magistrate's Court, which upheld it in a ruling of 29 April 2017. The applicant

foundation appealed. The 1st Magistrate's Court dismissed the appeal and referred the case to the Ankara 2nd Magistrate's Court, which likewise dismissed the applicant foundation's claims.

On 9 May 2017 the applicant foundation lodged an individual application with the Turkish Constitutional Court.

On 25 July 2018, while its individual application was pending before the Constitutional Court, the applicant foundation applied to the magistrate's court for the measure in question to be lifted. The 4th Magistrate's Court rejected the application. An objection lodged by the applicant foundation was dismissed.

In a judgment of 26 December 2019 published in the Official Gazette on 15 January 2020 the Constitutional Court held, by ten votes to six, that there had been a violation of Article 26 of the Constitution protecting the right to freedom of expression.

The Constitutional Court held that the measure ordered by the administrative and judicial bodies had not been based on a pressing social need, that the reasons given for it had been insufficient and that it amounted to disproportionate interference with the right to freedom of expression.

Lastly, the court specified that the violation in question resulted from both an administrative and a judicial decision. It returned the case file to the competent magistrate's court so that the latter could reopen the proceedings with a view to remedying the violation. It also awarded 2,732.50 Turkish lira (TRY) to the applicant foundation in respect of costs and expenses.

On being notified of the Constitutional Court judgment on 15 January 2020 the Ankara 1st Magistrate's Court immediately lifted the order blocking access to the entire Wikipedia site.

On 29 April 2019, while its individual application to the Constitutional Court was pending, the applicant foundation lodged the present application with the Court. Arguing that its application to the Constitutional Court could no longer be considered effective, it requested that the case be given priority. The Court granted the request and gave notice of the application to the Government.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 April 2019.

Relying on Articles 6 (right to a fair hearing), 10 (freedom of expression) and 15 (derogation in time of emergency), the applicant foundation alleged that the blocking of access to the entire Wikipedia website amounted to unjustified interference with its right to freedom of expression, and that the procedure for judicial review of blocking orders against websites was inadequate to prevent abuse. It further alleged that no effective remedy was available under Turkish law and that its individual application to the Turkish Constitutional Court had been rendered ineffective since its activity consisted in publishing the content of its webpages in a timely manner.

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

Jon Fridrik **Kjølbro** (Denmark), *President*,  
Carlo **Ranzoni** (Liechtenstein),  
Egidijus **Kūris** (Lithuania),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** (North Macedonia),  
Saadet **Yüksel** (Turkey),  
Diana **Sârcu** (the Republic of Moldova),

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

## Decision of the Court

### Article 10

In the present case the measure complained of by the applicant foundation, namely the order blocking access to the Wikipedia website made initially by the TİB, an administrative body, and subsequently upheld by the competent magistrate's court, had been lifted on 15 January 2020 following notification of the Constitutional Court judgment of 26 December 2019. The 1st Magistrate's Court had decided to lift the order blocking access to the entire Wikipedia website without delay.

Regarding the effectiveness of the individual application to the Constitutional Court, the Court observed that it had found, in numerous cases concerning freedom of expression, that an application of this kind was to be regarded as a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention in respect of such complaints. The Court saw no reason to depart from that case-law, as there was insufficient evidence for it to find that an individual application to the Constitutional Court was not capable of affording appropriate redress for the applicant foundation's complaint under Article 10 of the Convention.

With regard first of all to the rules on the blocking of access to websites under section 8/A of Law no. 5651, it was clear from the Constitutional Court's judgments that that court had established a line of case-law defining the criteria to be applied. In particular, the Constitutional Court had held that the blocking of access to an entire website was an exceptional measure, and it had enumerated the criteria to be applied in deciding on such measures. After examining the case it had also found that the measure ordered by the administrative and judicial bodies had not been based on a pressing social need, that insufficient reasons had been given for it and that it amounted to disproportionate interference with the right to freedom of expression.

The Court took note of the applicant foundation's arguments and the third parties' observations concerning the systemic nature of the problem raised in the present case. Nevertheless, it did not have sufficiently relevant information to suggest that the Constitutional Court was not capable of remedying the alleged systemic problem. As the applicant foundation conceded, the Constitutional Court had delivered several judgments on the blocking of websites, through which it had established a large number of criteria to be followed by the national authorities and the courts called upon to examine blocking orders. Furthermore, if a problem was shown to be systemic, the Constitutional Court also had appropriate means available to it, such as the pilot-judgment procedure, as an alternative to simply finding a violation in a given case. Likewise, when hearing an individual application the Constitutional Court was empowered to assess the foreseeability of the provision in issue and to find, if appropriate, that it did not satisfy the requirements in terms of the "quality of the law".

On the subject of the length of the Constitutional Court proceedings, the Court noted that the Constitutional Court had delivered its judgment two years and eight months after the individual application had been lodged. In the Court's view, while this was a lengthy period it was not manifestly excessive, especially given what had been at stake in the case. Nevertheless, that finding should not be interpreted as giving the domestic courts *carte blanche* in dealing with similar complaints under Article 10 of the Convention, particularly in view of the shortcomings identified by the Constitutional Court concerning the review carried out by the magistrates' courts.

It followed from the above that the first condition to be satisfied in order for the Court to find that an applicant no longer had victim status – the acknowledgement by the national authorities of a violation – was met in the present case, as the terms in which the Constitutional Court's judgment was couched could be regarded as an acknowledgement that there had been a violation of the right to freedom of expression. As to the second condition – the existence of appropriate and sufficient redress – the Constitutional Court, after finding a violation, had returned the case file to the

competent magistrate's court so that it could reopen the proceedings with a view to remedying the violation. In its turn, the magistrate's court had lifted the blocking order against the entire Wikipedia website as soon as it received notice of the Constitutional Court judgment, on 15 January 2020. Lastly, the Constitutional Court had awarded the applicant foundation TRY 2,732.50 in respect of costs and expenses. The second condition was thus also met.

In sum, the Court considered that the Turkish Constitutional Court, in ruling on the individual application which it was called upon to examine, had acknowledged in substance the violation of Article 10 of the Convention and had afforded appropriate and sufficient redress for the damage sustained by the applicant foundation. It therefore held that the applicant foundation could no longer claim victim status and that the application was incompatible with the provisions of the Convention for the purposes of Article 35 § 3 (a) and must be rejected.

*The decision 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.