

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 23/02/2021

DH-DD(2021)218

Document distributed under the sole responsibility of its author, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1398th meeting (March 2021) (DH)

Reply from the authorities (22/02/2021) following a communication from NGOs (İfade Özgürlüğü Derneği, Human Rights Association, Article 19) (27/01/2011) in the Ahmet Yildirim group of cases v. Turkey (Application No. 3111/10).

Information made available under Rule 9.6 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

* * * * *

Document distribué sous la seule responsabilité de son auteur, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1398^e réunion (mars 2021) (DH)

Réponse des autorités (22/02/2021) suite à une communication d'ONG (İfade Özgürlüğü Derneği, Human Rights Association, Article 19) (27/01/2011) concernant le groupe d'affaires Ahmet Yildirim c. Turquie (Requête n° 3111/10) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

THE GOVERNMENT RESPONSE TO THE RULE 9.2 COMMUNICATION

Ahmet Yıldırım (3111/10) Group of Cases

1. The Turkish authorities would like to make the following explanations in response to the communication from the NGOs (İfade Özgürlüğü Derneği, Human Rights Association, Article 19) with respect to *Ahmet Yıldırım* group of cases.
2. At the outset, it should be noted that the Action Report submitted to the Committee on 6 January 2021 (hereinafter Action Report) in its substance, provides answers to the issues raised in the NGOs communication. The authorities therefore reiterate the information provided therein in this regard.
3. In this submission the Authorities would like to clarify the following issues raised in the NGOs communication.

The scope of the violations at hand

4. The Turkish authorities would like recall that the relevant legislation subject to the judgments of violation at hand is only Article 8 of Law No. 5651. In accordance with Article 46 of the Convention, in the performance of the supervision of the execution of judgments and decisions, the Committee of Ministers' examinations are limited to the framework outlined by the judgment finding violation.
5. As is known, these cases concern a violation of the applicants' right to freedom of expression (Article 10) on account of domestic court orders blocking access to Google Sites and YouTube. The European Court's conclusions in the present cases were mainly based on the fact that the interference with the applicant's right to freedom of expression resulting from Article 8 of Law No. 5651 did not satisfy the foreseeability requirement of the Convention.
6. The European Court indicated in the present cases that the Article 8 of the Law no 5651 had no provision for a wholesale blocking of access. Nevertheless, the domestic courts resorted to these measures. Therefore, the European Court based its finding of violation on the point of legality.
7. The authorities would like to reiterate that this legal gap has been filled and legal basis for the wholesale blocking order has been introduced to the Article 8 with the addition of the paragraph 17. (Law no: 7188 dated 17 October 2019).
8. The amendment concerned not only introduces legal basis for wholesale blocking order but also sets forth strict conditions for wholesale blocking order in order to

prevent arbitrary effects. Namely, it stipulates that blocking orders shall be issued in the form of blocking access to the relevant publication, section, or part in which the offence was committed (in the form of the URL etc). Wholesale blocking orders can only be issued in exceptional circumstances such as where access to the content leading to a violation cannot be blocked for technical reasons, or where a violation cannot be prevented by means of blocking access to the relevant content.

9. In addition to the above amendment, Article 8 of the Law no 5651 was further amended with the Law No. 7253 on 29 July 2020. This amendment introduced a new form of sanction namely “removal of content” which should be considered to be a less intrusive measure compared to the blocking access orders which should be welcomed instead of being criticized.
10. In the light of the above amendments, the authorities consider that Article 8 of the Law no 5651 now provides legal basis for wholesale blocking order which is however applied as the last resort should the conditions set forth therein met. Accordingly, these amendments should be considered to respond the issues raised by the Court under this heading.
11. The authorities are also well aware of the fact that implementation of the legislative amendments concerned in practice is of paramount importance. To this end, the authorities would like to draw the Committee’s attention to the well-established case law of the Turkish Constitutional Court. The jurisprudence of the Constitutional is of great importance for better implementation of the Law in practice. In its judgments the Constitutional Court further clarifies the relevant provisions of the Law no 5651 and sheds light to the relevant courts as well as the administrative body.
12. As underlined in the Action report, the conclusions of the Turkish Constitutional Court in the cases of *Wikimedia Foundation Inc. and Others* (no. 2017/22355), *YamanAkdeniz and Others* (no. 2014/3986), *YouTube LLC Corporation Service Company and Others* ([General Assembly], no. 2014/4705) are completely in line with the European Court’s case law in the field of internet restrictions. In its judgments the Constitutional clearly underlines that wholesale blocking orders should only be applied if only specific conditions are met and as the last resort. It further notes that all forms of the restriction orders should be well-reasoned and proportionate.
13. The authorities would like to underline that the case-law of the Constitutional Court should be followed by the relevant courts as well as the relevant administrative body.

14. The sample judgments provided in the Action reports clearly illustrate the fact that the first instance courts follow the principles set forth by the Constitutional Court. In these sample judgments it can be seen that the magistrates' courts apply the principle of proportionality and impose the wholesale blocking order as the last resort.
15. In the light of the above considerations the authorities cannot accept the assertion by the NGOs that the Law does not satisfy the foreseeability and proportionality requirements and does not provide safeguards to prevent arbitrary effects of blocking orders. The authorities further highlights that the latest amendments have not expanded the authority of the administrative body.

The judicial-review procedures

16. The Turkish authorities would like to note that the Court in the present judgments did not find a systemic problem as regards the judicial review proceedings. The Court in fact criticized the practice of the domestic courts in the specific conditions of the present case.
17. As explained in the Action Report and in this submission, the latest amendments of 2019 and 2020 introduced a less intrusive measure which is removal of content. Furthermore, legal basis for wholesale blocking order has also been introduced. Article 8 of the Law no 5651 now allows the relevant authorities to impose sanctions in the form of removal of content, blocking access to relevant content and as the last resort and if the conditions are met blocking access to entire website. Therefore, it is considered that the wording of the Law which was criticized by the Court has been improved in order for preventing similar violations. Accordingly, the relevant courts shall examine whether the wholesale blocking of a website is necessary and explain their reasoning while delivering any form of restriction order. The necessity of reasoned decisions and the notion of proportionality are also consistently underlined by the Constitutional Court. The first instance courts are following this approach as illustrated by the sample first instance court judgments provided in the Action Report.
18. In the light of the foregoing the authorities cannot accept the claims that judicial-review procedures concerning the blocking of websites are insufficient.

Conclusion

19. The Turkish Government kindly invites the Committee to take into consideration its above-mentioned explanations within the scope of the execution of the judgments in the *AhmetYıldırım*(3111/10) group of cases.

20. Furthermore, the Turkish authorities consider it unnecessary to speculate on the unverified statistical information given and as well as the other issues raised in the NGOs communication that are not subject to the findings of the Court in the present cases.