



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 158

December 2012

Ahmet Yıldırım v. Turkey - 3111/10

Judgment 18.12.2012 [Section II]

Article 10

Article 10-1

Freedom of expression

Interim court order incidentally blocking access to host and third-party websites in addition to website concerned by proceedings: *violation*

Facts – The applicant owns and runs a website on which he publishes material including his academic work. It was set up using the Google Sites website creation and hosting service. On 23 June 2009 the Criminal Court of First Instance ordered the blocking of another Internet site under the Law on regulating publications on the Internet and combating Internet offences. The order was issued as a preventive measure in the context of criminal proceedings. Later that day, under the same Law, a copy of the blocking order was sent to the Telecommunications Directorate for execution. On 24 June 2009, further to a request by the Telecommunications Directorate, the Criminal Court of First Instance varied its decision and ordered the blocking of all access to Google Sites. As a result, the applicant was unable to access his own site. On 1 July 2009 he applied to have the blocking order set aside in respect of his own site, which had no connection with the site that had been blocked because of its illegal content. On 13 July 2009 the Criminal Court dismissed the applicant's application. In April 2012 he was still unable to access his own website even though, as far as he understood, the criminal proceedings against the owner of the offending site had been discontinued in March 2011.

Law – Article 10: Following the blocking of another website as a preventive measure, the court had subsequently, further to a request by the Telecommunications Directorate, ordered the blocking of all access to Google Sites, which also hosted the applicant's site. This had entailed a restriction amounting to interference with the applicant's right to freedom of expression.

The blocking of the offending site had a basis in law but it was clear that neither the applicant's site nor Google Sites fell within the scope of the relevant law since there was insufficient reason to suspect that their content might be illegal. No judicial proceedings had been brought against either of them. Furthermore, although Google Sites was held responsible for the content of a site it hosted, the law made no provision for the wholesale blocking of access to the service. Nor was there any indication that Google Sites had been informed that it was hosting illegal content or that it had refused to comply with an interim measure concerning a site that was the subject of pending criminal proceedings. Furthermore, the law had conferred extensive powers on an administrative body, the Telecommunications Directorate, in implementing a blocking order since it had been able to request an extension of the scope of the order even

though no proceedings had been brought in respect of the site or domain concerned and no real need for wholesale blocking had been established.

Such prior restraints were not, in principle, incompatible with the Convention, but they had to be part of a legal framework ensuring both tight control over the scope of bans and effective judicial review to prevent possible abuses. However, in ordering the blocking of all access to Google Sites, the Criminal Court of First Instance had simply referred to the Telecommunications Directorate's opinion that this was the only possible way of blocking the offending site, without ascertaining whether a less severe measure could be taken. In addition, one of the applicant's main arguments in his application of 1 July 2009 to set the blocking order aside was that to prevent other sites from being affected by the measure in question, a method should have been chosen whereby only the offending site became inaccessible. However, there was no indication that the judges considering his application had sought to weigh up the various interests at stake. This shortcoming was merely a consequence of the wording of the law itself, which did not lay down any obligation for the domestic courts to examine whether the wholesale blocking of Google Sites was necessary, having regard to the criteria established and applied by the Court under Article 10 of the Convention. Such wholesale blocking had rendered large amounts of information inaccessible, thus substantially restricting the rights of Internet users and having a significant collateral effect. The interference had therefore not been foreseeable and had not afforded the applicant the degree of protection to which he was entitled by the rule of law in a democratic society. The measure in issue had had arbitrary effects and could not be said to have been designed solely to block access to the offending site. Furthermore, the judicial-review procedures concerning the blocking of Internet sites were insufficient to meet the criteria for avoiding abuses; domestic law did not provide for any safeguards to ensure that a blocking order concerning a specified site was not used as a means of blocking access in general.

Conclusion: violation (unanimously).

Article 41: EUR 7,500 in respect of non-pecuniary damage.

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