



Constitutional Court's Decision on Access Ban to News Content on Social Media

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Turkish Constitutional Court granted a decision on April 17, 2019 regarding an applicant's claims on violation of his freedom of expression and press due to access ban of a news article (which is taken from a newspaper) posted by his social media account with the comment "Interesting confession from the judge of the July 22th investigation". The decision was published on the Official Gazette on May 15, 2019. The Constitutional Court accepted the applicant's claim by stating that the access ban of the news article violated the applicant's right to freedom of expression and press.

Background of the Case

The applicant ("Applicant") is a journalist and also a member of parliament. The applicant is the owner of a social media account on a social media website, wherein he shares news content. According to the decision, the Applicant shared a news article (which is taken from a Turkish newspaper) on his social media account under the title "Parallel Judge: I have my signature in the wiretapping" along with the comment "Interesting confession from the judge of the July 22th investigation". The news article related to the statements of a criminal judgeship of peace's judge, who was assigned for a case regarding the arrest of policemen based on the claim that the policemen, who allegedly had connections with an illegal organization infiltrated into the government, conspired against high-level public officials. The news article further stated that the judge did not accept the case, due to his workload and that he was the one who decided to wiretap in one of the investigations carried out regarding a terrorist organization.

After the news article was published on the Applicant's social media account, the criminal judgeship of peace, which is subject to the news article, has filed a complaint before Istanbul 6th Criminal Judgeship of Peace and obtained an access ban decision regarding the news article published on the social media account on the basis that the content violates his personal

rights. Applicant filed an objection against Istanbul 6th Criminal Judgeship of Peace's decision and his objection is rejected by Istanbul 1st Criminal Judgeship of Peace, as the higher court.

Accordingly, the Applicant filed an individual application before the Constitutional Court (2015/4821) on March 16, 2015 by claiming that its freedom of expression and press has been violated.

The Constitutional Court's Evaluation

Constitutional Court evaluated the access ban procedure under Turkish law and noted that access ban decision based on the 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 *Ali Kidik* decision. According to the Constitutional Court, the individual has the option to file a lawsuit before civil or criminal courts, since, in the present case, there has to be detailed information to determine whether the content of the news article mirrors the reality and whether this publication harms the honor and dignity of the relevant judge, who is the complainant of the access ban. Constitutional Court stated that Istanbul 6th 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*, considering that the access ban decision is granted after four years of the publishing of the news article.

Constitutional Court also noted that there is not enough reason for applying access ban measure in the case at hand considering the content of the news article. The Constitutional Court emphasized that access ban decision granted by way of non-contentious jurisdiction can only be acceptable if there is an imminent and visible violation occurring at the first glance. The Constitutional Court evaluated that in the case at hand, the lower court failed to explain the need to immediately and swiftly eliminate the alleged attack against the honor and dignity through the relevant content, without applying to a contentious trial, as the content of the articles subject to the complaint are not as serious as to grant an access ban decision as per Article 9 of the Law No. 5651.



The Constitutional Court finally stated that in unlawful interventions against people's honor and dignity due to expressions of ideas and thoughts on the internet medium, the main goal is to relieve the damages of the injured party, and there are more effective, useful and beneficial legal and criminal remedies, especially in terms of the disputes such as the case at hand.

Consequently, the Constitutional Court 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.

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