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Third party intervention
by the Council of Europe Commissioner for Human Rights

under Article 36, paragraph 3, of the European Convention on Human Rights

Application no. 25479/19
Wikimedia Foundation, INC. v. Turkey

Introduction

1. On 23 September 2019, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of her decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning the case of *Wikimedia Foundation, INC. v. Turkey*. This case relates to the blocking in Turkey of Wikipedia, a free, multi-lingual, collaborative online encyclopaedia hosted by the applicant, a non-profit organisation.

2. According to her mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights across the region.[1]

3. The present intervention is based on the Commissioner's work on Turkey, including a contact mission to the country from 15 to 19 October 2018, a previous written submission to the Court of 20 December 2018,[2] and a country visit to Turkey from 1 to 5 July 2019, during which she met civil society representatives and officials.[3] This submission also draws on her continuous monitoring of the country, as well as on the work of her predecessors.[4]

4. Section I of the present written submission focuses on the main issues concerning blocking of access to websites in Turkey; Section II seeks to place these issues within the general context regarding freedom of expression in the country; Section III focuses on the Commissioner's concerns regarding the decisions of magistrates' courts and the context within which they operate; Section IV presents the Commissioner's observations on the effectiveness of the Constitutional Court as a remedy for human rights violations, particularly in relation to cases of internet blocking. These sections are followed by the Commissioner's conclusions.

I. The legislative framework and judicial practice regarding internet blocking in Turkey

5. The issue of internet censorship and blocking of websites in Turkey has been on the agenda of the Commissioner's Office since 2011, when the Commissioner's predecessor published a report on freedom of expression in the country.[5] In this report, both the text and the application of the Turkish Internet Law (Law No. 5651 entitled "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications") were examined in detail, with the conclusion that the censorship of the internet and the blocking of websites in Turkey went beyond what is necessary in a democratic society.

6. The Commissioner notes that in its 2012 judgment in the *Ahmet Yıldırım v. Turkey* case, the Court scrutinised this Law and found that blocking access to an entire online platform, as allowed by this Law, constituted a violation of Article 10 of the Convention.[6] The Court notably held that the legal framework in Turkey was inadequate, conferred extensive powers on an administrative body and failed to provide sufficient safeguards against abuses. In a later case, the Court found that the blocking, from 5 May 2008 to 30 October 2010, of the entire Youtube website due to the content of a single page did not have a statutory basis at the time, while noting that the law had subsequently been amended to provide such

[1] Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.
[2] Third Party Intervention of 20 December 2018, *Mehmet Osman Kavala v. Turkey*, by Dunja Mijatović Commissioner for Human Rights, CommDH(2018)30.
[3] See the Commissioner's press release of 8 July 2019.
[4] In particular: Report by Thomas Hammarberg, Commissioner for Human Rights, following his visit to Turkey from 27 to 29 April 2011: freedom of expression and media freedom, CommDH(2011)25, 12 July 2011; and Memorandum on freedom of expression and media freedom in Turkey by Nils Muižnieks, Commissioner for Human Rights, CommDH(2017)5, 15 February 2017.
[5] CommDH(2011)25, *op.cit.*
[6] *Ahmet Yıldırım v. Turkey*, judgment of 18 December 2012.

a basis under certain conditions after the facts.[7] However, the Court did not rule *in abstracto* on the compatibility of the new provisions, which the Commissioner understands to be at stake in the present case, with the Convention.

7. Those new provisions were examined by the Commissioner's predecessor in 2017. He found that, despite the clear guidance of the Court in the *Ahmet Yıldırım v. Turkey* judgment, the subsequent changes to the Internet Law since 2014, rather than ensuring compliance with the Convention, broadened the scope of internet censorship, and therefore concluded that the censorship of the internet and blocking of websites in Turkey continued to be "exceptionally disproportionate".[8] He noted, in particular, that the amendments of 8 September 2014 authorised initially the Telecommunications Authority, and subsequently the Information and Communication Technologies Authority ("ICTA"), to collect and store all user logs from Internet Service Providers (ISPs) and extended their authority to block websites without a court order on the grounds of protecting national security, public order, or preventing crime. Although on 2 October 2014 Turkey's Constitutional Court annulled the said provisions,[9] a set of amendments were enacted in March 2015 authorising ministers and the prime minister (subsequently, the President of the Republic), in addition to the magistrates' courts, to order ICTA to block content when necessary to "defend the right to life, secure property, ensure national security and public order, prevent crime, or protect public health" (Article 8/A). ICTA must execute such orders within four hours and submit it to a magistrates' court for approval within twenty-four hours.

8. While, as noted by the Court in the aforementioned *Cengiz v. Turkey* judgment, the amended Internet Law allows for blocking measures to be applied to specific URLs rather than websites, this is conditional on the technical capacity at the disposal of the Turkish authorities and allows for wholesale blocking of the relevant website when it is technically not possible to block a single URL (Article 8, paragraph 17, Article 8/A, paragraph 3, and Article 9, paragraph 4). As noted by the Court in the same judgment, however, URL filtering technology for foreign-based websites is not available in Turkey. Crucially, the Commissioner also observes that the Internet Law does not foresee any obligation for the administrative authorities and courts to take account of the collateral effects of a wholesale blocking order of a website or to make any other proportionality assessment to balance competing rights against one another.

9. The Commissioner also notes the findings of the Venice Commission in its opinion regarding the conformity of the Internet Law and its application in practice with European human rights standards.[10] The Venice Commission notably identified a number of important shortcomings in the Internet Law, particularly with regard to the broad authority granted to the authorities to block access to content or to remove it. It found Articles 8/A, 9 and 9/A of the Internet Law especially problematic, in that access-blocking under those articles was not a "precautionary measure" in the context of an ongoing trial, but "fully fledged, autonomous procedures through which substantive decisions" are taken. It recommended that procedures on blocking under these articles be made dependent on the institution of a criminal or civil procedure and that "the law be amended in order to introduce a list of less intrusive measures which would allow the judge to make a decent proportionality assessment and apply the least restrictive measures if they are considered as sufficient and adequate to reach the legitimate aim pursued by the restriction." Similarly, in a press release of 15 April 2016, the OSCE Representative on Media Freedom stated that Law 5651 remained in urgent need of reform.[11]

10. At its latest examination of the state of execution of the *Ahmet Yıldırım v. Turkey* judgment in 2017, the Committee of Ministers "strongly invited the authorities to draw inspiration from relevant Council of Europe materials in ensuring that Law No. 5651 fully responds to the concerns raised by the Court, in particular by providing effective safeguards to prevent abuse by the administration and imposition of blanket blocking orders on entire Internet sites".[12]

11. In the light of these considerations, the Commissioner is of the opinion that the letter and spirit of the Turkish Internet Law is directly causing numerous violations of the right to freedom of expression as

[7] *Cengiz and Others v. Turkey*, judgment of 1 December 2015.
[8] CommDH(2017)5, *op.cit.*, para. 111.
[9] Turkish Constitutional Court, judgment no 2014/149 of 2 October 2014.
[10] See the Venice Commission Opinion No. 805/ 201 on Law No 5651 on regulation of publications on the Internet and combating crimes committed by means of such publication ('the Internet Law'), CDL-AD(2016)011, 15 June 2016.
[11] See press release OSCE Representative on Freedom of the Media, published on 15 April 2016.
[12] Decision of the Minister's Deputies at their 1302nd Meeting, 5-7 December 2017 (DH).

protected under Article 10 of the Convention. This problem is particularly acute in the context of Article 8/A of the Internet Law, which gives a quasi-automatic power to the Turkish executive to block any content. While this power is nominally subject to judicial control in the form of an immediate review by a magistrates' court, in practice these formations limit their scrutiny to a formal, procedural review of compatibility with the legislation, without any in-depth, reasoned, contextual and human-rights based assessments of the requests in question. In any case, the Commissioner finds that the practice of magistrates' courts is highly problematic in general, due to the lack of reasoning of their decisions for all matters under their purview (see under Section III below).

12. As noted by the Venice Commission, access blocking measures taken or validated by a magistrates' court can only be appealed to another magistrates' court, or failing that to the Constitutional Court under the individual application procedure.[13] However, in the current context, the Commissioner considers that the Constitutional Court has not been able to curb the excesses caused by the Internet Law and the practice of magistrates' courts (see under Section IV below).

13. In practice, blocking and filtering of web pages remain a pressing concern for the Commissioner. She notes that, while at the time of her Office's first scrutiny of the Internet Law in 2011 the number of websites blocked was estimated to have been around 5 000, according to recent estimates this figure might have been as high as 245 825 as of the end of 2018.[14] (In this connection, the Commissioner also notes that no official statistics are published on the number of blocked websites and that the Turkish authorities declined the Venice Commission delegation's request for such statistics.)[15]

14. In his aforementioned 2017 memorandum, the Commissioner's predecessor gave many examples to illustrate the pervasiveness of internet censorship, such as the blocking of websites of pro-Kurdish media outlets; the blocking of the blog-hosting service WordPress; a decision in February 2015 by a magistrates' court to ban access to a total of 49 websites including Charlie Hebdo's official site, as well as specific pages from the country's most popular internet forums, which were deemed to have "denigrated religious values"; or the blocking of access to five websites in common use by LGBTI persons. Access to various social media platforms had also been banned numerous times for not complying with sweeping general broadcasting bans imposed by magistrates' courts (see Section II below).[16] The Commissioner further observes that thousands of news articles appear to have been blocked as well.

15. In conclusion, the Commissioner considers that the blocking measure affecting the applicant, while particularly egregious, is far from being an isolated case. It is a symptom of a deep systemic problem stemming from, on the one hand, the incompatibility of Turkey's internet legislation with its obligations under the Convention, and on the other hand, the persistent failure of the Turkish judiciary to mitigate these legislative shortcomings in a Convention-compliant manner.

II. General concerns about freedom of expression in Turkey

16. The Commissioner believes that the use made of access-blocking of websites in Turkey should be seen against a backdrop of systematic violations of the right to freedom of expression, including the right to receive and impart information on the internet. The aforementioned 2017 memorandum details the various forms undue inferences with freedom of expression in Turkey have taken in recent years. These include, notably:

    - Restriction of media pluralism and independence, by using state resources to foster pro-government media, pressuring and stifling critical media outlets, including the imposition of disproportionate fines on critical media outlets by the broadcasting regulating authority ("RTÜK"), as well as increasingly direct attacks on media, such as the takeover by court-appointed trustees

[13] CDL-AD(2016)011, *op.cit.*, para. 50.
[14] EngelliWeb 2018, an assessment report on blocked websites, news articles and social media content from Turkey, prepared by Yaman Akdeniz and Ozan Güven, July 2019.
[15] CDL-AD(2016)011, *op.cit.*, para. 31.
[16] CommDH(2017)5, *op.cit.*, paras. 106-107.

of newspapers and broadcasting media outlets, and even their outright closure by emergency decrees, without judicial control;

- Judicial actions restricting freedom of expression, with a pattern of dramatically increasing numbers of prosecutions and convictions against persons having exercised their right to freedom of expression and whose statements should clearly be considered protected under Article 10 of the Convention. This was the case notably in connection with articles of the Turkish Criminal Code which were highlighted as particularly problematic by the Commissioner's Office, the Venice Commission and in various judgments of the Court. The Commissioner's predecessor drew particular attention to the use of criminal and civil defamation provisions, including insulting the President of the Republic, as well as to the use of the judiciary to restrict parliamentary debate and academic freedoms, and to stifle the expression of criticism among the general public;
- Attacks on the safety and security of journalists, including physical attacks and violence, detentions on remand causing a chilling effect and other judicial actions specifically targeting journalists;
- Internet censorship which, in addition to the application of the Turkish Internet Law, included large numbers of takedown requests to social media platforms, wholesale internet shutdowns and allegations of internet throttling, as well as criminal proceedings and detentions targeting persons active online.

17. The Commissioner considers that the various practices examined in that memorandum reveal not only a will to interfere with the right to impart information and foster a chilling effect by punishing or silencing dissenting or critical voices and media, but also a pattern of undue restrictions on the right of the general public to receive information deemed offensive, harmful or subversive by the authorities. The unifying feature for these measures is that the content, opinion or information in question is critical of the government, relates to events deemed politically damaging to it, or deviates from the religious and moral values espoused by it, while disregarding considerations relating to the truth of said information or the public's legitimate interest to receive it in a democratic society.

18. While blocking of websites is one of the most obvious forms such undue restrictions take, there are several other types of measures in regular use in Turkey which interfere with the public's right to receive information. Most notably, the Commissioner draws attention to the common practice by Turkish magistrates' courts to impose complete media bans or blackouts concerning events of clear public interest, by using stereotypical formulas referring to national security, integrity of judicial investigations, public order and security, and territorial integrity, but without any explicit reasoning to establish the pertinence of any one of these grounds. Thus, for example, these decisions typically ban any "news, interviews, criticism" regarding the "scope of the investigation file" of an ongoing criminal investigation, and are imposed on all media, including press, broadcasting and internet-based media, as well as social media. In his aforementioned memorandum, the Commissioner's predecessor stated that these vague yet sweeping bans had become a mainstay of the Turkish judiciary's response to major events, referring to dozens of cases where they had been imposed, including corruption investigations, numerous terrorist attacks, a child-abuse scandal regarding a religious foundation, or a fire in a student dormitory.[17]

19. The Commissioner has also been following with concern the large number of requests by Turkish authorities for the removal of content from social media platforms. For example, according to the latest available transparency report from Twitter, in the period July-December 2018, the company received 5 014 removal requests from Turkey specifying 9 155 accounts, corresponding to almost half of all removal requests received by the company worldwide.[18] This must be seen together with the very large number of investigations and prosecutions targeting social media activities. For example, it was reported that, in an official reply to an information request, the Turkish Minister of the Interior announced that 20 474 persons had been investigated or prosecuted between 2013 and 2018 for content they had shared on social media.[19]

20. Other measures directly interfering with the right to receive and impart information on the internet included alleged intentional slowing of the internet, as well as full internet shutdowns on three occasions

[17] *Ibid.*, para. 67.
[18] Available on the website: https://transparency.twitter.com/en/removal-requests.html
[19] News article by the Cumhuriyet newspaper of 3 May 2019, accessed on 4 November 2019.

in the context of forced removals of mayors in the country's southeast region.[20] The Commissioner also notes a pattern of exclusion of critical broadcasting media outlets from Turkish satellites, as well as from cable and IPTV bundles, as a result of actions by the authorities.

21. Against this background, and given the extensive control already exerted on the internet through the Internet Law, the Commissioner is particularly concerned about amendments to the Law No. 6112 on the Establishment of Radios and Televisions and their Broadcasting Services, which significantly expands control on internet-based media.[21] Significantly, the new regulations apply to internet-based broadcasts the same licensing and control obligations for traditional media, including the obligation to obtain a broadcasting licence *ex ante* to provide content on the internet, despite the fact that internet-based broadcasting does not involve the attribution of a finite number of broadcasting frequencies. Article 29/A of the amended Law, which explicitly refers to Article 8/A of the Internet Law, notably empowers RTÜK to instruct ICTA to block access to an internet-based media outlet, under the control of a magistrates' court, where it deems that the service in question did not comply with its obligations under the Law. Given the track record of RTÜK, the Commissioner interprets these amendments as a further attempt to restrict media pluralism and limit access to information by the general public.

22. In this general context, it is difficult to dismiss the argument that blocking decisions, in particular when they are initiated under Article 8/A, form part of a general pattern of measures taken to deprive the Turkish public from access to conflicting or dissenting points of view regarding matters of clear public interest, which could be expected to contribute to a pluralistic and informed debate in a democratic society.

23. Finally, the Commissioner considers the present case to be an illustration of the sweeping impact of blocking measures: beyond the question of whether the applicant's human rights were violated by the blocking measure in question, the Commissioner notes that the measure automatically deprived every internet user in Turkey of a crucial online resource which is taken for granted in the rest of the Council of Europe member states, and interfered with their rights guaranteed under Article 10 of the Convention as well. As she conveyed to the Turkish authorities in person during her latest visit to the country in July 2019 when she raised the case of the blocking of Wikipedia, the Commissioner is of the view that such an indiscriminate restriction of the human rights of millions of persons can under no circumstances be considered necessary in a democratic society.

III. Problems concerning magistrates' courts

24. The Commissioner already drew the attention of the Court to various concerns relating to the functioning and decisions of magistrates' courts, also known as criminal judgeships or judges of the peace, established in June 2014.[22] Although the magistrates' courts were supposed to improve the protection of human rights in criminal proceedings by centralising expertise and knowledge of Convention standards, the Commissioner observes that the practical effect has been the opposite, as the decisions of these judges have been at the origin of some of the most obvious violations of the right to freedom of expression.

25. In 2017, the Commissioner's predecessor also examined these judicial formations, concluding that, in terms of the right to freedom of expression, they were "at the nexus of some of the most problematic decisions, including detentions, media bans, appointment of trustees for the takeover of media companies and internet blocking".[23] He observed that one of the reasons for this negative outcome had been the fact that the system of magistrates' courts worked as a closed circuit, since the decisions of one magistrate can only be appealed to another. This system of horizontal appeals, which was also criticised by the Venice Commission,[24] creates a closed system where objections to initial decisions are dismissed virtually automatically, as stated by the Commissioner in her written observations submitted

[20] CommDH(2017)5, *op.cit.*, paras. 112-113.
[21] See, for example, a legal review of the draft amendments (subsequently enacted) to Law No. 6112 by Professor Yaman Akdeniz, commissioned by the OSCE Representative on Freedom of the Media, 28 February 2018.
[22] CommDH(2018)30, *op.cit.*, para. 31.
[23] CommDH(2017)5, *op.cit.*, para. 69.
[24] Venice Commission Opinion No. 852/2016 on the duties, competences and functioning of the criminal peace judgeships, CDL-AD(2017)004, 13 March 2017.

to the Court in another case in December 2018.[25] This situation has allowed the magistrates to ignore or resist the positive developments in the case-law of Turkish courts, including the Constitutional Court.

26. The Commissioner considers that these factors, combined with their workload, contributed to a situation where the decisions of these formations are particularly defective, despite the fact that they have a disproportionately strong impact on the enjoyment of human rights guaranteed under the Convention, in particular under Articles 5 and 10. As the Venice Commission stated, "there are numerous instances where peace judges did not sufficiently reason decisions which have a drastic impact on human rights of individuals".[26]

27. Indeed, the Commissioner considers that the decisions of magistrates' courts she examined in cases of particular interest to her, such as initial and continued detention decisions, as well as decisions on internet blocking, are characterised by the absence of any individualised arguments and reasoning that takes account of Article 10 standards as established in the case-law of the Court. Instead, these decisions often consist of stereotypical formulas limited to the enumeration of statutory provisions and the final conclusions of the judge, making them fully interchangeable from one case to another. The Commissioner would like to stress that the situation described above preceded the declaration of a state of emergency in Turkey in July 2016 and continued after it was lifted two years later.

28. Specifically in cases of internet blocking, the Commissioner concurs with the view of the Venice Commission that the magistrates courts' power to order the blocking of websites or to validate the authorities' requests to that effect deviates from the core purpose for which these courts were established in the first place, and that they "should no longer have any jurisdiction on the merits and real appeals should be introduced in these matters, including the blocking of Internet sites".[27] As mentioned above, in this general context the judicial review established under the Internet Law has remained only nominal, and the scrutiny of the magistrates' courts has been limited to a formal, procedural review of compatibility with the legislation, without any in-depth, reasoned, contextual and human-rights based assessment. The absence of any proportionality assessment is particularly glaring in this context.

29. The Commissioner considers, therefore, that the judicial review procedures concerning the blocking of internet sites, in so far as they rely exclusively on magistrates' courts, are manifestly insufficient to provide a check on the extensive powers granted to administrative authorities and the Turkish government, avoid arbitrariness and abuse, and ensure compliance with Article 10 standards.

IV. Problems relating to the effectiveness of the Constitutional Court's review of internet blocking

30. As a result, the Commissioner must conclude that currently, the only legal remedy available capable of offering to a person who considers that their human rights have been violated as a result of a blocking measure any prospect of consideration of the merits of such a request is the individual application procedure to the Constitutional Court. The Commissioner is also aware that the Constitutional Court issued judgments on matters relating to freedom of expression on the Internet in the past which were more respectful of Turkey's obligations under Article 10.[28]

31. However, this does not automatically amount to a reasonable prospect of success in challenging blocking orders, by content providers deprived of their right to impart information, internet users deprived of their right to receive such information or by hosts of information-sharing platforms such as the applicant. In this connection, the Commissioner wishes to highlight three sets of considerations.

32. Firstly, the Commissioner refers to the observations she submitted to the Court in December 2018 in a detention-related case, in particular regarding her concerns relating to the independence and impartiality of the Turkish judiciary and the resistance of lower courts to the more Convention-compliant case-law of the Constitutional Court. The Commissioner reiterates that lower court judges do not appear

[25] CommDH(2018)30, *op.cit.*
[26] CDL-AD(2017)004, *op. cit.*, para. 105.
[27] CDL-AD(2017)004, *op. cit.*, para. 106.
[28] See, for example, the Constitutional Court judgments of 2 April 2014 (Application No. 2014/3986) and 29 May 2014 (Application No. 2014/4705).

to face any consequences for ignoring or resisting the clear principles contained in the Constitutional Court's judgments, which constitutes a serious blow to the Turkish constitutional order and the rule of law, where lower courts should be strictly bound by the decisions of higher courts. Indeed, the magistrates' courts have wholly ignored the guidance established by the Constitutional Court in its relevant judgments regarding internet blocking. The Commissioner regrets that this state of affairs, above and beyond the question of internet blocking, puts into question the effectiveness of the Turkish Constitutional Court as a domestic remedy in general.

33. Secondly, the Commissioner considers that the Turkish legal system cannot be expected to ensure the compliance of blocking measures with Article 10 of the Convention, as long as the Turkish Constitutional Court remains the only judicial body capable of scrutinising blocking orders in a Convention-compliant manner. Given the consistent practice of the Turkish authorities and magistrates' courts and the number of blocking orders imposed, the Constitutional Court does not have the capacity even to mitigate, let alone systematically check, the manifest excesses deriving from the letter and spirit of the Internet Law and its application. Given the systemic nature of this problem, the caseload of the Constitutional Court cannot be expected to diminish in the absence of far-reaching general measures, including the complete overhaul of the Internet Law. In any case, the Commissioner is of the view that the individual application procedure to a Constitutional Court cannot and should not be a substitute for the possibility of seeking and obtaining redress before an ordinary court.

34. Finally, the Commissioner draws attention to the manifest disconnect between the very large number of abusive blocking measures by the Turkish authorities and the small number of violation judgments issued by the Constitutional Court, as well as the extremely long delays that applicants can expect to face in obtaining redress from the Constitutional Court. For example, in a recent case the Constitutional Court found a violation due to the imposition of a blocking order four years and two months after the blocking decision and four years after the individual application to the Constitutional Court.[29] The Commissioner is of the view that even in cases where the Constitutional Court finds a violation, such delays void the right to freedom of expression protected under Article 10 entirely of its substance, in particular given the nature of the internet as a medium.

35. The Commissioner considers that the blocking of Wikipedia is a good illustration of this problem independently of the applicant's allegations, given Wikipedia's importance as an online resource in Council of Europe member states, including in Turkey. Regardless of the outcome of the Constitutional Court's eventual decision, the Commissioner considers that the fact that millions of Turkish internet users have been deprived of access to such a crucial resource for (as of November 2019) over two and a half years, without any meaningful judicial review, cannot be explained by reference to an excessive caseload alone.

Conclusions

36. The Commissioner sees the ongoing blocking of access to Wikipedia as forming part of a broader pattern of undue restrictions on the right to receive and impart information on the internet, and more generally as an illustration of the disproportionately heavy-handed approach currently prevailing in Turkey to any content or information the Turkish authorities consider offensive.

37. The Commissioner highlights in particular that:

- the very wording and spirit of the Turkish Internet Law (Law No. 5651) is at the origin of numerous violations of Article 10 of the Convention notably due to the sweeping powers it gives to the Turkish administration and the executive to censor content on the internet;
- in practice, this results in an exceptionally disproportionate recourse to blocking measures, including of whole websites;
- the approach of the Turkish courts compounds this problem as they systematically fail to assess the proportionality of blocking measures, or make a reasoned, contextual and human-rights based analysis of the case made by applicants;

[29] Constitutional Court judgment of 4 July 2019 (Application No. 2015/11131).

- the magistrates' courts are a source of particular concern, due to general problems affecting their functioning and their systematic failure to issue reasoned decisions of an acceptable quality. They are particularly ill-adapted to oversee the legality of internet blocking measures, or curb the excesses of the administration in this matter;
- this results in a situation where the Turkish Constitutional Court is the only legal instance capable of making a Convention-compliant assessment of blocking measures. However, as a result of the lack of compliance by lower courts with its case-law, the mismatch between its capacity and the number of blocking decisions routinely taken, and the undue delays it accumulated in dealing with these cases, the Constitutional Court cannot be relied upon to remedy violations resulting from internet blocking at present.

38. Against this background, the Commissioner considers that the way Turkish administrative authorities and courts routinely have recourse to internet blocking, including by indiscriminately blocking entire websites which are important resources of universally recognised value, is unacceptable in a democratic society and not compatible with Article 10 of the Convention. The use made of these blocking measures in practice, against the general background regarding freedom of expression in Turkey, reinforces the argument that they serve to deprive the Turkish public of access to different, dissenting or critical points of view regarding matters of public interest. The systemic nature of the problem requires far-reaching measures, including the complete overhaul of the relevant Turkish legislation.