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Communication from an NGO (Ifade Ozgurlugu Dernegi (IFOD – Freedom of Expression Association)) (03/11/2023) in the case of AHMET YILDIRIM v. Turkey (Application No. 3111/10).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1483e réunion (décembre 2023) (DH)

Communication d'une ONG (Ifade Ozgurlugu Dernegi (IFOD – Freedom of Expression Association)) (03/11/2023) dans l'affaire AHMET YILDIRIM c. Turquie (requête n° 3111/10) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

RULE 9.2 COMMUNICATION

in the Ahmet Yıldırım Group of Cases v. Türkiye (Application No. 3111/10)

by

İFADE ÖZGÜRLÜĞÜ DERNEĞİ (İFÖD)

03 November 2023

An independent non-governmental organization specialized in defending and promoting freedom of expression

İFADE ÖZGÜRLÜĞÜ DERNEĞİ

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03.11.2023

Rule 9.2 Communication from İfade Özgürlüğü Derneği ("İFÖD") in the *Ahmet Yıldırım* group of cases v. Türkiye (Application No. 3111/10)

1. This submission is prepared by **İfade Özgürlüğü Derneği** ("İFÖD" – Freedom of Expression Association), a non-profit and non-governmental organization which aims to protect and foster the right to freedom of opinion and expression in Türkiye. İFÖD has been informing the Committee of Ministers ("the Committee") on the recent developments concerning the persistent failure of Turkish authorities in full and effective implementation of general measures in *Ahmet Yıldırım* group of cases v. Türkiye since 2021.[1]

2. In relation to *Ahmet Yıldırım* group of cases, İFÖD submitted two Rule 9.2 communications on 26.01.2021 and on 17.01.2023.[2] In those submissions, İFÖD explained the background and amendments made to Law No. 5651 in detail. İFÖD further provided examples and statistics demonstrating that Law No. 5651 **did not satisfy the foreseeability requirement of Article 10 of the Convention** and did not **provide any safeguards** against abuse of power by public authorities.

3. In its latest examination of the *Ahmet Yıldırım* group of cases v. Türkiye on its **1398th meeting, on 9-11 March 2021 (DH)** the Committee of Ministers invited the authorities to **provide statistical or any other available information** on the overall number of removed content, blocked URLs and websites by the President of Information and Communications Technologies Authority and by the criminal judgeships of peace in the past three years, with an indication of the articles of the Law No. 5651 on which they are based, together with the number of blocking requests rejected by such judgeships and examples of the reasoning of such decisions.

4. The Committee also deeply regretted that the law still does not correspond to the concerns raised by the European Court, as it **allows the blocking of access to an entire website in circumstances where blocking access to the relevant content is not possible**, without submitting this measure to a proportionality assessment based on necessity, and the absence of any requirement of necessity in the legislation means that there is still no clear provision obliging domestic judges to conduct a proportionality assessment.

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1 *Ahmet Yıldırım v. Türkiye*, no. 3111/10, 18.12.2012; *Cengiz and Others v. Türkiye*, nos. 48226/10 and 14027/11, 01.12.2015.

2 See İFÖD's joint submission with İHD and A19, DH-DD (2021)144 at https://ifade.org.tr/reports/rule9/IFOD_Rule9_AhmetYildirim_Group_Submission.pdf ; İFÖD's second submission DH-DD (2023)112 at https://ifade.org.tr/reports/rule9/IFOD_Rule9_AhmetYildirim_Group_Submission_2.pdf

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5. More importantly, the Committee **expressed concern about the powers** of Information and Communications Technologies Authority in the absence of a legal framework which ensures both tight control over the scope of the ban and effective judicial review to prevent any abuse.

6. The Committee therefore, once again, **strongly invited the authorities** to draw inspiration from the relevant Council of Europe's materials, in particular Venice Commission's Opinion on Law No. 5651 and urged them to make further legislative amendments to ensure that Law No. 5651 fully responds to the concerns raised by the European Court in the present cases, in particular by providing effective safeguards to prevent abuse by the administration in the imposition of wholesale blocking orders on entire Internet sites and ensuring effective judicial review containing an assessment of the proportionality of such orders. Finally, the Committee invited the authorities to provide information on the above questions by 31.03.2022. [3]

7. The Turkish authorities, **without addressing the concerns** raised by the Committee in its March 2021 meeting and without providing the requested information and therefore without making any legislative amendments in order to align Law No. 5651 with the requirements of the Convention, **submitted a belated Action Report on 09.10.2023** and invited the Committee of Minister **to close its supervision** arguing that no further individual and general measures are required in the present cases.

8. The aim of this submission is to inform the Committee concerning the recent application of Law No. 5651. In this respect, İFÖD will elucidate the problems arising from and in relation to Law No. 5651. In the present submission, **firstly**, the Action Report of the Turkish authorities of 09.10.2023 will be scrutinized with respect to the Committee's decision of March 2021. **Secondly**, İFÖD will provide information relating to legislative amendments mentioned in the Action Report. **Thirdly**, İFÖD will assess the sample decisions presented by the Government. **Finally**, İFÖD will also provide the Committee with recent statistics on access blocking and removal of content practices deployed in Türkiye.[4]

Background of the *Ahmet Yıldırım* Group of Cases

9. *Ahmet Yıldırım* group of cases concerns the interference with the applicants' right to freedom to **receive** and **impart** information and ideas by blocking access to entire websites of the Google Sites and YouTube platforms by relying on article 8 of Law No. 5651 which does **not satisfy the foreseeability requirement** of the Convention and which did not afford the applicants the degree of protection to which they were entitled by the rule of law in a democratic society. According to the European Court, the legal measure **generated arbitrary outcomes** resulting in a **significant collateral effect.** Moreover, article 8 **conferred extensive powers** on an administrative body (and subsequently to the president

[3] CM/Del/Dec(2021)1398/H46-31, para. 6 (Emphasis in original).

[4] Yaman Akdeniz and Ozan Güven, EngelliWeb 2022: *The Constitutional Court in the Shadow of Criminal Judgeships of Peace*, July 2023, İfade Özgürlüğü Derneği, at https://ifade.org.tr/reports/EngelliWeb_2022_Eng.pdf

of ICTA) [5] and the **judicial-review procedures** concerning the blocking of websites were **insufficient to meet the criteria for avoiding abuse.**

10. With regards to the general measures required for the full implementation of these judgments, the Committee of Ministers called upon the authorities to amend the relevant legislation to ensure that the Law No. 5651 meets **the requirements of foreseeability** and **clarity** and provides **effective safeguards** to prevent abuse by the administration. The Committee also recommended that access blocking measures **should not generate arbitrary outcomes** and should not result in wholesale blocking of access to websites.

11. The Turkish Government submitted three separate action plans (in 2014 [DH-DD (2014)161] and [DH-DD (2014) 916], in 2017 [DH-DD (2017) 1157]) and two action reports (in 2021 [DH-DD (2021)51], and in 2023 [DH-DD(2023)1194]) regarding this group. In the last two action reports, the Turkish authorities referred to the legislative amendments made by Law Nos. 7188 and 7253. İFÖD submitted two Rule 9.2 communications on this group of cases on 26.01.2021 and 17.01.2023 and provided the Committee an assessment of the then-newly-adopted legal amendments as well as detailed statistics on the application of the relevant law.

12. As explained in İFÖD's previous submissions, the European Court **raised the required standards to block access to websites or social media accounts much higher** than in its earlier judgments of *Ahmet Yıldırım* and *Cengiz and Others*[6] as will be further explained in this submission. Therefore, the Committee should take into account those extended standards when evaluating whether the Turkish legal framework has been aligned with the Court's case law. As it will be demonstrated once again in this submission, the Turkish law does not comply with neither the earlier nor later jurisprudence of the European Court. Opportunities were missed both in July 2020 and in October 2022 while the Law No. 5651 was amended.

An Assessment of the Recent Action Report of the Authorities

13. As indicated above, the Committee, citing the Venice Commission's Opinion on Law No. 5651, urged the Government to make legislative amendments to ensure that Law No. 5651 fully responds to the concerns raised by the European Court in the present group of cases. The Venice Commission had recommended that the Government repeal the power of issuing access-blocking orders of the president of the Information and Communication Technologies Authority ("ICTA").[7] Nevertheless, no legislative amendment has been made to repeal the power of the president of ICTA to issue access blocking or content removal. **On the contrary**, as was explained in the previous submission of İFÖD, the power granted to the president of the ICTA was further expanded by amendments made in October 2022 by Law No. 7418. Furthermore, article 8 of Law No. 5651 **does not stipulate any subsequent judicial review procedure against the arbitrary administrative access**

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5 TIB has been shut down in August 2016. Subsequently, Law No. 5651 was amended and the President of the Information and Communications Technologies Authority, currently bears the same responsibilities.

6 *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020; *OOO Flavus and Others v. Russia*, no. 12468/15 23489/15 19074/16, 23.06.2020; *Bulgakov v. Russia*, no. 20159/15, 23.06.2020; *Engels v. Russia*, no. 61919/16, 23.06.2020.

7 Venice Commission, Opinion on Law No.5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications (No. 805/2015) CDL-AD(2016)011, para. 53.

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blocking or content removal decisions of the president of the ICTA. Therefore, the Turkish legislative framework **has yet to meet** the Convention standards.

14. Moreover, the Action Report sets off with a summary of the legal amendments made to Law No. 5651 in 2019 and 2020, notwithstanding the fact that the relevant information was presented to the Committee previously. On the other hand, the Action Report does not include any information about the amendments made by Law No. 7418 on 13.10.2022 about which İFÖD informed the Committee in its previous submission in relation to the relevant amendments made.

15. As regards the legal framework, the Action Report, referring to article 8(17) of Law No. 5651, argues once again that there now exists legal grounds for the wholesale blocking of access to websites (§§13-15). However, the *obiter dictum* of the *Ahmet Yıldırım* judgment and the focus of this present group's supervision does not merely relate to the lack of a legal basis for the impugned interference with the freedom of expression of the applicants but encompasses also the quality of such legal provisions. As the law stands today, the prerogative of the president of the ICTA to block an entire website without the approval of a judge remains and as explained in İFÖD's previous submission, is further expanded by the most recent amendments. Regardless of this provision, article 8 of Law No. 5651 falls also short of the **required procedural safeguards** to be observed by contracting states when interfering with freedom of expression through online access blocking and/or removal of content measures.[8]

16. As regards the practice of the ICTA, the authorities argued that the president of the ICTA exercises the "notice and take-down" mechanism when applying articles 8, 8/A and 9/A (§§ 21-22). Within this context, the authorities argue that wholesale blocking is the **last resort** and, in this way, freedom of expression and the right to receive information is better protected in terms of non-criminal content on the same website (para. 15). However, the authorities fail to explain the fact that the "**last resort**" as they refer always becomes the "**first resort**" in practice. **First**, the Government's description of a "**notice and takedown mechanism**" is **flawed (§§ 21-24)**. There is no "**notice and takedown mechanism" incorporated as a legal procedure** within article 8. Although the **authorities argue otherwise** (**see §§ 21-24**), this is simply not true. Likewise, in practice, the administrative authorities or criminal judgeships of peace do not give any notice before issuing a removal of content/access blocking decision, notwithstanding the recent emphasis of the Court on the necessity of such measures.[9]

17. The president of ICTA and/or the judgeships **may decide for the removal of content** as removal in addition to access blocking is envisaged within article 8 as a measure. However, **there are no detailed procedures including procedural guarantees** within article 8 or there exists any related regulations on how such a notice based mechanism should work in practice. The Government's argument is superficially based upon the insistence of the removal of notified content without any due process (**see § 24**). If the notified content is not removed as asked, then the **last resort option** that the Government refers to, **always becomes the first resort**. Moreover, the technical incapability that the Government refers

[8] *OOO Flavus and Others v. Russia*, no. 12468/15 23489/15 19074/16, 23.06.2020; *Bulgakov v. Russia*, no. 20159/15, 23.06.2020; *Engels v. Russia*, no. 61919/16, 23.06.2020; *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020.

[9] OOO Flavus and Others v. Russia, § 40.

to often results with access blocking to legal content available through websites and platforms while trying to block access to allegedly illegal content. In fact, often wholesale access is blocked to news websites[10] and even to platforms such as Wikipedia[11] as the current practice under article 8/A shows. Therefore the so called "notice and take-down" practice turns inevitably into a "**We Tell You & You Remove It Or We Will Block Your Website Model**".

18. As the **flawed Turkish model** does not have any legal basis formalizing the Government's favourite notice and take-down approach[12] and in the absence of due process, procedural guarantees or any appeal mechanism, the "**We Tell You & You Remove It Or We Will Block Your Website Model**" falls short of Article 10 Convention standards.[13] The European Court, in its *Engels v. Russia* decision noted that, the applicant in that case was "**confronted with a choice** between **removing the allegedly illegal content** and **having access to his entire website blocked**" and this "caused the **applicant to take it down in order to avoid the blocking measure**". According to the Court, this amounted "to "**interference by a public authority**" with the **right to receive and impart information**, since Article 10 guarantees not only the right to impart information **but also the right of the public to receive it**."[14] According to the Court, "such a **vague and overly broad** legal provision **fails to satisfy the foreseeability requirement**. It does not afford website owners, such as the applicant, the **opportunity to regulate their conduct**, as they cannot know in advance what content is susceptible to be banned and can lead to a blocking measure against their entire website."[15]

19. In other words, there are no procedural safeguards to guarantee that blocking access to a whole website is applied as a last resort. In order to align the Turkish legal framework with the extended ECtHR standards, it must be ensured that wholesale blocking can only be resorted to in exceptional cases where the whole website contains criminal material such as child abuse etc.

20. The authorities also refer to the difficulties of blocking access to content and websites relying on the "**https secure protocol**" (**see §§ 24-25**) and states that "the blocking of access to whole website containing harmful content due to technical impediments is imperativeness, not a choice. In that case, the only possible option is to block access to the whole website" (**see § 25**). However, as clearly stated by the European Court, "when **exceptional** circumstances justify the blocking of illegal content, **a State agency** making the **blocking order must ensure** that the **measure strictly targets the illegal content** and **has no arbitrary or excessive effects**, **irrespective of the manner of its implementation**. Any indiscriminate blocking measure **which interferes with lawful content or websites**

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10 Ali Ergin Demirhan (Sendika.Org), App. No: 2015/16368, 11.03.2020; Ali Ergin Demirhan (2) (Sendika.Org) App. No: 2017/35947, 09.09.2020; Cahit Yiğit (Yüksekovaguncel.com), App. No: 2016/2736, 27.11.2019; Tahsin Kandamar (Siyasihaber.org & Siyasihaber1.org), App. No: 2016/213, 28.11.2019.

11 Wikimedia Foundation and Others, App. No: 2017/22355, 26.12.2019.

12 No such procedure of notice-and-take-down is stipulated in articles 8, 8/A, 9 or 9/A of the Law No. 5651.

13 See *OOO Flavus and Others v. Russia*, no. 12468/15, 23.06.2020, §§ 38-44; *Ahmet Yıldırım v. Turkey*, no. 3111/10, ECHR 2012, § 66; *Kablis v. Russia*, nos. 48310/16 and 59663/17, 30.04.2019, § 94. See also *Bulgakov v. Russia*, no. 20159/15, 23.06.2020; *Engels v. Russia*, no. 61919/16, 23.06.2020; *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020.

14 *Engels v. Russia*, no. 61919/16, 23.06.2020, § 25.

15 *Ibid*., § 27.

as a collateral effect of a measure aimed at illegal content or websites amounts to arbitrary interference with the rights of owners of such websites."[16]

21. In any case, based on the European Court's jurisprudence, there would be no justification for blocking access to social media platforms as well as platforms such as Wikipedia and news websites. In fact the Court further states that "**a measure blocking access to an entire website has to be justified on its own**, **separately and distinctly from the justification underlying the initial order targeting illegal content**, and by reference to the **criteria established and applied by the Court under Article 10 of the Convention**."[17]

22. Currently, there exists **absolutely no procedural safeguards** or **safeguards against collateral effect** to avoid platforms such as Google Sites (see *Ahmet Yıldırım*) or more importantly YouTube (see *Cengiz and Others*) to be subjected to a wholesale blocking decision if they do not comply with a so called "notice and take-down" notification from the President of ICTA.

23. Furthermore, the authorities also argued that the establishment of representatives in Türkiye by social media provider companies will limit the use of access blocking to whole websites (§ 16). Nevertheless, the authorities failed to submit any information on how the mentioned amendment affected the practice of wholesale access blocking within the last three years.

24. Finally, the authorities argue that the "**content removal**" measure introduced by Law No. 7253 in 2020 is a "**less severe measure compared to blocking access**" (§ 19). Yet, they provide no statistics to back this claim. Contrarily, content removal proves to be more stringent than access blocking. This is because such a measure forces content providers to remove content **without due process**, given that the ex-officio decisions of the President of ICTA are **not subject to judicial approval**.

25. In terms of **judicial practice**, the Action Report proceeds with a run-down of the statutory provisions concerning the general obligations of the courts to provide reasoned judgments as enshrined in Law No. 5271 on Criminal Procedure (§ 29). It is self-explanatory that the mentioned regulations are neither relevant to the questions directed by the Committee nor capable of compelling the courts to provide adequately reasoned judgments in the absence of legal safeguards envisioned in the substantive legal rules, such as article 8 of Law No. 5651, as is demonstrated by this group of cases.

26. Furthermore, the Government submission refers to the Constitutional Court judgments of *Wikimedia Foundation Inc.,*[18] *Yaman Akdeniz and Others*[19] and *YouTube*[20] as indicative of the alignment of the Constitutional Court case-law with the European Court's jurisprudence. It must be noted, **firstly**, that one of these judgments (*Wikimedia Foundation*) concerns **article 8/A** of Law No. 5651, and therefore not article 8. The other two decisions were delivered before the ECtHR's *Cengiz and Others* judgment. The Constitutional Court has not delivered an individual application involving article 8 since 2014. However, the Constitutional Court annulled the power of the president of the ICTA

16 *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020, § 46.
17 *Ibid*, § 38.
18 Wikimedia Foundation and Others, App. No: 2017/22355, 26.12.2019.
19 Yaman Akdeniz and Others, App. No: 2014/3986, 02.04.2014.
20 YouTube LLC Corporation Service Company and Others [GA], App. No: 2014/4705, 29.05.2014.

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to block obscene sites hosted outside the country stipulated in article 8/4 of Law No. 5651 finding that the scope of the rule was unforeseeable.[21] Nevertheless, as explained in İFÖD's previous submission, the scope of the power of the president of the ICTA to block access and remove content administratively was widened by Law No. 7418 in October 2022 to encompass all crimes stipulated in article 8/1 without making any distinction whether they are hosted domestically or outside the country. Thus, the power that the Constitutional Court had declared to be contrary to the principle of "foreseeability" because of "allowing the administration to issue an ex officio decision to block access without the approval of a judge" was reinstated to the President of the ICTA and the decision of the Constitutional Court was put aside.

27. **Secondly**, as found by İFÖD's EngelliWeb report of 2022, despite the judgments of the Constitutional Court, none of the 8/A decisions issued by the domestic courts between 2020 and 2022 included any reference to the case law of the Constitutional Court with regard to article 8/A or any assessment of the principles developed by the Court with regards to the application of article 8/A.[22]

28. **Thirdly**, news platforms such as OdaTV, Independent Turkish, and JinNews were blocked by consecutive blocking orders subject to article 8/A of Law No. 5651, notwithstanding the article 8/A related Constitutional Court judgments finding violations of freedom of expression.[23] The Constitutional Court has not decided on any 8/A applications since September 2020, while the respective Constitutional Court applications for JinNews, OdaTV, and Independent Turkish have stood before the Court for a very long time. Article 8/A remains as problematic as article 8 and during 2022, access to the official website of the **National Film Board of Canada** as well as the website of the Internet music and podcast platform **iHeart.com** were also blocked inexplicitly subject to a request by the Çanakkale Provincial Gendarmerie Command and by a decision of the Çanakkale 1st Criminal Judgeship of Peace.[24] Moreover, access to the popular Ekşi Sözlük platform was also blocked during February 2023 subject to article 8/A. Notwithstanding the principled approach taken by the Constitutional Court in its judgments relating to article 8/A, among 461 decisions issued by 72 different criminal judgeships of peace during 2022, not a single one of them referred to the Constitutional Court's judgements on 8/A.[25] The performance of the judgeships was no better in the previous years.

29. In light of the analysis and observations above, it is evident that the Turkish legal framework and judicial practice are not in compliance with the Court's standards and the Committee's recommendations.

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21 AYM, E. 2015/76., K. 2017/153, K.T. 15.11.2017, R.G. 7.2.2018 – 30325.

22 EngelliWeb 2022, p. 36.

23 See BirGün İletişim and Yayıncılık Ticaret A.Ş., Application No: 2015/18936, 22.05.2019; Baransav and Keskin Kalem Yay. Tic. A.Ş., Application No: 2015/18581, 26.09.2019; Cahit Yiğit (Yüksekovaguncel.com), Application No: 2016/2736, 27.11.2019; Tahsin Kandamar (Siyasihaber.org & Siyasihaber1.org), Application No: 2016/213, 28.11.2019; Wikimedia Foundation and Others, Application No: 2017/22355, 26.12.2019; Ali Ergin Demirhan (Sendika.Org), Application No: 2015/16368, 11.03.2020; Ali Ergin Demirhan (2) (Sendika.Org) Application No: 2017/35947, 09.09.2020.

24 Çanakkale 1st Criminal Judgeship of Peace, no. 2022/3482, 26.10.2022.

25 EngelliWeb 2022, p. 36.

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Observations on the Sample Decisions Presented by the Government

30. The authorities, in their Action Report of October 2023, referred to **three separate domestic court decisions** in which access blocking requests were granted by various criminal judgeships of peace.[26] It must be highlighted at the outset that **none of the presented examples concerns the judicial review of the blocking decisions issued by the president of the ICTA** under article 8/4 of the Law. Two of the submitted decisions involved requests by the Public Prosecutor's Office of İzmir subject to article 8/1 of Law No. 5651(obscene content) and the other one was requested by the Association of Turkish Pharmacists subject to article 8 of Law No. 5651 on the ground that the publications in question constituted the offence of supplying substances hazardous to health. In all the sample decisions the requests of blocking access were granted by the relevant criminal judgeships of peace. The authorities argue that in none of those decisions, wholesale blocking was granted. Nevertheless, **in none of those requests blocking of an entire website was demanded** and there was no need to deploy the wholesale access blocking measure. In other words, all the demands included blocking of specific URL addresses and respective criminal judgeships of peace accepted all demands (Izmir 6th Criminal Judgeship of Peace, decision no. 2020/757, 11.02.2020, includes blocking of 57 specific addresses, Izmir 6th Criminal Judgeship of Peace, decision no. 2023/5252, 29.08.2023 includes blocking of two specific tweets). Only in the decision of Ankara 10th Criminal Judgeship of Peace, did the Association of Turkish Pharmacists request the blocking of a website and a specific URL involving a pharmaceutical courier service. However, the judgeship rejected the blocking of the website on procedural grounds and granted the blocking of the URL address.

31. None of these decisions show that criminal judgeships of peace strictly follows the caselaw of the Turkish Constitutional Court or the European Court of Human Rights. Therefore, the authorities provide **hardly any evidence** to the contrary to show that article 8 of Law No. 5651 meets the legality standards required by the Convention jurisprudence or that this provision meets the **required procedural safeguards** to be observed by contracting states when interfering with freedom of expression through online access blocking measures.[27] More worryingly, the **authorities did not submit any decisions of the president of the ICTA** and the secrecy behind the decisions of the president remains, while there exists no evidence to the contrary that his decisions comply with the Constitutional Court or the European Court of Human Rights standards.

İFÖD's Observations on the Application of Article 8 of Law No. 5651

32. The authorities are persistently refusing to disclose statistics regarding the application of article 8 of Law No. 5651. Although the Action Report argues that 99.76% of the measures of access blocking applied within the scope of article 8 of Law No. 5651 concern offenses of sexual abuse of children, prostitution, obscenity, illegal betting, and gambling, authorities refuse to submit detailed statistics to confirm this argument. ICTA has been refusing to provide the relevant statistics in the context of a freedom of information request

[26] The Government submitted three sample decisions annexed to their submission of 06.10.2023: two decisions of İzmir 6th Criminal Judgeship of Peace and one decision of Ankara 10th Criminal Judgeship of Peace.

[27] *OOO Flavus and Others v. Russia*, no. 12468/15 23489/15 19074/16, 23.06.2020; *Bulgakov v. Russia*, no. 20159/15, 23.06.2020; *Engels v. Russia*, no. 61919/16, 23.06.2020; *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020.

since 2009, the case finally reaching a decision from the Constitutional Court in February 2023. The General Assembly of the Constitutional Court ruled unanimously in the case of *Yaman Akdeniz (2)*[28] that the applicant's freedom of expression was violated by rejecting his freedom of information request concerning the access blocking statistics at the time. Subsequently, an administrative court executed the Constitutional Court's decision and ICTA to release the access blocking statistics. Despite the court decision, ICTA refused to release the information. Hence, the applicant, one of the founders of İFÖD (Yaman Akdeniz) filed a criminal complaint against the responsible authority on 27.10.2023 for failing to abide by the court order.

33. As was mentioned above, the application of article 8 of Law No. 5651 **remains highly problematic** and at odds with the Convention standards. In this regard, İFÖD would like to present to the Committee the relevant statistics based on data presented to the public in its 2022 EngelliWeb Report.[29]

34. First of all, **712.558 websites are blocked** from Türkiye as of end of 2022. While **137.717 websites were** blocked during 2022, a substantial increase is observed compared to previous years (2021: **107.714**, 2020: **58.872**, 2019: **61.383**, 2018: **94.601**). Therefore, access-blocking practices increasingly continued in 2022, with a number much higher than the average (**44.535** websites per year) for the 16-year period (2007-2022) since the Law No. 5651 came into force and access-blocking practices have been deployed. Majority of the websites with **109.037 (79%)** were blocked by the president of ICTA during 2022. Similarly, out of the **712.558 websites blocked** from Türkiye as of end of 2022, **625.640** were blocked **(87%)** by administrative blocking decisions subject to article 8 of Law No. 5651.[30] Judicial organs, on the other hand, are responsible for blocking access to **43.938 (6%)** websites during the same period of 2007-2022. Amongst all of the blocking decisions issued by the president of ICTA, IFÖD is not aware of a single example where that decision had been overruled.

35. In addition to inviting the Committee to reinstate its request made in its 1398th Meeting regarding the submission by the Government of detailed information, İFÖD proposes that the Committee **requests the Government to submit detailed qualitative and quantitative data on the judicial review of the blocking/content removal decisions issued by the president of the ICTA.** IFÖD requests the Committee to invite the Government to provide sample decisions in which administrative courts annulled the blocking decisions issued by the president of ICTA, along with the legal reasoning behind such decisions.

36. IFÖD is of the opinion that contrary to the Government's arguments, Law No. 5651 still **does not satisfy the foreseeability requirement of Article 10 of the Convention and does not provide any safeguards** against abuse of power by public authorities including the president of ICTA and criminal judgeships of peace. Legislative amendments **have not therefore provided necessary safeguards** against arbitrary interference with freedom of

[28] *Yaman Akdeniz (2)* [GA], App. No: 2016/6815, 15.02.2023.
[29] EngelliWeb 2022, p. 13.
[30] *Ibid*, p.16.

expression on the Internet. In addition, the domestic legal practice is far from providing any effective legal safeguards in the application of Law No. 5651.

37. The above-presented information and statistics demonstrate that the president of ICTA as well as criminal judgeships of peace **systematically disregard the case-law** of the Constitutional Court and the European Court. In this respect, it is not possible to claim that Türkiye's administrative and judicial practice is well-established or provides effective procedural safeguards or safeguards against collateral effect of wholesale access blocking. Moreover, a few randomly selected irrelevant decisions cannot be construed as representative of an improvement in judicial practice.

Conclusions and Recommendations

1. Systematic problems continue with regard to access blocking and content removal decisions issued by the criminal judgeships of peace and by the administrative bodies.

2. The legal framework is far from being foreseeable and does not provide procedural safeguards for website owners or content providers to defend their rights during the proceedings. Law No. 5651 continues to enable criminal judgeships of peace and the president of the ICTA to order blocking of access to entire websites and the legal provisions do not include safeguards against collateral effect of wholesale access blocking.

3. As a result, amendments made to article 8 and other provisions of the Law did not resolve the structural and systemic problems identified by the European Court and the Committee, as well as NGOs such as İFÖD. None of the legal amendments adopted and mentioned by the authorities would prevent similar blocking decisions from being issued in the future.

4. The Committee should invite the Government to explain the legal basis of the "notice and take-down" mechanism, list the names of domestic authorities applying this procedure and provide some examples and decisions in this regard.

5. The Committee of Ministers should also continue to ask the Government to provide detailed statistical data about access blocking and/or content removal measures.

6. Based on the detailed analysis provided in this submission, İFÖD kindly invites the Committee of Ministers **not to close** the *Ahmet Yıldırım* Group of cases and **continue to examine this group under the enhanced procedure**, as the problem remains persistent and requires even closer scrutiny.

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