



Access to Wikipedia Reinstated in Turkey

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ELIG Gürkaynak Attorneys-at-Law, acting as outside counsel for Wikimedia Foundation, Inc. (“Wikimedia”), has secured an affirmative decision from the Turkish Constitutional Court in the matter of an universal access ban on the Wikipedia website (www.wikipedia.org) in Turkey.

The Constitutional Court’s decision regarding the claims of violation of freedom of expression due to the access ban on the entire Wikipedia website was issued on December 26, 2019, and published in the Official Gazette on January 15, 2020. The Constitutional Court concluded, by a majority vote, that the access ban of the entire Wikipedia website was unconstitutional.

Background of the Case

The Turkish Information Technologies and Communications Authority (“ICTA”) access banned the entirety of Wikipedia on April 29, 2017, based on the contents of certain articles on state-sponsored terrorism and foreign involvement in the Syrian Civil war, which had been published at two different Wikipedia URL addresses (https://en.wikipedia.org/wiki/State-sponsored_terrorism#Turkey and https://en.wikipedia.org/wiki/Foreign_involvement_in_the_Syrian_Civil_War#Turkey), and which were deemed to be of a threatening nature to Turkey’s internal and external national security and accused of disturbing the public order.

The objection filed against the access ban decision was rejected on the grounds that the contents constituted an unjust and groundless attack on the reputation and dignity of the Republic of Turkey on international platforms and within the country, by creating the impression that Turkey was one of the initiators of the civil war in Syria and by implying that Turkey was a country that supported and provided financial assistance and weapons to terrorist organizations.

After the access ban decision became final and binding, Wikimedia, represented by ELIG Gürkaynak Attorneys-at-Law, filed an individual application before the Turkish Constitutional Court on May 9, 2017. The Constitutional Court remained silent on the issue for more than two years. During this period, Wikimedia also filed an individual application before the European Court of Human Rights.

The Constitutional Court Decision

In the session held on December 26, 2019, the Constitutional Court’s General Chamber first evaluated whether there had been interference with the right of freedom of expression, and whether such interference constituted a violation, by assessing the case in terms of legality, legitimacy and necessity, *i.e.*, by evaluating whether the grounds of the interference decision had legal basis, legitimate aims or could be deemed necessary in a democratic society.

In terms of the access ban’s legality, the Constitutional Court stated that the legal basis of the interference was only indicated as “Article 8/A of the Law No. 5651” in the ICTA’s decision, without further elaboration. The Constitutional Court also noted that Article 8/A(1) did not include protecting “*the dignity of the government*” among the potential grounds that would allow an access ban, and accordingly, found such interference to be arbitrary.

As for the legitimacy question, the Constitutional Court pointed out that an interference could be deemed to have a legitimate aim if its purpose was the protection of values and interests under Article 26 of the Turkish Constitution; however, in the matter at hand, the aim of the decision was hardly discernable, and furthermore, as with the prior discussion of legality, it was not unproblematic. The Constitutional Court further discussed the legitimate aim within the scope of the necessity of a democratic society, and, referring to one of its recent decisions, stated that the ICTA should interfere with contents on the Internet only when it is necessary to protect the public interest by taking prompt action. The Constitutional Court also stated that interfering with the freedom of expression without proper justification and without consideration of the criteria determined by the Constitutional Court, would be considered to constitute a violation of Article 26 of the Constitution, and further declared that none of these criteria (nor the existence of a non-delayable condition) had been duly presented or fulfilled in the subject access ban decision at hand.

The Constitutional Court provided additional analysis on the contents of the Wikipedia articles that had resulted in the access ban decision, and clarified that all of the claims in these articles were based on international news articles, which, again, were all accessible through the Internet. The Constitutional Court noted that the contents included the public statements of well-known politicians, and emphasized that some of the claims had referenced no sources and even those that had been cited were questionable.

The Constitutional Court also observed that Wikimedia writers and editors had made significant changes in the relevant contents and removed the majority of the information that was not verified or corroborated. It further pointed out that the access ban decision not only violated Wikimedia’s rights, but also the rights of the Wikipedia users in Turkey.

Consequently, the Constitutional Court determined that (i) the interference of the ICTA had been disproportionate, (ii) Article 26 of the Constitution had been violated, and (iii) the case should be sent to the first-instance court for a retrial, in order to remove the results of the violation of the right of freedom of expression and resolve the case by following the Constitutional Court's decision.

On the other hand, six out of the sixteen judges on the Constitutional Court disagreed with the majority decision, and issued a dissenting opinion which stated that certain things that are published on the Internet might violate personal rights, or cause or abet cyber-bullying, prostitution, child exploitation, fraud, racism and terrorism, and therefore, an access ban on some online content might be considered necessary and appropriate. In their dissenting opinion, the judges argued that since the content in the relevant Wikipedia articles indicated that Turkey was one of the countries which had initiated the civil war in Syria, and suggested that it had helped terrorist organizations and conducted petroleum trade with them, the access ban decision should be considered as necessary in a democratic society.

Reinstating Access to Wikipedia in Turkey

The ICTA lifted the access ban on Wikipedia on January 15, 2020, upon the order of the Ankara 1st Criminal Judgeship of Peace, per the Constitutional Court's decision. After more than two and a half years, access to Wikipedia has finally been reinstated in Turkey.

Wikimedia's case before the European Court of Human Rights, which had been initiated in May 2019 regarding this universal access ban in the absence of a decision by the Turkish Constitutional Court at the time, is currently still pending before the Court.

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