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**RULE 9.2 SUBMISSION**

**for the cases of**

**AHMET YILDIRIM v. Turkey**

(Application No. 3111/10)

and

**CENGİZ AND OTHERS v. Turkey**

(Application No. 48226/10)

by

**Media and Law Studies Association  
(MLSA)**

and

**Free Web Turkey Platform  
(FWT)**

**October, 2023**

**The Media and Law Studies Association (MLSA)** is a non-profit organization founded in Istanbul (registered as Medya ve Hukuk Çalışmaları Derneği) in December 2017 to respond to an urgent and growing need for a return to democracy and normalization in Turkey. It was founded as a cooperation of court reporters and media lawyers to work on freedom of media and freedom of expression.

MLSA's legal unit provides legal representation and counseling services to journalists whose freedom of expression is threatened without considering their affiliations, political views, gender, or ethnicity. MLSA legal unit also conducts strategic litigation services where there is a systematic violation of freedom of expression. MLSA litigated against the Interior Ministry's regulation that banned videotaping police conduct and annulled the regulation with a decision of the Council of State. MLSA litigated two administrative bans against Kurdish theater play and won the cases against governorates.

MLSA also maintains a trial monitoring program since 2017; the program has monitored more than 2,500 hearings all over the country. The program monitors cases where the freedom of expression and or freedom of assembly is concerned.

MLSA also maintains Free Web Turkey. The project monitors internet bans in Turkey and reports it in yearly reports and also publishes weekly "censorship agendas" in which every week all news about internet censorship is printed on the webpage and Twitter.

MLSA is also maintaining a program to strengthen Turkey's civil society against the legal threats posed after the adoption of the new CSO law, it provides legal and administrative training for the members of CSOs, and also it provides simulation audits for threatened NGOs.

MLSA's editorial unit publishes opinion pieces and news articles on different aspects of Turkey's media landscape in cooperation with freelance journalists and provides these journalists a platform to express themselves.

## INTRODUCTION

1. This communication has been submitted as a response to the Turkish Government's action report submitted to the Secretariat of the Committee of Ministers of the Council of Europe on 09/10/2023 concerning the cases of AHMET YILDIRIM v. Turkey and CENGIZ AND OTHERS v. Turkey (Application No. 3111/10 and 48226/10) according to Rule 9.2. of "Rules of the Committee of Ministers for the supervision of the execution of judgments and the terms of friendly settlements".
2. The communication will argue that the situation regarding whole webpage blocking orders has been worsened and the implementation process must continue for these cases.
3. Both cases concern the whole webpage blockings and as a result, violation of the right to receive information and freedom of expression (*Article 10 of the convention*). In the case of AHMET YILDIRIM v. TURKEY, the applicant's webpage on Google Sites has been blocked because of a whole website blocking caused by another violating webpage on the same domain.
4. In the case of CENGIZ AND OTHER v TURKEY, the three applicants argued that their right to receive information was violated because the video sharing platform YouTube had been blocked due to ten video contents that infringed Law No. 5816 prohibiting insult to the memory of Atatürk. On May 5, 2008; Ankara Criminal Court of First Instance issued a decision on blocking the domain of "[www.youtube.com](http://www.youtube.com)" which was at the time and still is the biggest video-sharing platform in the world.
5. This communication will **initially examine the government's arguments** put forward in the latest action report presented. **Secondly, it will examine the whole website blockings in Turkey. Thirdly it will provide statistics about the state of internet freedom** and internet censorship in Turkey. In the conclusion section, the **recommendations** to the CM and the Turkish government will be explained.

## GOVERNMENT'S ARGUMENTS ON GENERAL MEASURES

6. The government argues that with the amendment of Law No. 5651<sup>1</sup>, the authority to block an entire webpage has been limited to two cases; namely "*in the case where it is technically impossible to ban access to the content*"<sup>2</sup> or in the case of where "*a violation cannot be prevented by means of blocking access to the relevant content*"<sup>3</sup>. MLSA wishes to draw the attention of the Committee that, even though on the law, the grounds for banning the entire webpage are limited, in practice the courts do not adhere to these rules. The courts usually ban entire webpages even though the URL bans are technically possible, as will be explained in the following paragraphs.
7. The government admits that blocking access to a whole website is the "*last resort*"<sup>4</sup> and again agrees with the statement that whole webpage blockings infringe "*right to receive information*"<sup>5</sup>. However, as explained in this communication, the Turkish government has been actively using whole webpage blockings to silence opposition news outlets and to silence Kurdish and left-leaning media.

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<sup>1</sup> **Law on the Regulation of Publications Made on the Internet and Fighting Crimes Committed Through These Publications.** Law No: 5651; Official Gazette: 4/5/2007 Issue: 26530

<sup>2</sup> Law No: 5651 Article 8 para 17 (As amended by Law no: 7188 Article 36 Official Gazette 17/10/2019).

<sup>3</sup> Action report (06/10/2023) - **Communication from Turkey concerning the cases of AHMET YILDIRIM v. Turkey and CENGIZ AND OTHERS v. Turkey** (Application No. 3111/10 and 48226/10)

<sup>4</sup> Ibid para 15

<sup>5</sup> Ibid para 15

8. The government explains in detail why it is blocking certain URLs<sup>6</sup> in web pages with HTTPS<sup>7</sup> protocol encryption<sup>8</sup>. First of all, the government has been trying to justify its whole website blockings based on internet protocols; however, it can be identified that the government is employing whole webpage bans if all the content is unfavorable to the government.
9. As of October 01, 2023, as per the Google Transparency Report<sup>9</sup>, 95 percent of all websites visited on Google Chrome have been encrypted with HTTPS. HTTPS is an internet safety protocol that encrypts access data therefore increasing the security of internet users; therefore, its use will continue to increase. In this regard, the government is arguing that it must employ whole webpage bans on 95 percent of all the web pages on the internet. Also, it must be noted again that modern websites are predominantly using HTTPS protocol in their encryption models.
10. But the government's arguments are diluting the real problem with the practice of whole webpage bans. The government is employing the practice of whole webpage bans against critical web news outlets, primarily claiming that the entire web page must be blocked in order to suspend the violations.

### WHOLE WEBPAGE BLOCKINGS IN TURKEY

11. MLSA believes that a clear distinction should be drawn between **bans/blockings to individual content/URLs** and **whole website bans/blockings**. Individual content blocking would block access to a certain content that is in violation of the law stored in the domain.
12. In practice, a certain URL, which enables to fetch a specific content from a domain, would be blocked and as a result, the violating content is removed from public access. This would result in the removal of only the violating content. Whereas in whole website blockings; entire domain is blocked; this would result in inaccessibility of non-violating content.
13. As an example; when there is a libelous video on YouTube. General practice is to block the access to the video and not to the YouTube itself. This "content ban" is exercised through blocking access to a certain URL which directly fetches the video. When that certain URL is blocked; only the violating video would be inaccessible but other videos on YouTube would stay accessible. Whereas in whole website bans, a domain is blocked. When a domain is blocked, both violating and non-violating content would be inaccessible. Such whole webpage blocking is similar to ban an entire newspaper whereas individual content blocking would be similar to removing a certain article on the newspaper.
14. In 2023, Free Web Turkey reported multiple cases where the whole web page had been blocked. The most notable cases were the ban of the Ekşi Sözlük site, which has been the leading forum in Turkey since its founding in 1999, and the ban on OnlyFans platform.
15. **February 8, 2023 - Access to Twitter has been banned** - After the devastating earthquake in southern Turkey; social media platforms have been filled with critical comments on the government's rescue efforts; at the same time the earthquake survivors were tweeting their location for rescue workers. On February 8, for 9.5 hours, access to all social media platforms was blocked

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<sup>6</sup> URL, Uniform Resource Locator, is a reference or address used to access resources on the internet. It provides a way to retrieve a specific piece of content or a webpage from the vast expanse of the World Wide Web. As an example youtube.com is considered a domain and youtube.com/watch?v=lzFUa7WmvUM is a URL that enables Access to a certain content (a video). Blocking of a URL would only disable access to a certain violating content (just one video) stored within the domain whereas when a domain is blocked such as youtube.com; all the videos stored on youtube.com would be inaccessible.

<sup>7</sup> HTTPS is a domain encryption protocol, that encrypts the communication within the computer network. Government argues that when a website uses this certain encryption model, it is no longer able to block just a single URL but it has to block an entire domain.

<sup>8</sup> Ibid para 23-25

<sup>9</sup> <https://transparencyreport.google.com/>

by the Informatics Authority. The blocking is thought to have led to an increase in the number of casualties.

16. MLSA filed a criminal complaint against mobile network operators and the executives of Informatics Authority (BTK) following the ban imposed on Twitter during the quake disaster. MLSA's criminal complaint against them included allegations of "misuse of public duty", "prevention of communication", "reckless killing" and "reckless injury".<sup>10</sup>
17. **February 21, 2023 - Ekşi Sözlük Banned**<sup>11</sup> - Access to the social media platform Ekşi Sözlük was blocked on the grounds of "protecting the presidency or national security and public order." According to information obtained by Independent Turkish's Gülseven Özkan<sup>12</sup> from BTK officials, Ekşi Sözlük was blocked on the grounds stated in Article 8/A of the Internet Law No. 5651. "According to information obtained from BTK officials, Ekşi Sözlük was blocked on the grounds of 'protection of the Presidency or national security and public order'," Özkan reported. Ekşi Sözlük was blocked by the Information and Communication Technologies Authority (BTK) on the evening of February 21. On Twitter, Ekşi Sözlük posted the following statement: "Hello, we have seen that there has been a decision to block access, but we do not have information about the details, we are trying to get information from the authorities, we will share it as we receive information." Journalist İsmail Saymaz also received a statement from Ekşi Sözlük administrator Başak Purut saying, "As of 21.00, the BTK imposed an access ban on Ekşi Sözlük. We have not received any decision. It was not possible for us to contact a BTK official."
18. Afterward, the Ankara Criminal Court of First Instance 4th Division annulled the blocking decision of the BTK; BTK objected to the ruling and Ankara Criminal Court of First Instance 5th Division vacated the judgment and the blocking stayed in place.
19. Ekşi Sözlük has been active since 1999; it is the longest-operating Turkish social media platform; it has 400,000 active users. The platform repeatedly said that it had complied with every content removal order and introduced new content regulation rules. The website is still inaccessible.
20. **March 08, 2023 - Istanbul Chamber of Taxi Tradesmen blocked access to Martı** - The Istanbul 14th Commercial Court of First Instance ruled to impose a temporary access ban on the mobile application and website of "Martı TAG" and "Martı Motorcycle" as part of the lawsuit filed by the Istanbul Chamber of Automobile Tradesmen, led by Eyüp Aksu, President of the Istanbul Chamber of Taxi Tradesmen. In the lawsuit petition submitted to the Istanbul 14th Commercial Court of First Instance by the lawyers of the Istanbul Chamber of Automobile Tradesmen in November, the defendant Martı İleri Teknoloji Anonim Şirketi claimed that the "Martı TAG" and "Martı Motorcycle" applications carried out illegal pirate transportation and demanded the detection and prevention of these acts that constitute unfair competition for taxi tradesmen. The Istanbul 14th Commercial Court of First Instance decided to impose a precautionary access ban on the mobile application and website of "Martı TAG" and "Martı Motosiklet". In its decision, the court stated that it was proven that the continuation of the Martı TAG and Martı Motorcycle application would cause serious harm to taxi drivers<sup>13</sup>.
21. **March 23, 2023 - Access to Red Flag blocked** Kızıl Bayrak newspaper's website kizilbayrak77.net was blocked from access by Van 2nd Criminal Judgeship of Peace on March 23. Kızıl Bayrak continues to publish on kizilbayrak78.net<sup>14</sup>. The justification was national security and public order.
22. **March 20, 2023 - Freedom of Expression Association's EngelliWeb Website Blocked** - The EngelliWeb page of the Association for Freedom of Expression (@ifadeorgtr), where more than 500

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<sup>10</sup> <https://balkaninsight.com/2023/02/10/turkish-ngo-sues-gsm-operators-authorities-over-social-media-ban/>

<sup>11</sup> <https://ifade.org.tr/engelliweb/eksi-sozluk-tekerr-erisime-engellendi/>

<sup>12</sup> <https://www.indyturk.com/node/612356/haber/ek%C5%9Fi-s%C3%B6zl%C3%BCk-neden-kapat%C4%B1ld%C4%B1>

<sup>13</sup> <https://www.freewebsite.com/istanbul-taksiciler-esnaf-odasi-martiya-erisimi-engellendi-emegimiz-olan-taksi-plakalarimiza-sonuna-kadar-sahip-cikacagiz/>

<sup>14</sup> <https://kizilbayrak77.net/ana-sayfa/haber/guncel/kizil-bayraka-erisim-engeli-11>

access ban announcements were made, was completely blocked from access with the decision of the Rize Criminal Judgeship of Peace dated March 20, 2023, and numbered 2023/1003 on the grounds of “*violation of personal rights*”<sup>15</sup>.

23. **April 6, 2023 - ETHA blocked for the 51st time** - Etkin News Agency's (ETHA) website etha51.com was banned from access by Diyarbakır 5th Criminal Judgeship of Peace on April 6. The agency continues to publish on etha52.com<sup>16</sup>.
24. **May 4, 2023 - Censorship of Yeni Demokrat Gençlik magazine's website** - Yeni Demokrat Gençlik magazine's website http://yenidemokratgenclik7.com was banned from access by the Adana 2nd Criminal Judgeship of Peace on May 4, 2023<sup>17</sup>.
25. **March 16, 2023 - Access ban on Komün Magazine** - Komün Dergi's website komundergi10.com was blocked by the Ankara 6th Criminal Judgeship of Peace on March 16. The magazine's previous domain name komundergi9.com was also blocked on February 28. The magazine continues to be published on komundergi11.com<sup>18</sup>.
26. **May 29, 2023 - Access to Jiangzaitoon blocked** - The website http://jiangzaitoon.io of Jiangzaitoon (@jiangzaitoon), which produces content on manga culture and publishes comics in Turkish, was blocked by the Information and Communication Technologies Authority (BTK) on May 29<sup>19</sup>.
27. **June 7, 2023 - Access blocked to OnlyFans** - The subscription-based social media platform #OnlyFans, which is mostly used by adult content producers, was blocked by the Istanbul 1st Criminal Judicature of Peace on June 7<sup>20</sup>.
28. **June 8, 2023 - Access ban on Gazete Patika** - Gazete Patika's website http://gazetepatika19.com was banned from access by Adana 4th Criminal Judgeship of Peace on June 8. The newspaper continues to publish on http://gazetepatika20.com<sup>21</sup>.
29. **August 15, 2023 - Access blocked to the European Democrat** - Avrupa Demokrat's website avrupademokrat2.com was blocked on August 15 by the Şanlıurfa 1st Criminal Judgeship of Peace upon the request of the Information and Communication Technologies Authority (BTK). The newspaper continues to publish on avrupademokrat3.com<sup>22</sup>.
30. **August 28, 2023 - Access to VOA Turkish blocked** - VOA Turkish's website voaturkce.com was blocked upon the request of the Radio and Television Supreme Council (RTÜK) for failing to obtain the necessary license. The decision was issued by the Ankara 9th Criminal Judgeship of Peace on August 28<sup>23</sup>.
31. **June 11, 2023 - Court of Cassation upholds decision: Access ban on Uber finalized** - The 11th Civil Chamber of the Court of Cassation upheld the decision to block access to #Uber, which provides private transportation services over the internet, and to ban it from Turkey on the grounds of 'unfair competition'<sup>24</sup>.
32. **October 5, 2023 - Access ban on the websites of five newspapers** - The websites of Gazete Patika, Kızıl Bayrak, Etkin News Agency (ETHA), Devrimci Demokrasi, and Komün Magazine were banned from access by four separate decisions of Ardahan Criminal Judgeship of Peace on October 5 on the grounds of "*protection of national security and public order*"<sup>25</sup>.

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<sup>15</sup> <https://ifade.org.tr/engelliweb/engelliweb-erisime-engellendi/>

<sup>16</sup> <https://twitter.com/etkinhaberajans/status/1644242230142459905>

<sup>17</sup> <https://twitter.com/FreeWebTurkey/status/1659824594117705732?s=20>

<sup>18</sup> [https://twitter.com/komun\\_dergi/status/1637378790853844997?s=20](https://twitter.com/komun_dergi/status/1637378790853844997?s=20)

<sup>19</sup> <https://twitter.com/jiangzaitoon/status/1658871749675450370?s=20>

<sup>20</sup> <https://twitter.com/FreeWebTurkey/status/1666523975445348352?s=20>

<sup>21</sup> <https://twitter.com/FreeWebTurkey/status/1667086206864064512?s=20>

<sup>22</sup> <https://twitter.com/FreeWebTurkey/status/1692076947826672002?s=20>

<sup>23</sup> <https://www.freewebturkey.com/sansur-gundemi-27-haziran-3-temmuz>

<sup>24</sup> <https://www.freewebturkey.com/yargitay-karari-onadi-ubere-erisim-engeli-getirilmesi-kesinlesti>

<sup>25</sup> <https://www.freewebturkey.com/sansur-gundemi-2-8-ekim>

33. Gazet Patika continues to publish at gazetepatika22.com; Kızıl Bayrak at kizilbayrak81.net; Devrimci Demokrasi at <http://devrimcidemokrasi3.org> ; ETHA at etha53.com. No information has yet been shared about the new address of Komün Dergi.
34. **October 4, 2023: E-sports news source HLTV blocked from access** - Half-Life Television (#HLTV), a news site and forum covering Counter-Strike: Global Offensive e-sports news, tournaments, and statistics, was blocked by the Information and Communication Technologies Authority (BTK) on October 4. The reason given was "*illegal betting*"<sup>26</sup>.
35. This was the second access block imposed on the platform. hltv.org, which has approximately 4 million unique visitors per month, was blocked on March 14, 2022, with the decision of the Spor Toto Organization Presidency. The access block was lifted at the end of March.
36. **In 2022, Free Web Turkey had identified 35,066 whole webpage blockings** in Turkey. The legal justifications for these bans are as follows:

<b>Violation of Personal Rights</b>	8
<b>Not obtaining a license to operate</b>	3
<b>National Security and Public Order</b>	53
<b>Terrorist Propaganda, Gambling, Financial Webpages, Adult Content</b>	35.002
<b>TOTAL</b>	35.066

37. The webpage bans on the grounds of "*national security and public order*" has been worrisome. This justification is being generally used against newspapers, news outlets, and in general opposition media. The following news sites have been fully blocked on the national security and public order; these news sites are generally known to be critical of the government and considered to be a part of "*Kurdish media*". Most of them are continuing their operation through updated domains.
38. The banned news outlets in 2022 are as following: Umut Gazetesi (Hope Newspaper); Kızıl Bayrak; Yeni Demokrasi, Yeni Yaşam, Xwebun, Alın Teri <sup>27</sup>; ETHA<sup>28</sup>, Gazete Yolculuk<sup>29</sup>, Siyasi Haber<sup>30</sup>, Özgür Gelecek Gazetesi<sup>31</sup>, Jinnews<sup>32</sup>, Kömün Dergi<sup>33</sup>, Socialist Middle East<sup>34</sup>, Kaldıraç<sup>35</sup>, Komünist KöZ<sup>36</sup>, Avrupa Demokrat<sup>37</sup>, Pirha<sup>38</sup>.

<sup>26</sup> <https://www.freewebturkey.com/sansur-gundemi-2-8-ekim>

<sup>27</sup> <https://ifade.org.tr/engelliweb/ocak-2022de-milli-guvenlik-ve-kamu-duzeninin-korunmasi-gerekcesiyle-erisime-engellenen-websiteleri/>

<sup>28</sup> <https://www.nethaberajansi.com/gercek-ve-objektif-haber-ajanslarindan-etha-ya-3-haftada-3-erisim-engeli-h12705.html>

<sup>29</sup> <https://twitter.com/FreeWebTurkey/status/1491375162348179457>

<sup>30</sup> <https://twitter.com/SiyasiHaberOrg/status/1501895698765209603>

<sup>31</sup> <https://gazetepatika18.com/ozgur-gelecek-gazetesinin-internet-sitesine-erisim-engeli-110315.html>

<sup>32</sup> <http://jinnews41.xyz/TUM-HABERLER/content/view/185561?page=2>

<sup>33</sup> <https://twitter.com/FreeWebTurkey/status/1531580779628830721>

<sup>34</sup> <https://twitter.com/SocialistEast/status/1546044739337732097?s=20&t=cp3SJoqdMBcP37rwOCdCfA>

<sup>35</sup> <https://twitter.com/kaldiracdergisi/status/1555132734200233986?t=XS43lc6ridTNw3WRiDPaPA&s=08>

<sup>36</sup> <https://twitter.com/KozGazete/status/1584252792243642368?s=20&t=5F06A7vvtucXdHsAQTzTEA>

<sup>37</sup>

<https://twitter.com/AvrupaDemokrat/status/1604872920450351105?s=20&t=agmlOYHFqWqYmObzQ4Np8w>

<sup>38</sup> <https://twitter.com/FreeWebTurkey/status/1501625388753108995>

## CONCLUSION AND RECOMMENDATIONS

39. The first step in this measure that should be taken is to demand more transparency from the government and related institutions, they should explain more clearly **the reasons and justifications for blocking access to host websites**, and share with the public the data on the blocked URLs.
40. The government must abolish the authority of BTK and other administrative authorities to block access to web pages. This authority should be exclusively left to the judiciary, not the executive. The government should be invited to start necessary legal reforms to promote internet freedom and abolish administrative infringements to freedom of expression.
41. The government also must adopt and implement new strategies to deal with the problem of websites that have HTTPS protocol. As explained in the first section, almost all of the internet websites have begun to use HTTPS protocol and if no new strategy is adopted, all these web pages will be subjected to whole website blockings.
42. MLSA and Free Web Turkey urges the Committee of Ministers to continue with the implementation of the cases of AHMET YILDIRIM v. Turkey and CENGİZ AND OTHERS v. Turkey (Application No. 3111/10 and 48226/10). **It should continue its enhanced review of these cases.**