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ECHR rules against blanket website blocking
International - Hogan Lovells International LLP

Internet issues

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In *Yildirim v Turkey* (December 18 2012), the European Court of Human Rights (ECHR) has ruled that blanket website blocking violated the right to freedom of expression under the [European Convention on Human Rights](#). The decision is of relevance as it recognises the importance of the Internet as a vehicle for exercising the right to freedom of expression and establishes that any restriction on this right must be based on a strict legal framework.

The case was brought by Ahmet Yildirim, a computer engineering PhD student from Turkey who owned a [website](#) where he published academic articles and expressed his views on various issues.

On June 23 2009 a Denizli Criminal Court ordered the interim takedown of a website for insulting the memory of Mustafa Kemal Atatürk, the founder of the modern Republic of Turkey and a national hero for the Turkish people. The court order was based on a provision protecting the memory of Atatürk under the Turkish Internet Law, Article 8§1(b) of Law 5651 (a provision which is based on Law 5816 of July 25 1951 on Crimes Committed against Atatürk).

The administrative body responsible for enforcing the Denizli court's decision, the Turkish Telecommunications and Electronic Data Authority (TIB), informed the Denizli court that, in order to implement its decision, it was necessary to block the entire platform hosting the offensive website (Google Sites). Following the TIB's recommendation, the Denizli court - without further consideration - ordered a complete ban of the web hosting platform (and thus all websites associated with the sub-domain 'sites.google.com'), with the consequence that all of the many websites on the platform were shut down, including the complainant's academic website.

On July 1 2009 the complainant filed an opposition against the Denizli court's decision alleging that the interim measure had the effect of blocking access to his website in spite of the fact that it had no connection to the offensive website. On July 13 2009 the Denizli court rejected the claim on the basis that blocking the entire hosting platform was the only means technically available to shut down the offensive website.

In early 2010, still unable to access his academic website, the complainant brought a case against the government of Turkey before the ECHR alleging, among other things, that the blocking of his own personal website was an act of indirect censorship, in violation of his right to freedom of expression under Article 10 of the convention. The complainant argued that the measure taken by the Denizli court was disproportionate in relation to the goal envisaged and, furthermore, that the proceeding violated basic principles of due process. The government of Turkey did not submit any arguments in its defence.

The ECHR had to decide whether the blocking of the complainant's website as a result of the national court decision constituted prior censorship or restraint in violation of the rights conferred by the convention, in particular the right to freedom of expression, as recognised in Article 10, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

In its analysis, the ECHR observed that the right to freedom of expression is two-fold, comprising not only the right to transmit but also to receive information, and that although Article 10 does not afford absolute protection against prior restraint, restrictions on freedom of expression do require strict judicial scrutiny.

Drawing on prior ECHR decisions, the court explicitly acknowledged the importance of the Internet as a vehicle for exercising the right to freedom of speech and information. Having considered that blocking the complainant's website - as a result of an interim measure against another website - constituted a restriction,

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the ECHR found that such restriction constituted an interference by the government.

The ECHR then examined whether such interference was prescribed by law, served a legitimate interest in accordance with Article 10 §2 of the convention and was necessary to protect such legitimate interest.

The ECHR recalled that "prescribed by law" implies that a restriction must have a legal basis. Furthermore, such legal basis must be accessible and narrowly tailored so as to enable individuals to predict the legality of a particular conduct (and thereby allow them to regulate their own conduct). The ECHR found that, whilst the blocking measure had a legal basis - Article 8§1 of the Turkish Internet Law - said provision was not precisely and clearly formulated and, therefore, did not satisfy the accessibility and predictability requirements. The ECHR thus found that the provision failed to adequately protect against abuse or arbitrary interference by the government.

The ECHR explained that, according to Article 8§1 of the Turkish Internet Law, a court may order the blocking of access to "publications made available on the Internet where there is sufficient reason to believe - based on their content - that they constitute a violation". The ECHR considered that neither the complainant's academic website nor the web hosting platform - Google Sites - in general fell within the scope of said provision because the legality of their content had never been contested within a court proceeding. Furthermore, it noted that the Turkish Internet Law did not provide for a blanket blocking such as the one ordered by the national court. The ECHR also observed that the web hosting platform Google Sites was never notified of the existence of a website containing illicit content and nor was there evidence that it ever refused to take measures against such a website.

Finally, the ECHR observed that the Turkish Internet Law conferred excessive powers on the administrative body in charge of enforcing the court's decision to block a website (the TIB), as it was able to expand the measure upon simple request.

The ECHR stressed that, although restrictions on freedom of expression are not by themselves contrary to the convention, they must be based on a strict legal framework clearly defining the scope of the restriction, and be subject to review by a judge to protect against abuse. In light of this, the ECHR observed that the Denizli court based its decision to block the entire hosting platform on the opinion of the TIB, without considering whether there was a less restrictive means to achieve its purpose or weighing up the interests at stake. In particular, the ECHR observed that the Denizli court had failed to consider whether blocking the entire platform was a necessary measure to achieve its purpose, particularly in light of the collateral effects. In the ECHR's opinion, the Denizli court's failure was a result of the inadequacy of the national law.

In view of the foregoing, the ECHR concluded that the interference by the government - by way of Article 8 of Law 5651 - did not meet the predictability requirement under the convention and did not afford the complainant the degree of protection required by law. The ECHR held that the general blocking of the entire website hosting platform had been arbitrary and overly broad given the aim of blocking a particular website, and that the court's review of internet blocking measures did not provide sufficient safeguards against abuse.

The ECHR therefore concluded that there had been a violation of Article 10 of the convention and ordered the government of Turkey to pay damages and costs to the complainant in the sum of €8,500.

The decision (which may be appealed for a period of three months) recognises the importance of the Internet as a vehicle for exercising the right to freedom of expression and makes clear that restrictions to this right must be based on a strict legal framework. Whilst the decision did not reject the legitimacy of the law protecting the memory of Atatürk, which is at the origin of the controversy, it did suggest that the Turkish internet legislation was not in accordance with the principles set down by the convention and the ECHR precedents, thus sending a strong message not only to Turkey, but to all 47 countries of the [Council of Europe](#).

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