

REPUBLIC OF TURKEY
CONSTITUTIONAL COURT

SECTION TWO

DECISION

Application No: 2014/3986

Date of Judgment: 2/4/2014

SECTION TWO

DECISION

President

: Alparslan ALTAN

Members

: Serdar ÖZGÜLDÜR

Osman Alifeyyaz PAKSÜT

Celal Mümtaz AKINCI

M. Emin KUZ

Rapporteur : Esat Caner YILMAZOĞLU
1st Applicant : Yaman AKDENİZ
Counsel : Att. Hüsni ÖNDİL
2nd Applicant : Mustafa Sezgin TANRIKULU
Counsel : Att. Berk BAŞARA
3rd Applicant : Kerem ALTIPARMAK

I. SUBJECT OF APPLICATON

1. The applicants have asserted that due to the action of the Presidency of Telecommunication and Communication (TİB) in relation to the blocking of access to the web site with the domain name twitter.com which they are a user of, articles 26, 27, 40 and 67 of the Constitution are breached and there is no effective remedy against the said action.

II. APPLICATION PROCESS

2. The applications have been submitted directly to the Constitutional Court on 24-25/3/2014. As a result of the preliminary administrative examination of the petitions and their annexes, it has been determined that there is no deficiency to prevent the submission thereof to the Commission.

3. It has been decided that applications No. 2014/3987 and 2014/4091 of similar essence be consolidated with the application No. 2014/3986 due to the fact that they have the same legal character regarding their subjects and that the examination be conducted over this file.

4. It has been decided by the Head of Section on 28/3/2014, that the examinations for admissibility and merits be conducted together and a copy of the application be sent to the Ministry of Justice.

5. Considering it as a requisite to urgently make a decision in relation to the applications as per clause (2) of article 71 of the Standing Orders of the Constitutional Court, the Section has evaluated the application in terms of its admissibility and merits without waiting for the response of the Ministry.

III. FACTS AND CASES

A. Facts

6. As expressed in the application form and the annexes thereof, the facts are summarized as follows:

7. The applicants are active users of the web site with the domain name twitter.com which is a social media platform.

8. TİB has implemented a decision for protection measure on the basis of the judgment of the Office of the Chief Public Prosecutor of İstanbul dated 7/3/2014 and No. 2011/762, of the 2nd Criminal Court of Peace of Samsun dated 4/3/2014 and No. 2014/223, of the 5th Criminal Court of Peace of İstanbul Anatolia dated 18/3/2014 and No. 2014/181

and of the 14th Criminal Court of First Instance of İstanbul Anatolia dated 3/2/2014 and No. 2011/795 and access to the web site twitter.com has been blocked.

9. The decision of TİB is as follows:

“... ”

The Presidency of Telecommunication and Communication functions in line with the Law No. 5651 and other relevant provisions in the legislation.

Upon complaints from our citizens, the judgments to block access have been rendered by the courts of the Republic of Turkey due to the violation of personal rights and of privacy on Twitter.

These judgments have been submitted to the Presidency of Telecommunication and Communication and our Presidency requested from Twitter that the relevant content be removed.

However, despite all our bona fide efforts for the implementation of the court judgments, Twitter has remained indifferent with regards to the said judgments and failed to recognize the court judgments.

The said web site which is based abroad has ignored the judgments rendered by the courts of the Republic of Turkey.

Hence, the measure to block access to Twitter has been implemented in line with the court judgments since there was no other choice left to prevent the non-recoverable future injuries to our citizens. The Presidency of Telecommunication and Communication is liable to implement court judgments within the framework of the principle of the state of law.

The blockage of access implemented as a precautionary measure will be ended if the said web site which is based abroad abides by the judgments of the Turkish courts and removes the illegal contents.

The members of the public are kindly requested to be informed on the matter.”

10. TİB has blocked access to Google DNS addresses when it is found out that users log in to the blocked web site twitter.com by changing their DNS settings.

11. The applicants have filed direct individual applications claiming that the lodging of an action for annulment before the administrative judiciary bodies against this decision of TİB is not an effective remedy which needs to be exhausted.

12. Meanwhile, in relation to the court case filed by the Presidency of the Union of Turkish Bar Associations against the said action of access-blocking by indicating the Presidency of Telecommunication and Communication and the Information and Telecommunications Technologies Authority as the adverse parties whereby a stay of execution is requested, the 15th Administrative Court of Ankara decided by majority of votes on 25/3/2014 on the stay of execution of the action which is the subject of the court case until a new judgment is rendered after the defence statements of the administrations standing as defendants and their interlocutory judgment response are taken or the duration for defence and for response to interlocutory judgment expire.

13. The part in relation to the stay of execution in the said judgment of the 15th Administrative Court of Ankara is as follows:

“... ”

Due to the facts that the action which is the subject of the case is in relation to the complete blockage of access to the web site with the domain name “twitter.com”, that this is of a quality which may restrict the freedoms of expression and communication which are guaranteed by the Constitution of the Republic of Turkey and the European Convention on Human Rights and that, if implemented, it may cause damages which are difficult to compensate for, it was adjudicated by majority of votes on 25/3/2014 that the execution of the action which is the subject of the case is stayed until a new

judgment is rendered after the defence statement of the administration standing as defendant and its interlocutory judgment response are taken or the duration for defence and for response to interlocutory judgment expire... and that the administrations standing as defendants are given (15) days for defence and for responding to the interlocutory judgment.”

B. Relevant Law

14. Clause four of article 138 of the 1982 Constitution is as follows:

“Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter the court decisions in any way whatsoever nor delay the execution thereof.”

15. Sentence one of clause two of article 27 of the Law No. 2577 on Administrative Jurisdiction Procedure is as follows:

“In cases where both conditions; arise of damages which are difficult or impossible to compensate for as a result of the implementation of the administrative action and explicit contrariety to law of the administrative action, materialize together, the Council of State or the administrative courts can render a judgment on the stay of execution by indicating the justification after the defence statement of the administration standing as defendant is taken or after the duration for defence has expired. The execution of administrative actions the effectiveness of which will exhaust upon the execution thereof can be stayed without taking the defence statement of the administration in a way to be decided again after the defence is taken.”

16. Clause seven of article 27 of the Law No. 2577 on Administrative Jurisdiction Procedure is as follows:

“As to the judgments concerning the stay of execution requests; objections can be filed for only once within seven days from the notification of the decision to the Boards of either the Administrative or Tax Law Chambers depending on the subject of the action if the judgment is rendered by the law chambers of the Council of State, to the nearest regional administrative court against the decisions of the regional administrative court, to the regional administrative court against the decisions of administrative or tax courts and against decisions rendered by a single judge and, during the judicial recess period, to the nearest court on duty or to the court on duty which the judge who rendered the judgment does not participate in against the decisions of the tax and administrative courts.

Bodies to which the objections have been brought must decide on the objection within seven days after they receive the file. Decisions rendered upon objections shall be final.”

17. Sentence one of clause one of article 28, titled “Consequences of decisions”, of the Law No. 2577 on Administrative Jurisdiction Procedure is as follows:

“As to the requirements of the decisions of the Council of State, the regional administrative courts, the administrative and tax courts on the merits of the case and on the stay of execution, the administration shall be obliged to conduct acts or take actions without delay. Under no circumstances can the duration for this exceed thirty days starting from the notification of the decision to the administration.”

18. Clause (4) of article 9 of the Law dated 4/5/2007 and No. 5651 on the Regulation of Publications on the Internet and Fight Against Crimes Committed by Means of Such Publications is as follows:

“The judge shall render his/her judgment on blocking access to be rendered within the scope of this article by means of the method of blocking access to content (in the form of URL,

etc.) only in relation to the publication, section, part where the violation of personal rights occur. The blockage of access to the entire publication on the web site cannot be decided on as long as this is not compulsory. However, if the judge is of the conviction that the violation cannot be prevented by means of the method of blocking access to content by indicating a URL address, he/she can decide that access to the entire publication on the web site be blocked on the condition that the justification for this decision is indicated.”

IV. EXAMINATION AND JUSTIFICATION

19. The application file was examined during the session of the court on 2/4/2014 and the following were ordered and adjudged:

A. Claims of the Applicants

20. The applicants have asserted that access to twitter.com is blocked through the implementation of a protection measure by TİB on the basis of the judgments rendered by the Office of the Chief Public Prosecutor of İstanbul and some courts, that the court judgments indicated by TİB as the basis of its action are not towards the complete blockage of access to the web site with the domain name twitter.com, that this practice is contrary to law and is of arbitrary nature, that it significantly restricts the right to disseminate information in addition to the opportunity to access information, that this practice blocks access to not only the information which exists on the said web site but also the information which will be shared on this social network in the future and that, in its current form, it enables censorship which is absolutely prohibited in the Constitution and that the said action is contrary to the principles in relation to freedom of expression as guaranteed in article 10 of the Convention (European Convention on Human Rights) which are adopted by the European Court of Human Rights (ECHR).

21. The applicants have also asserted that access can only be blocked with a court judgment and in relation to the part where the violation occurs in cases where there is a claim of breach of personal rights as per clause (4) of article 9 of the Law No. 5651; that access to the entire web site can be blocked with a court judgment only on the condition that the justification for this is indicated; that it is a usurpation of function when TİB decides on blocking access to a web site completely despite the court judgment ordering partial blockage on the basis of URL; that TİB's complete blockage of access to the web site with the domain name twitter.com, despite the fact that the court judgments indicated as the basis of TİB's decision of blockage are for the blocking of access to certain URL addresses, has no legal basis. The applicants have requested the determination of breach by asserting that the restriction in the form of blocking access violated their rights defined in articles 26, 27, 40 and 67 of the Constitution, claiming that the blockage of access is contrary to the criteria on the restriction of fundamental rights and freedoms, that it does not strike the balance between the protection of privacy and the freedom of expression and that the blockage of access to the web site twitter.com immediately before the local elections to be held on March 30, 2014 creates an impact of indirect censorship.

B. Evaluation

1. In Terms of Admissibility

22. The applicants have asserted that resorting to an administrative judiciary body against the said action is not an effective remedy and thus there is no need to exhaust this remedy.

23. During the process of evaluation of the applications in relation to the blockage of access to the web site with the domain name twitter.com by the Presidency of Telecommunication and Communication, it has been decided on 25/3/2014 by the 15th Administrative Court of Ankara that the execution of the said action be stayed in the action for annulment filed against the said action of TİB by the Union of Turkish Bar Associations with a request for stay of execution.

24. It is understood that the said web site is not opened for access by the administration which is obliged to conduct acts or take actions without delay as to the requirements of court judgments as per the provisions of legislation mentioned above (§ 14, § 17) despite the court judgment to that effect and that although it is stated in the law that the duration in relation to the execution of the court judgment cannot exceed thirty days, it is understood that this duration indicates the maximum duration. The implementation of a court judgment in a state of law requires not only an execution in form but also the elimination of the identified unlawfulness under objective conditions and within the shortest duration possible. Taking into account, also the fact that the judgment on a stay of execution regarding this matter is based on the determination that the conditions where damages which are difficult or impossible to compensate for arise as a result of the implementation of the administrative action and that the administrative action is clearly contrary to law exist together and considering the obligation for the administration to eliminate the negative impact caused by the action the stay of execution of which is decided, it is understood that this liability is not fulfilled due to the fact that the said web site is not immediately opened by TİB for access.

25. Freedom of expression is one of the foundations of a democratic society and it is among the indispensable conditions for the development of the society and the self-realization of the individual. Social pluralism can only be achieved in an environment of free discussion where all kinds of ideas can be freely expressed. In this context, establishing social and political pluralism is dependent on expression of all kinds of thoughts in a peaceful fashion and freely. In the same manner, an individual can realize his/her unique personality in an environment where he/she can freely express his/her thoughts and engage in discussion (B. No: 2013/2602, 23/1/2014, § 41).

26. Taking into consideration the restrictive impact of the blockage of access to a social media web site which has millions of users in our country on the freedom of expression of these individuals, which is one of the foundations of a democratic society, it is an obligation emanating from the principle of the state of law that the conformity of such restrictions to law be urgently checked and, in the case of identifying a contrariety to law, that the said restrictions be immediately abolished. It is observed that despite the decision of stay of execution stated above in relation to the said administrative action, access to the web site with the domain name twitter.com which is the subject of the violation claim of the applicants, is still not possible. It is apparent that the information and thoughts shared on the social media in relation to certain incidents and cases may become outdated and lose their effect and value as time passes. Under these circumstances, it is concluded that it cannot be said that the court judgment provides an effective and accessible protection in terms of removing the violation and the negative consequences thereof against the uncertainty about when access to the web site will be possible again upon the enforcement of the court judgment and thus it is not an effective remedy for the applicants to apply to the administrative court.

27. As it is observed that the complaints of the applicants in relation to article 26 of the Constitution are not explicitly devoid of a basis, it needs to be decided that the applications are admissible.

2. In Terms of Merits

28. The applicants have stated that the court judgments indicated by TIB as the basis of blockage are not towards the complete blockage of access to the web site with the domain name twitter.com, that the fact, that the TIB blocked access to the web site with the domain name twitter.com by trying out arbitrary methods of blocking access, does not have any legal basis; that this action significantly restricts the right to disseminate information in addition to the opportunity to access information; that this action blocks access not only to the information which exists on the said web site but also to the information which will be shared on this social network in the future and that, in its current form, it enables censorship which is absolutely prohibited in the Constitution.

29. The applicants have also stated that access on Internet medium can only be blocked with a court judgment, that this blockage can only be imposed by means of blocking access to the content in relation to the part where the violation occurs, that access to the entire web site can be blocked with a court judgment only on the condition that the justification for this is indicated, that it is a usurpation of function when TIB decides on complete blockage of access to the web site despite the court judgment ordering partial blockage on the basis of URL, that TIB's blockage of access to the web site with the domain name twitter.com completely despite the fact that the court judgments indicated as the basis of TIB's decision of blockage are only blocking access to certain URL addresses is legally not possible.

30. The applicants have also stated that the blockage of access to the said web site is contrary to the constitutional criteria on the restriction of fundamental rights and freedoms, that the balance between the protection of privacy and the freedom of expression cannot be stricken and that the blockage of access to the web site with the domain name twitter.com immediately before the local elections to be held on March 30, 2014 creates an impact of indirect censorship.

31. Article 13 of the Constitution with the side title "Restriction of Fundamental Rights and Freedoms" is as follows:

"Fundamental rights and freedoms may only be restricted on the basis of the reasons mentioned in the relevant articles of the Constitution and by law without prejudice to their essence. These restrictions cannot be contrary to the letter and spirit of the Constitution, the requirements of the democratic social order and of the secular Republic and the principle of proportionality."

32. Article 26 of the Constitution with the side heading of "Freedom of expression and dissemination of thought" is as follows:

"Everyone has the right to express and disseminate their thoughts and convictions orally, in writing, in pictures or through other means individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. ..."

The exercise of these freedoms may be restricted for the purposes of national security, public order, public security, protecting the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing offending, punishing offenders, not revealing information duly classified as a State secret, protecting the reputation

or rights and private and family lives of others or protecting professional secrets set forth in the law or duly performing the duty of hearing cases.

Regulatory provisions concerning the use of means to disseminate information and thoughts shall not be deemed as the restriction of freedom of expression and dissemination of thoughts on the condition that the transmission of information and thoughts is not prevented.

Forms, conditions and procedures to be applied in exercising the freedom of expression and dissemination of thought are regulated by law.”

33. As per the said regulations, the freedom of expression covers not only the freedom to “have a thought and conviction” but also the existing freedom to “express and disseminate thought and conviction (opinion)” and the associated freedom to “receive and give information or opinion”. In this framework, freedom of expression means that individuals can freely access news and information and other’s thoughts, that they cannot be condemned for the thoughts and convictions they have and that they can freely express, tell, defend, convey and disseminate to others these through various methods by themselves or together with others (B. No: 2013/2602, 23/1/2014, § 40).

34. Freedom of expression is one of the foundations of a democratic society and it is among the indispensable conditions for the development of the society and the self-development and self-realization of the individual. The light of truth springs forth from collision of ideas. In this context, establishing social and political pluralism is dependent on expression of all kinds of thoughts in a peaceful fashion and freely. In the same manner, an individual can realize his/her unique personality in an environment where he/she can freely express his/her thoughts and engage in discussion. Freedom of expression is a value that we need in defining, understanding and perceiving ourselves and others and, in this framework, in determining our relations with others (B. No: 2013/2602, 23/1/2014, § 41).

35. As stated frequently in the judgment of the ECHR, in order for the freedom of expression to fulfil its social and individual function, not only the “information” and “thoughts” which are considered to be positive, accurate or not harmful by the society and the state but also the information and thoughts which are considered to be negative or inaccurate by the state or a segment of the society and are disturbing for them should be freely expressed and the individuals should be sure that they will not be subject to any sanctions due to these expressions. Freedom of expression is the basis of pluralism, tolerance and open-mindedness and without this freedom, it is not possible to speak of “a democratic society” (Handyside / United Kingdom, App. No: 5493/72, 7/12/1976, § 49).

36. The Constitution guarantees not only the thoughts and convictions but also the styles, forms and tools of expression. In article 26 of the Constitution, the tools to be used in the exercise of the freedom of expression and dissemination of thought are stated to be “speech, writing, pictures or other media” and with the expression “other media”, it is indicated that all kinds of tools of expression are under constitutional protection (App. No: 2013/2602, 23/1/2014, § 43).

37. In this context, the freedom of expression is directly related to a significant portion of other rights and freedoms guaranteed by the Constitution. The freedom of the press which guarantees the dissemination of ideas, thoughts and information by means of visual and printed media tools is also one of the tools to be used in the exercise of the freedom of expression and dissemination of thought. The freedom of the press is protected within the scope of Article 10 on the freedom of expression of the European Convention on Human Rights and is also specially regulated in articles 28 to 32 of the Constitution (App. No: 2013/2602, 23/1/2014, § 44).

38. In a democratic system, in terms of ensuring that those who possess the public powers exercise their authorities within the limits of the law, the press scrutiny and the public scrutiny play a role just as effective and are equally important as the administrative scrutiny and the judicial scrutiny. Since the functioning of the press which acts as a public observer on behalf of the society is dependent on its being free, the freedom of the press is a freedom which is applicable to and vital for everyone. (See CC, M. 1997/19, D. 1997/66, DD. 23/10/1997), (for the judgments of the ECtHR in the same vein, see *Lingens v. Austria*, App. No: 9815/82, 8/7/1986, § 41; *Özgür Radyo – Ses Radyo Televizyon Yapım ve Tanıtım AŞ v. Turkey*, App. No: 64178/00, 64179/00, 64181/00, 64183/00, 64184/00, 30/3/2006, § 78; *Erdoğan and Ince v. Turkey*, App. No: 25067/94, 25068/94, 8/7/1999, § 48; *Jersild v. Denmark*, App. No: 15890/89, 23/9/1994, § 31).

39. The Internet has a significant instrumental importance in modern democracies in terms of the exercise of fundamental rights and freedoms, specifically of the freedom of expression. The social media platform that the Internet provides is of an indispensable quality for individuals to express, mutually share and disseminate their information and thoughts. Thus, it is apparent that the state and the administrative bodies need to behave very responsibly and sensitively in regulations and practices to be issued in relation to the Internet and social media tools which have become one of the most effective and widespread methods of expressing thoughts today.

40. The freedom of expression and dissemination of thought is not absolute and unlimited. In this context, while exercising the freedom of expression and dissemination of thought, attitudes and behaviours violating the rights and freedoms of individuals should be refrained from. As a matter of fact, the freedom of expression and dissemination of thought as guaranteed by articles 26 and 28 of the Constitution can be restricted due to the reasons stated in these articles in accordance with the conditions in article 13 of the Constitution. As per article 13 of the Constitution, restrictions on fundamental rights and freedoms can only be imposed by law and they can neither be contrary to the requirements of the democratic order of the society and the principle of proportionality nor infringe upon the essences of rights and freedoms.

41. It should be noted that the state and public bodies have discretion over the restrictions in relation to the freedom of expression. However, this sphere of discretion is also subject to the scrutiny of the Constitutional Court. During the scrutiny which will be conducted within the framework of the criteria of conforming to the requirements of the democratic order of the society, proportionality and not infringing upon the essence, instead of a general or abstract evaluation, there is a requirement to conduct a detailed evaluation which differs according to various elements such as the type, form and contents of the expression, the time when it is expressed, the quality of the reasons for restriction. The criteria of not infringing upon the essence or conformity with the requirements of the democratic society require that the restrictions on the freedom of expression should primarily be in the form of a compulsory or exceptional measure and that they should be considered to be the last remedy to be resorted to or the last measure to be taken. As a matter of fact, the ECHR concretizes being a requirement in the democratic society as a “pressing social need”. According to this, if the restrictive measure is not in the form of meeting a pressing social need or is not the last remedy to resort to, it cannot be considered as a measure which is in conformity with the requirements of the democratic order of the society. Similarly, while looking into the existence of a pressing social need, an abstract evaluation should not be made but various elements such as the title of the individual who gets involved in the medium of expression and who also expresses, the identity and level of reputation of the targeted

individual, the content of the expression, the contribution the expressions make to a discussion in relation to the general interest which concerns the public opinion. (For the ECHR judgments on this subject, see *Axel Springer AG v. Germany*, [BD], App. No: 39954/08, 7/2/2012; *Von Hannover v. Germany* (no. 2), [BD], 40660/08 and 60641/08, 7/2/2012).

42. The intervention made by the public authority should be based on just reasons and during the restriction of rights and freedoms, the essences of the rights should not be infringed upon and such restriction should be proportional. Restrictions which significantly complicate and make difficult the exercise of the right in conformity with the objective thereof implicitly render it useless and eliminate its impact and infringe upon the essence (see CC, M. 2006/121, D. 2009/90, DD. 18/6/2009). Through the principle of proportionality which is described as striking a just balance between the objective of restriction and the tool of restriction, the aim is to prevent regulations which restrict rights and freedoms more and introduce more severe liabilities on individuals who will exercise the rights although it is possible to attain the objective of restriction by means of less restrictive or less severe measures. Thus, if a restrictive measure taken in order to attain a specific objective is more severe and strict than required, that restriction is neither proportional nor in conformity with the democratic order of the society (App. No: 2013/2602, 23/1/2014, § 51).

43. The state has both positive and negative liabilities in relation to the freedom of expression. Within the scope of negative liabilities, the public bodies should not ban the expression and dissemination of thought as long as this is not compulsory within the scope of articles 13 and 26 of the Constitution whereas, within the scope of positive liabilities, it should take the measures necessary for the actual and effective protection of the freedom of expression (for a similar opinion of the ECHR, see *Özgür Gündem v. Turkey*, App. No: 23144/93, 16/3/2000, § 43). While striking this balance, through the limited reasons and legitimate objectives prescribed in the law within the scope of articles 13 and 26 of the Constitution, it is necessary to observe a proportional balance between the objective and tool of restriction and the essence of the right should not be infringed upon by taking into consideration the requirements of the democratic order of the society (App. No: 2013/2602, 23/1/2014, § 56).

44. The Constitutional Court will determine, according to the unique character of each case, whether an intervention is required in a democratic society, whether the essence of the rights has been infringed upon during the intervention and whether the intervention has been proportional or not (App. No: 2013/2602, 23/1/2014, § 61).

45. In the concrete case, the applicants have asserted that their freedom of expression is violated due to the blockage of access to the web site with the domain name *twitter.com* which they are users of. Following the explanation of the general principles, during the application of these general principles to the concrete case, it will be determined “whether there is an intervention or not”, if there is, “whether the intervention is based on just reasons or not”, if there are just reasons, “whether the intervention is required for the democratic order of society and whether it is proportional or not”.

46. Although it is understood in the case which is the subject of the application that TİB has blocked access to the web site *twitter.com* on the basis of some court judgments, it is also understood upon the examination of the judgments submitted as basis that the said judgments only block access to certain URL addresses and that no judgment is rendered by courts of instance in relation to directly blocking access to the web site *twitter.com*.

47. It is apparent that the decision of the Presidency of Telecommunication and Communication in relation to the blockage of access as per the relevant provisions of law requires a court judgment as a rule, that the competent courts to this end are the criminal courts of peace and that the judgments rendered by the courts are protective measures of criminal procedure in terms of their quality. According to this, TİB can only enforce a judgment for blockage on the basis of a court judgment that is rendered to this end and that conforms to the style prescribed in this judgment.

48. It is stated above (§§ 37-40) which general principles would be used as basis of action in relation to whether the intervention by TİB, which is a public administration, to block access to a web site is required in a democratic society or not and whether the intervention has been proportional or not. As per article 13 of the Constitution, the restrictions towards the fundamental rights and freedoms shall be prescribed by law and the restrictions shall be in conformity with law. In the concrete case, it is observed that the action of blocking access is not performed on the basis of URL but by means of blocking access to an entire web site. Taking into consideration the regulations present in the Law No. 5651, it is obvious that the action which goes beyond the court judgments indicated to be the basis of the decision of TİB and which brings along the complete blockage of access to the web site twitter.com that is a social media network with millions of users does not have any legal basis and that the blockage of access to this social sharing web site without a legal basis and by means of a decision of prohibition whose borders are not definite constitutes a severe intervention on the freedom of expression which is one of the most basic values of democratic societies.

49. Under these circumstances, taking into consideration the importance, in a democratic state of law, of the freedom of expression which constitutes the subject of the claim of violation that is the subject of the individual application, it needs to be decided that the freedom of expression of the applicants which is protected by article 26 of the Constitution is violated due to the fact that the blockage of access to the web site with the domain name twitter.com by TİB is a severe intervention on the freedom of expression of not only the addressees of the judgments which are indicated to be the basis of this blockage and are rendered on the basis of URLs but also of all users who make use of the twitter.com network and that this does not have any legal basis.

V. JUDGMENT

In the light of the reasons explained, it is **UNANIMOUSLY** decided on 2/4/2014;

A. That the application is **ADMISSIBLE**,

B. That the freedom of expression of the applicants guaranteed by article 26 of the Constitution is **BREACHED**,

C. That a total of TL 1.706,10 comprising of an individual application fee of TL 206,10 and a counsel's fee of TL 1.500,00 **BE PAID** to Yaman Akdeniz, the applicant, a total of TL 1.706,10 comprising of an individual application fee of TL 206,10 and a counsel's fee of TL 1.500,00 **BE PAID** to Mustafa Sezgin Tanrikulu, the applicant, the trial expenses comprising of an individual application fee of TL 206,10 **BE PAID** to Kerem Altıparmak, the applicant

D. That the payments be made within four months from the date of application of the applicants to the State Treasury following the notification of the judgment; if there happens to

be a delay in payment, legal interest be accrued for the period elapsing from the date when this duration ends until the date of payment,

E. That a copy of the judgment be sent to the Information and Communication Technologies Authority, the Presidency of Telecommunication and Communication and to the Ministry of Transport, Maritime Affairs and Communications in order for the **BREACH AND THE CONSEQUENCES THEREOF** to be removed as per clauses (1) and (2) of article 50 of the Law No. 6216.

President
Alparslan ALTAN

Member
Serdar ÖZGÜLDÜR

Member
Osman Alifeyyaz PAKSÜT

Member
Celal Mümtaz AKINCI

Member
M. Emin KUZ