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Access to Internet and freedom to receive and impart information and ideas

"[T]he **Internet has now become one of the principal means by which individuals exercise their right to freedom to receive and impart information and ideas**, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest. ... Moreover, **as to the importance of Internet sites in the exercise of freedom of expression**, 'in the light of its accessibility and its capacity to store and communicate vast amounts of information, **the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general**'. User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression ..." (*Cengiz and Others v. Turkey*, judgment of 1 December 2015, §§ 49 and 52).

Article 10 (freedom of expression) of the European Convention on Human Rights:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Measures blocking access to Internet

Ahmet Yıldırım v. Turkey

18 December 2012 (judgment)

This case concerned a court decision to block access to *Google Sites*, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk. As a result of the decision, access to all other sites hosted by the service was blocked. The applicant complained that he was unable to access his own Internet site because of this measure ordered in the context of criminal proceedings without any connection to him or his site. He submitted that the measure infringed his right to freedom to receive and impart information and ideas.

The Court held that there had been a **violation of Article 10** of the Convention, finding that the effects of the measure in question had been arbitrary and the judicial review of the blocking of access had been insufficient to prevent abuses. The Court accepted that this was not a blanket ban but rather a restriction on Internet access. However, the limited effect of the restriction did not lessen its significance, particularly as the Internet

had now become one of the principal means of exercising the right to freedom of expression and information. The Court also reiterated in particular that a restriction on access to a source of information was only compatible with the Convention if a strict legal framework was in place regulating the scope of a ban and affording the guarantee of judicial review to prevent possible abuses. However, when the criminal court had decided to block all access to *Google Sites*, it had simply referred to an opinion from the Telecommunications Directorate (TİB) without ascertaining whether a less far-reaching measure could have been taken to block access specifically to the site in question. There was further no indication that the criminal court had made any attempt to weigh up the various interests at stake, in particular by assessing whether it had been necessary to block all access to *Google Sites*. In the Court's view, this shortcoming was a consequence of the domestic law, which did not lay down any obligation for the courts to examine whether the wholesale blocking of *Google Sites* was justified. The courts should have had regard to the fact that such a measure would render large amounts of information inaccessible, thus directly affecting the rights of Internet users and having a significant collateral effect.

Akdeniz v. Turkey

11 March 2014 (decision on the admissibility)

This case concerned the blocking of access to two websites ("myspace.com" and "last.fm") on the grounds that they streamed music without respecting copyright legislation. As a regular user of the websites in question, the applicant mainly complained about the collateral effect of the measure taken under the law on artistic and intellectual works.

The Court declared the application **inadmissible** (incompatible *ratione personae*), finding that the mere fact that the applicant – like the other Turkish users of the websites in question – had been indirectly affected by a blocking measure against two music-sharing websites could not suffice for him to be regarded as a "victim" for the purposes of Article 34 (right of individual application) of the Convention. While stressing that the rights of internet users are of paramount importance, the Court nevertheless noted in particular that the two music streaming websites in question had been blocked because they operated in breach of copyright law. As a user of these websites, the applicant had benefited from their services, and he had only been deprived of one way among others of listening to music. The Court further observed that the applicant had at his disposal many means to access to a range of musical works, without thereby contravening the rules governing copyright.

Cengiz and Others v. Turkey

1 December 2015 (judgment)

This case concerned the wholesale blocking of access to *YouTube*, a website enabling users to send, view and share videos. The applicants, who were active users of the website, complained in particular of an infringement of their right to freedom to receive and impart information and ideas.

The Court held that there had been a **violation of Article 10** of the Convention, finding that the interference resulting from the application of the impugned provision of the law in question did not satisfy the requirement of lawfulness under the Convention and that the applicants had not enjoyed a sufficient degree of protection. The Court noted in particular that the applicants, all academics in different universities, had been prevented from accessing *YouTube* for a lengthy period of time and that, as active users, and having regard to the circumstances of the case, they could legitimately claim that the blocking order in question had affected their right to receive and impart information and ideas. The Court also observed that *YouTube* was a single platform which enabled information of specific interest, particularly on political and social matters, to be broadcast and citizen journalism to emerge. The Court further found that there was no provision in the law allowing the domestic courts to impose a blanket blocking order on access to the Internet, and in the present case to *YouTube*, on account of one of its contents.

Vladimir Kharitonov v. Russia, OOO Flavus and Others v. Russia, Bulgakov v. Russia and Engels v. Russia[1]

23 June 2020 (judgments)

These cases concerned the blocking of websites in Russia and, in particular, different types of blocking measures, including "collateral" blocking (where the IP address that was blocked was shared by several sites including the targeted one); "excessive" blocking (where the whole website was blocked because of a single page or file), and "wholesale" blocking (three online media were blocked by the Prosecutor General for their coverage of certain news).

The Court held that there had been a **violation of Article 10** of the Convention and a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 10**. It highlighted in particular the importance of the Internet as a vital tool in exercising the right to freedom of expression. Among other things, the Court found that the provisions of Russia's Information Act used to block the websites had produced excessive and arbitrary effects and had not provided proper safeguards against abuse.

Wikimedia Foundation, Inc. v. Turkey

1 March 2022 (decision on the admissibility)

This case concerned a request by the Telecommunications and Information Technology Directorate for the removal of pages from the applicant foundation's website and the subsequent order blocking access to the entire website as it was not technically feasible to block only certain pages. The applicant alleged that the blocking of access to the entire Wikipedia website amounted to unjustified interference with its right to freedom of expression, and that the procedure for judicial review of blocking orders against websites was inadequate to prevent abuse. It further alleged that no effective remedy was available under Turkish law and that its individual application to the Turkish Constitutional Court had been rendered ineffective since its activity consisted in publishing the content of its webpages in a timely manner.

The Court declared the application **inadmissible**, finding that the applicant could no longer claim victim status. It observed, in particular, that it had found, in numerous cases concerning freedom of expression, that an application to the Constitutional Court was to be regarded as a remedy to be exhausted for the purposes of Article 35 § 1 (admissibility criteria) of the Convention in respect of such complaints. The Court took note of the systemic nature of the problem raised in the present case. Nevertheless, it did not have sufficiently relevant information to suggest that the Turkish Constitutional Court was not capable of remedying the problem. That court had delivered several judgments concerning the blocking of websites, establishing numerous criteria to be followed by the national authorities and the courts called upon to examine blocking orders. In the present case, the Court found that in ruling on the individual application before it the Constitutional Court had acknowledged in substance the violation of Article 10 (freedom of expression) of the Convention and had afforded appropriate and sufficient redress for the damage sustained by the applicant foundation.

Taganrog LRO and Others v. Russia[2]

7 June 2022 (judgment)

This case concerned various actions taken by the Russian State against Jehovah's Witnesses religious organisations in Russia over a ten-year span, including amendments to anti-extremist legislation leading to the banning of their international website.

The Court held, inter alia, that there had been a **violation of Article 10** of the Convention read in the light of Article 9 (freedom of thought, conscience and religion) on account of the designation of the Jehovah's Witnesses' international website as "extremist", finding that the decision to block access to the entire website had been unlawful and disproportionate, all the more so as "Watchtower New York", the website

1. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").
2. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

owner, had taken down the offending publications in the meantime. The Court noted in particular, in that regard, that preventing access to the Jehovah's Witnesses website from within Russia had amounted to "interference by a public authority" with the right of "Watchtower New York" to disseminate information to individual Jehovah's Witnesses and other interested persons in Russia. It had also prevented the Administrative Centre of Jehovah's Witnesses in Russia from receiving and imparting information to its members. The Court also observed that, for the applicants with visual or hearing impairments, the website had been the only accessible source of downloadable religious materials addressing their specific needs. Lastly, in examining whether the interference had been legal and necessary, the Court noted that "Watchtower New York" had been given no prior warning, nor the opportunity to remove the allegedly illegal material from the website. It had also not been invited to participate in the ensuing hearing.

See also, recently:

Kablis v. Russia[3]

30 April 2019 (judgment)

Pending applications

Akdeniz and Altiparmak v. Turkey (no. 5568/20)

Application communicated to the Turkish Government on 26 August 2020

This application concerns the restriction of access to more than 600 Internet contents (news sites and social network accounts) by decisions adopted in 2015 and 2016 by the telecommunications administrative entity.

The Court gave notice of the application to the Turkish Government and put questions to the parties under Article 10 (freedom of expression) and Article 18 (limitation on use of restrictions on rights) of the Convention.

Akdeniz and Altiparmak v. Turkey (no. 35278/20)

Application communicated to the Turkish Government on 9 February 2021

This application concerns the restriction of access to 111 contents on the Internet (news sites, video sites and social network accounts) by a decision adopted in October 2015 by the telecommunications administrative entity.

The Court gave notice of the application to the Turkish Government and put questions to the parties under Article 10 (freedom of expression) and Article 18 (limitation on use of restrictions on rights) of the Convention.

Restrictions placed on prisoner's access to certain Internet sites

Internet sites containing legal information

Kalda v. Estonia

19 January 2016 (judgment)

This case concerned a prisoner's complaint about the authorities' refusal to grant him access to three Internet websites, containing legal information, run by the State and by the Council of Europe. The applicant complained in particular that the ban under Estonian law on his accessing these specific websites had breached his right to receive information via the Internet and prevented him from carrying out legal research for court proceedings in which he was engaged.

The Court held that there had been a **violation of Article 10** of the Convention, finding that the refusal to grant the applicant access to Internet websites containing legal information had breached his right to receive information. The Court noted in particular that Contracting States are not obliged to grant prisoners access to Internet. It found, however, that if a State was willing to allow prisoners access, as was the case in Estonia,

3. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

it had to give reasons for refusing access to specific sites. In the specific circumstances of the applicant's case, the reasons, namely the security and costs implications, for not allowing him access to the Internet sites in question had not been sufficient to justify the interference with his right to receive information. Notably, the authorities had already made security arrangements for prisoners' use of Internet via computers specially adapted for that purpose and under the supervision of the prison authorities and had borne the related costs. Indeed, the domestic courts had undertaken no detailed analysis as to the possible security risks of access to the three additional websites in question, bearing in mind that they were run by an international organisation and by the State itself.

Ramazan Demir v. Turkey

9 February 2021 (judgment)

This case concerned the prison authorities' refusal to grant a request for access to certain Internet sites, lodged by the applicant, a lawyer, in the course of his pre-trial detention in Silivri Prison in 2016. The applicant wished to access the Internet sites of the European Court of Human Rights, the Constitutional Court and the Official Gazette, with a view to preparing his own defence and following his clients' cases. He considered that there had been an interference with his right to receive information and ideas.

The Court held that there had been a **violation of Article 10** of the Convention, finding that the Turkish Government had not shown that the reasons adduced by the national authorities to justify the measure being challenged had been relevant and sufficient, or that this interference had been necessary in a democratic society. The Court considered in particular that since prisoners' access to certain sites containing legal information had already been granted under Turkish law for the purposes of training and rehabilitation, the restriction of the applicant's access to the sites, which contained only legal information that could be relevant to the applicant's development and rehabilitation in the context of his profession and interests, had constituted an interference with his right to receive information. The Court noted in this connection that the domestic courts had not provided sufficient explanations as to why the applicant's access to the Internet sites of the Court, the Constitutional Court or the Official Gazette could not be considered as pertaining to the applicant's training and rehabilitation, for which prisoners' access to the Internet was authorised by the national legislation, nor on whether and why the applicant ought to be considered as a prisoner posing a certain danger or belonging to an illegal organisation, in respect of whom Internet access could be restricted. Furthermore, neither the authorities nor the Government had explained why the contested measure had been necessary in the present case, having regard to the legitimate aims of maintaining order and safety in the prison and preventing crime.

Internet sites providing educational information

Jankovskis v. Lithuania

17 January 2017 (judgment)

This case concerned a prisoner's complaint that he had been refused access to a website run by the Ministry of Education and Science, thus preventing him from receiving education-related information. He had written to that Ministry requesting information about the possibility of enrolling at university in order to acquire a degree in law, and the Ministry had written back to him, informing him that information about study programmes could be found on its website. However, the prison authorities and subsequently the administrative courts all refused to grant the applicant Internet access to this website, essentially referring to the legal ban on prisoners having Internet access (or the ban on prisoners' telephone and radio communications and implicitly therefore also Internet) and security considerations.

The Court was not persuaded that sufficient reasons had been put forward by the Lithuanian authorities to justify the interference with the applicant's right to receive information which, in the specific circumstances of the case, could not be regarded as

having been necessary in a democratic society. It therefore held that there had been a **violation of Article 10** of the Convention. The Court noted in particular that Article 10 could not be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites for prisoners. However, since access to information relating to education was granted under Lithuanian law, the restriction of access to the Internet site in question had constituted an interference with the applicant's right to receive information. That interference was prescribed by law and pursued the legitimate aim of protecting the rights of others and preventing disorder and crime. However, the website to which the applicant wished to have access contained information about learning and study programmes in Lithuania, and it was not unreasonable to hold that such information was directly relevant to the applicant's interest in obtaining education, which was in turn relevant for his rehabilitation and subsequent reintegration into society. The Court also observed that the Internet played an important role in people's everyday lives, in particular since certain information was exclusively available on the Internet. The Lithuanian authorities had however not considered the possibility of granting the applicant limited or controlled Internet access to that particular website administered by a State institution, which could hardly have posed a security risk.

Mehmet Reşit Arslan and Orhan Bingöl v. Turkey

18 June 2019 (judgment)

The applicants, who were convicted in 1992 and 1995, respectively, for membership of an illegal armed organisation and were both serving sentences of life imprisonment, complained in particular of being prevented from using a computer and accessing the Internet. They submitted that these resources were essential in order for them to continue their higher education and improve their general knowledge. They had appealed to the courts but had been unsuccessful.

The Court held that there had been a **violation of Article 2** (right to education) **of Protocol No. 1** to the Convention in respect of both applicants. It was not persuaded by the grounds put forward to justify the Turkish authorities' denial of the requests by the applicants to use audio-visual materials and computers and to have Internet access, and found that the domestic courts had failed to strike a fair balance between their right to education on the one hand and the imperatives of public order on the other. The Court reiterated in particular that the importance of education in prison had been acknowledged by the Council of Europe Committee of Ministers in its recommendations on education in prison and in its European Prison Rules.

Further reading

See in particular:

- **Internet : case-law of the European Court of Human Rights**, report prepared by the Research Division of the Court, June 2015
- Council of Europe **web page** on "Internet Users Rights"

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