



The Constitutional Court's Decision on Freedom of Press and Expression Regarding the Contents of a News Article Posted on a Newspaper's Website

Authors: Gönenç Gürkaynak, Esq., Ceren Yıldız, Noyan Utkan and Kübra Keskin, ELIG Gürkaynak Attorneys-at-Law

The Constitutional Court granted a decision on May 22, 2019 regarding the applicant's claims on violation of their freedom of expression and press due to access ban of a news article on their newspaper's website and the decision is published on the Official Gazette on July 12, 2019. The Constitutional Court accepted the applicant's claim by stating that the access ban on the news article which is published in the newspaper's website contradicts with the principles of a democratic society.

Background of the Case

Birgun İletişim ve Yayıncılık Ticaret A.S. ("Applicant") is the owner of a nationally published newspaper and publisher of the website www.birgun.net. The news article subject to the decision is related to an incident which happens to be in the city of Sirnak on March 10, 2015. H.L.B, who was involved in a clash during the operation organized by the Turkish Police to close the ditches opened by the terrorists in the city center of Sirnak, was killed and his body was dragged by an armored police vehicle. After the incident, 111 (one hundred eleven) URL addresses which included news articles and images about this incident have access banned by criminal judgship of peace. One of these news articles was posted on the website www.birgun.net with a title "*H.B, whose dead body dragged from vehicle, has been shot 28 times.*" After the news article was posted, Telecommunication Communication Presidency (TIB), has filed a complaint before Golbasi Criminal Judgship of Peace and obtained an access ban decision regarding the news article along with several URL addresses of other websites on the grounds that the contents are praising terror, support violence and crimes, threaten the public order and national security, and jeopardize security of life and property. Applicant filed an objection against Golbasi Criminal Judgship of Peace's decision and their objection was rejected by the higher court Ankara 7th Criminal Judgship of Peace on October 23, 2015.

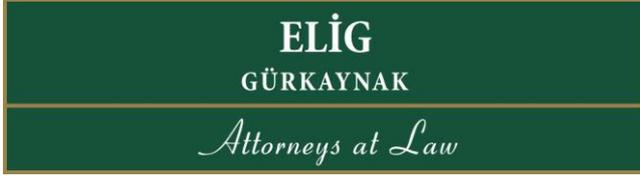
Accordingly, the Applicant filed an individual application before the Constitutional Court (2015/18936) on December 4, 2015 by claiming that its freedom of expression and press has been violated.

The Constitutional Court's Evaluation

The Constitutional Court evaluated the access ban procedure under Turkish law and noted that access ban decision based on the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed Through Such Broadcasts ("Law No. 5651") should only be granted in urgent cases of the existence of a "prima facie violation", where the violation is apparent without the need of a detailed examination, such as the cases of nude pictures or videos of an individual and cited its earlier decision of Ali Kidik. The Constitutional Court stated that Golbasi Criminal Judgeship of Peace failed to provide a convincing decision regarding the urgent need to access ban the news article by proving the prima facie violation, and also the relationship between the content of the publication and the reason for the limitation has not been revealed, nor has been demonstrated the existence of non-delayable case.

The Constitutional Court also noted that there is not enough reason for implementing access ban measure in the case at hand, considering that the access to such content is banned for a general reason. The Court also emphasized that the balance between freedom of expression and democratic society's legitimate right to defend themselves against terrorist activities is not satisfied by the domestic court and that access ban of the relevant URL addresses are not based on an adequate reasoning which exhibits that there is a social need for this measure and that this restriction is in accordance with the requirements of a democratic society. The Constitutional Court indicated that indefinite restrictions will violate with freedom of expression and the press.

According the to the Court's decision, access banning the news and thoughts which are published due to being related to significant incidents would be deemed as censorship and that



ensorship makes public debate on national issues impossible.

The Constitutional Court finally stated that access banning content indefinitely without adequate reasoning will be disproportionate, and that in a democratic society measures cannot be disproportionate in a manner to prevent freedoms to be exercised, regardless of the purpose. Consequently, the Constitutional Court anonymously concluded that the reasons for access banning of the content without a detailed examination are not relevant and adequate and thus the Applicant's freedom of expression and press which is protected under Articles 26 and 28 of the Constitution is violated.

Article contact: Gönenç Gürkaynak, Esq.

Email: gonenc.gurkaynak@elig.com

(First published by Mondaq on July 18, 2019)