

T.R.
ISTANBUL
ANADOLU 18TH CRIMINAL COURT
OF PEACE

MISCELLANEOUS DECISION

MISCELLANEOUS NO : 2014/98
JUDGE : REMZI OZDEMIR 32501
CLERK : MUHAMMET ICTEN 166732

OBJECTING PARTY : TWITTER INC.
ATTORNEY : GONENC GURKAYNAK, Citlenbik Sok. No. 12 Yildiz Mah.
Besiktas 34349 Istanbul

REQUEST : Reinstating access to www.twitter.com website
DATE OF REQUEST : 26.03.2014
DATE OF DECISION : 27.03.2014

The attorney of the objecting party objected to the rejection decision of Istanbul Anadolu 5th Criminal Court of Peace of 27.03.2014 with number 2014/231 Misc. and the lawsuit file, along with the petition are examined.

The complainants Binali Yildirim and Erkam Yildirim, through their lawyers, submitted their petition of 18.03.2014 to Istanbul Anadolu Criminal Court of Peace on duty and requested that access to the posts shared through Twitter account Hirsiza oy yok. @oyyokhirsiza which allegedly has content that constitute explicit violation of their personal rights and their personality thereby insulting the public officials ex officio by including misstatements be banned and that a letter to the Telecommunication Communications Authority be written.

Upon the request explained above, as per Article 9/3 of Law No. 5651, Istanbul Anadolu 5th Criminal Court of Peace decided with its decision of 18.03.2014 with number of 2014/181 Misc. to access ban of the addresses <http://twitter.com/oyyokhirsiza> and hirsizaoyyok.wordpress.com, without any examination and collection of evidence as to lawsuit, that the requesting parties' personal rights are violated as there are no finalized

judicial decisions on the allegations, that the contents exceed the limits of freedom of press, that there are accusations violating personal rights and that even mentioning the names of the requesting parties under a user account name “no votes for the thief” itself constitutes violation of rights.

Twitter, Inc., within the petition of March 26, 2014 submitted via its lawyer, stated in brief that Turkish laws cannot apply to the company whose server are outside the borders of the Republic of Turkey and who operate as a hosting provider, that the decision should be rendered regarding the most specific URL address, that otherwise, the precaution would be disproportional, that the content subject to the decision fall under the scope of media freedom and freedom of speech and requested that the decision be cancelled.

It is decided that requesting party Twitter, Inc. is the addressee of the relevant decision and incurs damages due to the decision, and that therefore it is entitled to object.

It is decided that the objection is submitted in due time as the request was submitted upon being informed of the decision and there is no document attesting service.

Freedom of speech and expression and right of spreading of the thoughts and opinions are fundamental rights and freedoms, which are under the Constitutional protection similar to all democratic countries. In this respect everyone has the right to express their thoughts and in all possible ways they wish. No one may be forced to express their thoughts and opinion for any reason and purpose and no one shall be censored or accused for that reason. Governmental bodies should avoid all acts and actions, which restrict such freedoms of people. Are these limitless? How these freedoms should be restricted? These questions should be responded with provisions of Constitution of Turkish Republic and international treaties which aim to respond these questions by jurisdictional rulings. With respect to this, restrictions may only be made by the laws within the scope of Constitution of Turkish Republic and international treaties, which are the superior norms, and with the prior condition which requires that the spirit of the right is protected and the right should not be abolished. For this reason, Law No 5651, which is applied to the case at hand, is enacted to regulate the broadcasts on the internet medium.

For the determination of restrictions of both provisions of Turkish Republic Constitution and restrictions of Article 9 of the Law No. 5651, violation of personal rights is necessary. The contents in the annexes of the requesting party's petition, which are claimed to be broadcasted by the Twitter user oyyokhirsiza, are not specific to the ones which are allegedly violating personal rights. Although the relevant court, which gave the decision, did not specify the contents, our court determined that these contents include claims of metaphors regarding the name of the claimant, increasing number of the ships of the navy company which is possessed by the former Minister of Transportation and his son due to the alleged corruption claims and that these claims are based on some information and sources when the contents are examined.

It is decided that the names chosen by the users, which may be considered nicknames used for their Twitter accounts, are not directed to a specific person and they are introductory information seen by all the users of the social media platform and that, if use of oyyokhirsiza account name were to be accepted as a violation of personal rights, this would lead to a result that it should be violating personal rights of all Twitter users and as the claimants are former minister who is now a candidate Mayor and his son, that they are political figures and their duties require public transparency and they should be subject to public controlling, that they should be more tolerant with these kinds of claims and comments and that their claim of violation of personal rights is not acceptable.

Even if, for a moment, we assume that the related contents are not correct and the contents are shared with the purpose of violating the personal rights of the claimant, as the contents are regarding corruption which constitutes public interest, and public interest should prevail private interest.

Article 9/3 of the Law No. 5651 states that the court may decide to access ban in accordance with the requests of persons whose personal rights are violated due to the content broadcasted on the internet medium under this article. Again, under Article 9/4 of the same law, there is a limitation set out as "access banning only the part, section, broadcast where the personal right violation occurs (URL, etc.)" where the illegality occurs. That means judges should have limits when determining the contents to be access banned.

In light of the foregoing, it is decided that the decision contrary to Constitution of Republic of Turkey, international human rights treaties and Law No. 5651, be cancelled per Article 268 and following articles of Criminal Procedure Law, upon examination.

PER CURIAM

Acceptance of the request and cancellation of the Istanbul Anadolu 5th Criminal Court of Peace's decision of 27.03.2014 with number of 2014/231 Misc. and

The decision be served on the objecting party,

Return of the file to the first degree court.

As a result of examining the file, it is finally decided according to Article 271 (4) Criminal Procedure Law No 5271. **27/03/2014.**