

Turkish Constitutional Court: Blocking Access to a Website Breaching a Trademark Does not Violate the Freedom of Expression

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The Turkish Constitutional Court ruled that blocking access to the site with the domain name "www.xxxkargomagdurlari.com" ["xxxcourivictims.com" in English] considering it as against the rule of good faith pursuant to article 55 of Turkish Commercial Code, is not against the freedom of expression.

On that basis, the applicant, acting as the attorney of the former employees who were victimized by the relevant cargo company, applied to the Turkish Constitutional Court:

Company ("Company") filed a lawsuit against the applicant on the basis that the applicant registered the website under his name which caused damage on Company's commercial reputation and requested for pecuniary and non-pecuniary damages. The first instance court ruled that:

- The "xxxkargomagdurlari" phrase on the website domain name has a negative connotation in the society for the company.
- The domain name constitutes unfair competition "through discrediting others and their commercial activities with unnecessarily offensive declarations" pursuant to article 55 of the Turkish Commercial Code.
- Blocking the access to the website is necessary to prevent to use of the domain name.

On that basis, the applicant, acting as the attorney of the former employees who were victimized by the relevant cargo company, applied to the Turkish Constitutional Court:

- The actual existence of people who were victimized by the Company excludes the website from being unnecessary, offensive and unfair,
- The Company's material rights have not been infringed or applicant did not act with the sole purpose of damaging Company's commercial reputation,
- Therefore, blocking access to the website violates the
 - Equal protection of the law,
 - Freedom of communication,
 - Freedom of thought and opinion,
 - Freedom of expression and dissemination of opinion, and
 - Right to a fair trial.

After a review of the case, the Turkish Constitutional Court stated that:

- The blockage of access to the website constitutes an interference with the applicant's right to freedom of expression and this intervention is a part of the measures to protect the fame and rights of others and therefore has a legitimate purpose,
- Commercial reputation should constitute a personal right and an economic asset value; therefore, it must be covered by the property right in accordance with article 35 of the Constitution and therefore the state should take measures for the protection of the property rights.

- There should be a fair balance between the Company's property right and the applicant's freedom of expression.
- In the judgment of the first instance court which stated that the relevant web site has a negative connotation in the community for Company, based on the grounds that the use of this domain name has damaged Company's commercial reputation, thus showing that the intervention corresponds to a social need pressure.
- The interference with the applicant's freedom of expression was in conformity with the requirements of a democratic society.

By stating the mentioned reasons, the court ruled with the majority of votes that the allegation concerning the freedom of expression of the applicant was inadmissible as it was manifestly unfounded.

Against this decision, the Chairman of the Constitutional Court presented a dissenting opinion. According to this opinion:

- Freedom of expression includes not only the freedom to "possess thought and opinion but also the freedom to express and disseminate thought and opinion" and accordingly "freedom to interchange opinion".
- The social need pressure for the indefinite blockage of access to the relevant website is not adequately explained by the first instance court.
- The unlimited period of access blockage is not moderate, The content in the website contained facts rather than judgment, therefore the aim is to express Company's acts that are thought to be unfair within the scope of freedom of expression, criticize and to share with public opinion rather than aiming to discrediting Company.
- The public service companies should be open to criticism and opinions about such services, criticizing a company over the Internet is very much the same to protest company services in front of the same company by demonstrating marches and showing criticism banners, and just like such expression is protected under the constitution, the freedom of expression on the internet should also be protected.
- Although indefinitely blocking access to the website is a convenient means of achieving the purpose of protecting the ownership of Company, it is not the last resort and the lightest measure to be taken.
- The interference with the right to freedom of expression, protected by article 26 of the Constitution, does not correspond to a predominant social need and is not measurable.

Please see this [link](#) for the full text of the Constitutional Court's decision (Only available in Turkish)

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