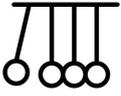


TURKEY'S UNHEARD VOICES

The “Cengiz and the Others vs Türkiye” Case in the ECHR

LAW

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Abstract

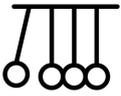
The case “Cengiz and the Others vs. Türkiye” concerns the evaluation of the restriction of general access applied to Youtube in Türkiye (2008) within the scope of going against the 10th article of the European Convention on Human Rights. Applicants, active users of Youtube for their academic activities, argued that the restriction of access to this platform was in violation of their rights of freedom of expression and access to information. The European Court of Human Rights has emphasised that in contemporary society the media plays a crucial role in providing a space for public debate and the circulation of information; thus, stating that restricting general access to an online platform concerns a serious intervention. The court upon first viewing has determined the restriction as unjustified and problematic in legal reasoning; finding the measure applied unnecessary and irrational in a democratic society. In conclusion, the court has ruled in favor of the applicants, acknowledging Türkiye’s violation of the 10th article clause. This decision demonstrated a revolutionary judicial approach on digital rights in terms of revealing that internet access is an integral element of freedom of expression.

Background and Formation of the Case

The “Cengiz and the Others vs. Türkiye” case is about the restriction applied to YouTube in the year 2008 in Türkiye. This limitation had been petitioned with claims of videos on the platform that insulted Atatürk; it was applied upon a court decision with regards to the law No. 5651. However, the court order wasn’t limited to the specific content and videos, it regarded the restriction of complete access to the platform. This decision disabled the free access to information of millions of users. Applicants to the lawsuit were university academics. These professors explained that they used Youtube for academic purposes, to obtain information and described themselves as active users of the application within the scope of freedom of expression. They argued that, because the limitation was not concerning solely determined content but the restriction of the whole platform, it was in violation of their freedom of expression and access to information rights. The restriction remained in effect for a long time; legal access to the platform was not possible, if not using alternative ways. Unable to come to a conclusion through domestic law, the applicants took their claims to the European Court of Human Rights. Thus, the lawsuit became a grave human rights issue regarding the restriction of people’s freedom of expression.

Legal Framework of the Dispute

The law number 5651 about the Regulation of Publications on the Internet was at the center of the dispute. This law permits the restriction of broadcasts and content regarding certain crimes. The court order justified the restrictions with certain content on the platform that went against the law and insulted Atatürk. However, in legal practice the limitation was not applied to those broadcasts, it covered the entirety of the platform. This decision brought



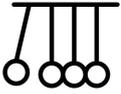
together discussions on the intervention of the government and its dimensions. By international law, the dispute was evaluated in connection with Article 10 of the European Convention on Human Rights. Article 10 not only protects the right to freedom of expression but, in addition, the rights to access information and hear others ideas. The European Court of Human Rights, in its jurisprudence, declares the internet as a major factor in modern society to employ freedom of expression. Therefore general restrictions on online platforms are pronounced as serious interventions by the document. In this context, the court evaluated whether the limitation was foreseen by law, had a legitimate purpose and was necessary in a democratic society. The complete restriction on YouTube was also convicted with great concerns about its consequences on people's access to information and academic liberty.

The Claims of the Applicants and the Government's Defense

The applicants claimed that the restriction of YouTube violated the right to freedom of expression protected by Article 10 of the European Convention on Human Rights. They articulated that, as academics, they used the platform not only for social purposes but, at the same time, for scientific research, as study material and to pursue public debates. On that account, they argued that the general access restriction on YouTube directly limited their rights to information and other people. Moreover, articulating that the YouTube restriction didn't cover specific content but the whole platform itself, they claimed that the measures taken were disproportionate. In response, the Government of the Republic of Türkiye defended their intervention with a basis from international law and with claims of protecting public order and preventing crimes. They mentioned that the censoring of certain content that insulted Atatürk was necessary by law enforcement and that the restriction was decided by the appointed court. In addition, they formed new accusations on the approval of the hearing by objecting that the applicants weren't direct victims of the situation and that they were never personally targeted. At this time, the main dispute was whether the scope and implementation of the access barrier was necessary and proportional in a democratic society in terms of freedom of expression.

The European Court of Human Rights' Evaluation

The European Court of Human Rights, initiated its viewing by debating whether the applicants could be characterized as 'victims' of the situation. The court accepted that the professors used YouTube for academic and career related activities and that they were directly affected by the restriction of the platform. With that evaluation, the court accepted the applicants as victims in terms of Article 10. Subsequently, the court viewed if the restriction of general access on YouTube intervened with the right to freedom of expression. According to the European Court of Human Rights, the internet is one of the primary means for the dissemination of information and ideas in contemporary society. Therefore, the restriction of an entire social platform is a serious intervention that doesn't solely affect content creators but, also, all the users who want to access public information. In those terms,



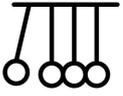
the court accepted that there was a violation of people's and the applicants rights to disseminated information. Ultimately, the court evaluated whether the restriction was legally fundamented. Although the law numbered 5651 allows to block access, the court convicted the regulation as problematic, due to insufficient guarantees against predictability and personal inclinations. Drawing attention to the fact that the restriction of general access rather than of certain content demonstrated clearly that the law lacked explanation on how it would be implemented in real practice.

The Final Verdict

The European Court of Human Rights, after hearing the case, came to the conclusion that the restriction violated Article 10 of the European Convention on Human Rights. The court clearly stated that the general access restriction on YouTube was a serious violation of the freedom of expression and access to information rights. The main justification of the verdict was that the legal support of the implemented restriction was not foreseeable and was vague. Even though law number 5651 permits restrictions and bans, the implemented measure has been extended to exceed the purpose of the law. The court has emphasised that the limitation of the whole platform instead of selected content demonstrates how the law 5651 is liable to personal interpretations. Moreover, the court came to the conclusion that the restriction was unnecessary and irrational in a democratic society. The decision to censor infinite content to millions of users was defined as extreme interference and was convicted in violation of legal rights. According to the European Court of Human Rights the intervention of the right to freedom of expression must be avoided by the government and the right should be preserved. The final verdict ruled that Türkiye violated Article 10 and the court decided to impose moral compensation in favor of the applicants. This pronouncement established a built-in judgmental approach on the reviewing of media restrictions in terms of human rights violations.

The Significance of the Verdict for Digital Freedom of Expression

Cengiz and the Others vs Türkiye ruling became an important turning point in the digital era in terms of freedom of expression. The European Court of Human Rights stressed that the internet is not only a communication tool but, at the same time, a public space for discussion and an essential platform to distribute and access information. This declaration references the central role that access to the internet plays in a democratic public order. The verdict exhibits the gravity of interferences such as restrictions on digital platforms and of general access. The blocking of the entire platform on the grounds of certain content that went against the law, was found in violation of applicable measures by the court. This conclusion suggests the government to prefer more specific, targeted and reasonable measures. On this account, clarifying that the digital limitations on the freedom of expression must be strictly inspected and enforced. In the scope of Türkiye, the ruling caused increasing criticism on the implementation of the law number 5651 in real life practice and became a



key reference for discussions on internet censorship. In terms of European human rights law, the evaluation reinforced the judicial approach on the relevance of access to the internet with the freedom of expression. In conclusion, the case has become a useful guide on the preservation of digital rights, academic freedom and the right to information on both international and National dimensions.

Conclusion

The verdict on *Cengiz and the Others vs Türkiye*, articulated important principles regarding the protection of freedom of expression in the digital age. The court stressed that the government should implement discrete laws on the internet and that the restriction of general access could very likely become an extreme intervention of public order. They came to the conclusion that the censure of the whole platform while other, specific solutions existed, such as the restrictions of specific content, went against the needs of a democratic society. In terms of Türkiye, the ruling gave direction to legal discussions and action on internet access and emphasized the necessity of strengthening digital freedom of expression. At the same time, it reinforced that the internet was a part of public order according to the European human rights law. Ultimately, this case has become a useful guide on the preservation of digital rights, academic freedom and the right to information on both international and regional dimensions.

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