IN THE EUROPEAN COURT OF HUMAN RIGHTS
APP NO: 5568/20
BETWEEN:

Applicants	**Yaman AKDENIZ and Kerem ALTIPARMAK**
-v-	
Respondent Government	**TURKEY**

THIRD-PARTY INTERVENTION SUBMISSIONS BY ARTICLE 19

INTRODUCTION

1. This third-party intervention is submitted on behalf of ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19, the Intervener). The Intervener is an independent human rights organisation that works around the world to protect and promote the right to freedom of expression and the right to freedom of information. It monitors threats to freedom of expression in different regions of the world, as well as national and global trends and develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally.

2. The Intervener welcomes the opportunity to intervene as a third party in this case, by the leave of the President of the European Court, which was granted on 13 January 2021 pursuant to Rule 44 (3) of the Rules of Court. These submissions do not address the facts or merits of the applicants' case.

3. The present case raises the question of whether Internet users can claim to be the victims of an order to block access to news websites and news articles, as well as social media content in circumstances where: (i) they are deprived of access to information in the public interest, such as press coverage of state security forces operations in the fight against terrorism, and (ii) such alternative information does not exist in the mainstream media. Hence, the Intervener believes that the present case is significant because it offers an opportunity for the European Court to broaden the scope of those who can claim victim status in circumstances where they are prevented from accessing news coverage on matters of public interest online, including national security, as a result of overbroad blocking orders. This would also provide guidance for similar cases at domestic level. As such, it represents a test case for the protection of freedom of expression and opinion online in the context of terrorism in Turkey.

4. In these submissions, the Intervener addresses the following: (i) evidence of improper blocking of access to entire news websites and content on the basis of national security and its impact on the work of human rights organisations and bringing perpetrators of human rights violations to justice; (ii) international standards on access to information in the context of national security; (iii) the proper approach to the scope of victim status under Article 34 of the Convention in cases involving overbroad website blocking orders; and (iv) Article 18 in the context of Article 10 cases and the right to receive information in an environment which allows political pluralism and commentary as an integral part of the democratic process.

I. IMPACT AND CONTEXT OF WEBSITE BLOCKING ON FREEDOM OF EXPRESSION

5. At the outset, the Intervener wishes to draw the European Court's attention to Turkey's track record of over-blocking legitimate content online. Government overreach in this area has been

meticulously documented by IFÖD, an independent non-governmental organisation specialised in defending and promoting freedom of expression in Turkey.

6. In particular, IFÖD has produced a detailed report and recommendations for the Universal Periodic Review (UPR) on Turkey,[1] in which is documented an exponential increase of the number of blocked websites from Turkey since 2015. At the beginning of 2015, access to 80,553 websites was blocked from Turkey; by the end of 2018 this number had risen to 245,825; and by the end of October 2019, to 288,310 websites. Therefore, compared to when the UPR 2015 recommendations were made, the number of blocked websites from Turkey had risen by 358%. Further, over 48,000 URL[2] based blocking orders were issued since 2014, resulting in over 150,000 URLs blocked to protect individual rights such as reputation.

7. İFÖD also found that, as of 31 December 2019, a total of 16,358 news articles (URL- based) were blocked after an amendment to Turkey's Internet Law No. 5651 added violations of personal rights as an additional ground for website blocking in 2014. These URLs were blocked by 4,158 separate orders issued by 408 separate criminal judgeships of peace.[3] The majority of these decisions involved news which was critical of political leaders, the government and the governmental institutions of Turkey with claims of defamation which were not pursued further in criminal or civil courts of law. Therefore, İFÖD finds that access blocking is used as a permanent measure to silence critical news and content.

8. İFÖD further observed that Article 8/A of Law No. 5651 (concerning website blocking orders on grounds of national security, including at the request of the President of Turkey) usually targets Kurdish, left-wing news websites and several social media accounts and content associated with Kurdish journalists, dissidents and activists. Between 22 July 2015 and end of 2019, 397 separate 8/A decisions were issued by 19 different criminal judgeships of peace (10 of them Ankara based) blocking access to over 21,000 Internet addresses; among these were app. 2,000 websites, 3,000 Twitter accounts, 2,200 tweets and 674 news articles. Websites such as Dicle News Agency, Azadiya Welat, Özgür Gündem, Rudaw, RojNews, ANF and Jin News are regularly and repeatedly blocked, together with government opposition news websites such as Sendika.Org, OdaTV and Independent Turkish. Similarly, Article 8/A is regularly used to block access to news and content related to Turkey's military operations.

9. Online free encyclopaedia Wikipedia platform (wikipedia.org) was also among the websites blocked from Turkey with an Article 8/A decision since 29 April 2017. The order was issued by the Ankara 1st Criminal Judgeship of Peace upon the request of the Office of the Prime Minister. The reasoning of this order states that two articles published on Wikipedia contained terror-related content, including incitement to violence and crime and content threatening public order and national security. Appeals by Wikipedia and by its users were rejected and applications were made both at the Constitutional Court and the European Court levels.[4] The Constitutional Court of Turkey[5] subsequently held that the more than two-and-a-half-year access ban of Wikipedia in Turkey was unconstitutional.[6]

10. İFÖD concludes that the rise in censorship in Turkey has reached an alarming level. This is also evident in the annual transparency reports published by social media platforms. Strikingly worrying is the ranking of Turkey in Twitter Transparency Reports when compared with other countries. Since Twitter is primarily used for political debate and expression in Turkey, the total number of removal and withdrawal requests in terms of accounts and tweets is much higher than in Russia and France, its immediate followers in the rankings.

11. Apart from IFÖD, concerns about the scale of violations of freedom of expression and privacy online in Turkey have been raised by other organisations. In a recent report about Internet censorship in Turkey, the Electronic Frontier Foundation (EFF), notes, *inter alia*, that:

> Turkey's largest ISP [Internet Service provider], Türk Telekom, (of which the Turkish government owns 30%) had used deep packet inspection to redirect hundreds of users in Turkey to nation-state spyware when those users attempted to download certain apps… DPIs were being used to block political, journalistic, and human rights content... Türk Telekom uses deep packet inspection (DPI)

> tools to spy on users and extract not only "usernames and passwords from unencrypted traffic, but also their IP addresses, what sites they'd visited and when." These are just a tip of the iceberg of the real level of privacy and data protection in Turkey.[7]

12. Against this background, the Intervener respectfully invites the European Court to pay particular attention to the extent to which the Turkish government is fulfilling its obligations under the Convention to protect freedom of expression and in particular to ensure that a broad range of views is available in Turkey, including online.

Website blocking prevents the documentation of human rights abuses

13. Website blocking on national security grounds – as is often the case in Turkey – does not only prevent individuals from accessing information about topics on matters of public interest. It prevents civil society organisations, human rights researchers, investigative journalists and prosecutors from documenting human rights abuses and prosecuting them. Human Rights Watch (HRW) has published a report where it notes that the "value of social media content extends beyond judicial mechanisms and internationally mandated investigations to the work of civil society organizations and investigative journalists."[8] Moreover, "documentation by civil society organizations and the media, which often rely at least in part on content posted on social media, can play a crucial role in spurring national and international prosecutions or other forms of accountability and redress." Ultimately, HRW urged social media companies and other relevant stakeholders to launch a consultation process to determine the contours of an independent mechanism to preserve content and its metadata that may serve as evidence of serious international crimes.

14. Freedom House has also expressed similar concerns, ultimately ranking Turkey as Not Free in its 2020 report on Freedom on the Net. It notes, *inter alia*, that:

> Social media users reported issues in February 2020, when Turkish troops conducted an air strike in northern Syria. The connectivity issues lasted around 16 hours and were the result of the intermittent blocking of social media platforms and messaging applications. Telecommunications operators restricted access to Twitter, Facebook, and Instagram completely, while partially blocking access to WhatsApp and YouTube.9

15. The Intervener submits that website blocking and internet throttling are consistent with the Turkish government seeking to evade scrutiny from the media in the area of national security, particularly as it might involve significant human rights abuses.

II. INTERNATIONAL STANDARDS ON ACCESS TO INFORMATION AND NATIONAL SECURITY

Protection of the right to receive and impart information online

16. The importance of the Internet as a medium for sharing and disseminating ideas and information has been widely recognised at international and European levels. In his 2011 report on freedom of expression and the Internet, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur on FoE), noted that the Internet has become "one of the most powerful instruments for "...increasing access to information, and for facilitating active citizen participation in building democratic societies,"[10] and is "a key means by which individuals can exercise their right to freedom of expression."[11]

17. Similarly, the Joint Declaration on Freedom of Expression and the Internet – issued by the four special mandates on freedom of expression in June 2011 – stressed "the transformative nature of the Internet in terms of giving voice to billions of people around the world, of significantly enhancing their ability to access information and of enhancing pluralism and reporting."[12] It also advocated that greater attention be dedicated to "developing alternative, tailored approaches, which are adapted to the unique characteristics of the Internet, for responding to illegal content."[13]

18. In its General Comment No.34 on Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR), the UN Human Rights Committee also emphasised the importance of new information and communication technologies; it went on to urge State parties to take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.[14]

19. The right to receive and impart information can only ever be meaningful if individuals are exposed to a wide range of views. The paramount importance of media pluralism for the exercise of the right to freedom of information and the proper functioning of democracy has long been recognised. The Council of Europe's Committee of Ministers has stressed that:

> 1. Media freedom and pluralism are crucial components of the right to freedom of expression, as guaranteed by Article 10 of the Convention … They are central to the functioning of a democratic society as they help to ensure the availability and accessibility of diverse information and views, on the basis of which individuals can form and express their opinions and exchange information and ideas.
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> 2. The media play essential roles in democratic society, by widely disseminating information, ideas, analysis and opinions; acting as public watchdogs, and providing forums for public debate.[15]

20. Similarly, UNESCO has emphasised that:

> Media pluralism is essential for providing choice to the public among a mix of public, private and community media, and avoiding media concentration, which could restrict diversity of opinions and information in circulation. It also means offering a wide range of platforms (print, broadcast and online) and diversity of journalistic content.[16]

21. Media non-governmental organisations have also explained that "access to a plurality of editorial lines and analyses [is] essential for citizens to be able to confront ideas, to make their own informed choices and to conduct their life freely."[17]

22. Consistent with the above standards, this Court has previously held that "the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest."[18] Moreover, the Grand Chamber has emphasised that "there can be no democracy without pluralism," ultimately finding a violation of Article 10 of the Convention due to a State's failure to comply with its "positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective media pluralism."[19] More recently, this Court recognised that active users of YouTube could claim victim status in circumstances where they were unable to access the YouTube platform, which had been blocked entirely by the Turkish authorities.[20]

23. The Intervener submits that the importance of freedom of information and media pluralism discussed above justifies States being under a positive obligation to provide an effective remedy against overbroad/unnecessary website blocking.

The right to information in the context of national security

24. The UN Special Rapporteur on Counterterrorism has elaborated upon the threshold that laws relating to incitement to terrorism must meet in order to comply with international human rights law.[21] In particular, he has highlighted that for the offence of incitement to terrorism to comply with international human rights law, it (a) must be limited to incitement to conduct that is truly terrorist in nature; (b) must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language and avoid vague terms such as "glorifying" or "promoting" terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to intent to communicate a message and intent that this message incites the commission of a terrorist act.[22] This is particularly relevant in this case as the blocked internet material concerned operations conducted by Turkish security forces against the PKK and the Islamic State group. However, the blocked content is much broader

as websites such as Sendika.org and siyasihaber.org are among the blocked sites. With 16 separate decisions, Turkey blocked access to 671 addresses.[23]

25. By contrast, expression that only transmits information from or about an organisation that a government has declared threatens national security must not be restricted. Principle 8 of the Johannesburg Principles on Freedom of Expression and National Security provides as follows:

> Expression may not be prevented or punished merely because it transmits information issued by or about an organization that a government has declared threatens national security or a related interest.[24]

26. In this connection, the HR Committee has found that "the media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted."[25]

27. The Tshwane Principles on National Security and the Right to Information address the question of how to ensure public access to government information without jeopardising legitimate efforts to protect people from national security threats. The following principles are of particular relevance:

> 1. The public has a right of access to government information, including information from private entities that perform public functions or receive public funds. (Principle 1)
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> 2. It is up to the government to prove the necessity of restrictions on the right to information. (Principle 4)
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> 3. Governments may legitimately withhold information in narrowly defined areas, such as defence plans, weapons development, and the operations and sources used by intelligence services… (Principle 9)
>
> 4. But governments should never withhold information concerning violations of international human rights and humanitarian law, including information about the circumstances and perpetrators of torture and crimes against humanity, and the location of secret prisons. This includes information about past abuses under previous regimes, and any information they hold regarding violations committed by their own agents or by others. (Principle 10A) …
>
> 6. No government entity may be exempt from disclosure requirements—including security sector and intelligence authorities. The public also has a right to know about the existence of all security sector entities, the laws and regulations that govern them, and their budgets. (Principles 5 and 10C). …
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> 12. Governments should not be permitted to keep state secrets or other information confidential that prevents victims of human rights violations from seeking or obtaining a remedy for their violation. (Principle 30).[26]

29. The material set out above highlights the public's right to be informed of government activities and operations. Governments may only restrict the availability of such information on national security grounds when they can prove the necessity and proportionality of the restrictions imposed.

III. THE SCOPE OF VICTIM STATUS MUST BE BROADENED

30. One of the main questions in this case is whether the applicants, as internet users and university human rights and internet law experts, can legitimately claim to be victims of a violation of their Article 10 right to receive information in respect of the over 600 websites and social media accounts which were blocked on purported national security grounds.

31. The Intervener notes that the victim status requirement in Article 34 of the Convention implies that the applicant has been directly affected by the measure at issue.[27] Consequently, the

position of principle is that any person claiming to be the direct victim of a violation of one of the rights included in the Convention may bring a complaint to this Court either in person or through a duly-appointed representative, with the exclusion of any other individual who does not comply with this basic requirement. The Court has repeatedly stated that the interpretation of victim status is a broad and flexible one.[28] Victim status is liable to evolve "in light of conditions in contemporary society."[29] The victim status criterion "must be applied without excessive formalism."[30] In other words, it should not be applied in a "rigid, mechanical and inflexible way."[31]

32. This Court has previously established the criteria that must be applied in determining whether an applicant can claim victim status in the content of a blocking order. In the case of *Cengiz and Others v Turkey,*[32] that also included the present applicants and concerned a measure blocking and depriving the applicants' access to YouTube, the Court considered the following:

    a. Whether an applicant can claim to be the victim of a measure blocking access to a website depends on an assessment of the circumstances of each case;

    b. In particular, this includes the way in which the person concerned uses the website and the potential impact of the measure on them;

    c. The Internet has now become one of the main means by which individuals exercise their right to receive and impart information and ideas, providing as it does essential tools for participation in activities and discussions concerning political issues and issues of general interest;[33]

    d. The measure in issue blocked access to a website containing specific information of interest to the applicants that was not easily accessible by other means.

33. Although the Intervener welcomes these criteria, we find them insufficient to redress the fundamental imbalance of power between the State and individuals deprived of access to information. It is crucial that any laws which regulate and provide for the restriction of access to information online should clearly and accessibly define the circumstances which would justify such restrictions. It follows that any affected party should have the right to an effective remedy, allowing them to challenge the measure before an impartial body. Moreover, the Intervener recalls that an important consideration in guaranteeing access to information is whether those who seek to access information do so with the intention of informing the public in the capacity of a public 'watchdog.'"[34] The Court has previously reiterated that this function is not exclusive to the press or NGOs, and may also include bloggers and social media users.[35]

34. Further, in *Vladimir Kharitonov v. Russia*, which concerned the collateral blocking of websites, this Court recently emphasised that:

> [T]he law must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention, and indicate with sufficient clarity the scope of any discretion conferred on the competent authorities and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI; and *Ahmet Yıldırım*, cited above, §§ 57 and 59).[36]

    This Court further held that a Convention-compliant review should take into consideration the fact that **rendering large quantities of information inaccessible, substantially restricts the rights of Internet users and has a significant collateral effect**.[37] It is incompatible with the rule of law if the legal framework fails to establish safeguards capable of protecting individuals from excessive and arbitrary effects of blocking measures.

35. In *Khurshid Mustafa and Tarzibachi v. Sweden*,[38] this Court also took into account the fact that the applicants did not appear to have any alternative means of receiving the information

in question in ultimately finding a violation of the proportionality requirement under Article 10 of the Convention.

36. The Intervener draws the Court's attention to the severity and extent of website and social media restrictions in Turkey, as highlighted by İFÖD, EFF and Freedom House above. It is therefore of key importance that affected internet users are able to ascertain the legal basis for such measures and have an effective remedy available in the event that they wish to challenge them.

37. The Intervener further asserts that in cases where governments are found to have blocked access to websites and social media for reasons other than national security or for the limited aims provided for under Article 10(2), this will likely raise an issue under Article 18 of the Convention. In the seminal case of *Merabishivili v. Georgia*[39] the Court held the following:

> 288. Article 18 does not, however, serve merely to clarify the scope of those restriction clauses. It also expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous ... Therefore, as is also the position in regard to Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies...
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> 290. It further follows from the terms of Article 18 that a breach can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention ...
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> 291. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case ...[emphasis added]

38. In the case of *Navalnny v Russia*,[40] this Court found a violation of Article 18 (in conjunction with Articles 5 and 11) of the Convention on the grounds that the restrictions pursued an ulterior purpose, namely the suppression of political pluralism, stating the following:

> 175. [T]he restrictions imposed on the applicant … pursued an ulterior purpose within the meaning of Article 18 of the Convention, namely to suppress that political pluralism which forms part of "effective political democracy" governed by "the rule of law", both being concepts to which the Preamble to the Convention refers (see, *mutatis mutandis*, *Ždanoka v. Latvia* [GC], no. 58278/00, § 98, ECHR 2006-IV, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 147, ECHR 2016 (extracts)). As the Court has pointed out, notably in the context of Articles 10 and 11, pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids abuse of a dominant position (see, among other authorities, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63, Series A no. 44; *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 90, ECHR 2004-I; *Leyla Şahin*, cited above, § 108; and *Karácsony and Others*, cited above, § 147). [emphasis added]

39. The Court also came to a similar conclusion in finding a violation of Article 18 in the case of *Ilgar Mammadov v Azerbaijan*[41] in the context of an opposition politician critical of the Government, holding that his detention was linked to his blog posts and thus pursued only the ulterior purpose of silencing and punishing him for criticising the Government and attempting to disseminate information the Government was trying to hide.

40. In *Kavala v Turkey,* the Court has recently found a violation of Article 18 in conjunction with Article 5 para 1 of the Convention on the following grounds:

> 231. Indeed, at the core of the applicant's Article 18 complaint is his alleged persecution, not as a private individual, but as a human-rights defender and NGO activist. As such, the restriction in question would have affected not merely the applicant alone, or human-rights defenders and NGO activists, but the very essence of democracy as a means of organising society, in which individual freedom may only be limited in the general interest, that is, in the name of a "higher freedom"

> referred to in the travaux préparatoires (see *Navalnyy*, cited above, §§ 51 and 174). The Court considers that the ulterior purpose thus defined would attain significant gravity, especially in the light of the particular role of human-rights defenders (see paragraph 74-75 above) and non-governmental organisations in a pluralist democracy (see paragraph 76 above).
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> 232. In the light of above-mentioned elements, taken as a whole, the Court considers it to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, in view of the charges that were brought against the applicant, it considers that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders. In consequence, it concludes that the restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention.[42]

41. Importantly, in *Selahattin Demirtaş v. Turkey (no. 2*), the Grand Chamber of the Court found a violation of Article in conjunction with Article 5 18 of the Convention, on the basis that the applicant's detention pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate. The Court stipulated that

> [I]t has been established beyond reasonable doubt that the applicant's detention, especially during two crucial campaigns relating to the referendum and the presidential election, pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society.[43]

42. Case law from common law jurisdictions also provides examples of a broad interpretation of victim status, where it concerns restrictions to the right to receive information, to include for instance public spirited persons, social media users, and other members of the public.

43. For example, a broad approach has been taken to victim status in the United States where it concerns restrictions of the right to receive information. The US Supreme Court has held that the right to receive information is not limited to the press, but extends to (and can therefore be relied upon to challenge restrictions by) academics and members of the general public. Would be recipients of information have standing in their own right to challenge restraints on those wishing to disclose information. For example, in *Lamont v. Postmaster General*,[44] the Supreme Court struck down a provision of the Postal Service and Federal Employees Salary Act of 1962 that restricted access to communist propaganda after a challenge filed by members of the public. In *Kleindienst v. Mandel*, [45] professors who wished to hear, speak, and debate with a speaker that had been denied entry into the United States were able to challenge this restriction of their right to receive information. For the purpose of standing, it is not considered relevant that a restriction or injury is "shared by a large class of other possible litigants."[46]

44. The victim status of public-spirited citizens has also been acknowledged in the United Kingdom in *ETK v. News Group Newspapers*,[47] in which an individual who followed cases especially in the field of media law, intervened to apply to have the case heard in open court. The application was accepted and heard by the court (but refused).

45. It is clear from the case-law above that if the Court considers that Turkey's website blocking pursued a purpose other than one allowed for under Article 10 of the Convention, such as to stifle criticism of the government or controversial political coverage and commentary – this could well lead to a separate finding of a violation of Article 18.

46. The Intervener concludes that this Court's case law on victim status provides clear guidance on how it should approach the question of victim status in blocking cases. The Intervener submits that the extensive scope of the blocking orders in this case and the serious nature of the restrictions to the Article 10 rights, these blocking orders entail "exceptional circumstances" that warrant a broad interpretation of victim status. This is necessary in order to ensure the "practical and effective" enforcement of Convention rights. It is particularly important when the underlying information relates to political matters.

CONCLUSION

47. As noted earlier, this Court has recently stressed in *Cengiz and Others v. Turkey* that an applicant may claim victim status as regards their right to receive information under Article 10 due to internet restrictions. This depends on the way in which applicants use affected websites and the potential impact of the restrictions on them. The public's right to receive information online has been affirmed by the Court and other international experts, such as the UN Special Rapporteur, HRC and OSCE, given the Internet's vital function in facilitating active citizen participation in building democratic societies, particularly where there are no alternative means for accessing such information.

48. Moreover, as discussed by Human Rights Watch and iterated in the Tshwane Principles on National Security and Access to Information set out above, social media platforms and websites provide an invaluable resource for accountability and redress in the event of government sponsored human rights abuses. For that reason, the onus lies on the government to prove the necessity of restrictions on the right to information.

49. The situation in Turkey as regards media and internet freedom has been identified as particularly worrisome by organisations such as İFÖD, Human Rights Watch and the Electronic Frontier Foundation. The Grand Chamber has stressed that "there can be no democracy without pluralism," and that States have a "positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective media pluralism."[48]

50. In recent cases, the Court has found violations of Article 18 where governments were held to have been pursuing an ulterior purpose not allowed for under the Convention when restricting rights under Articles 5 and 11. In those cases, the Court emphasised the importance of political pluralism which forms an essential part of effective political democracy governed by the rule of law. This is especially crucial in the case of human rights defenders and activists, whose absence would affect "the very essence of democracy as a means of organising society" (*Kavala v Turkey*, cited above).

51. Given the paramount importance of freedom of information as a bastion of political pluralism in a democratic society, the relevant Government bears the burden of proving the necessity and proportionality of impugned restrictions. Governments must not be allowed to escape scrutiny, accountability or criticism by overreliance on the "national security" restriction provided for under Article 10 (2) of the Convention.

31 January 2021

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ARTICLE 19: Global Campaign for Freedom of Expression

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[1] See İFÖD, Number of Websites Blocked from Turkey Has Exponentially Risen Since 2015, 9 December 2019.
[2] (URL) - Uniform Resource Locator - the internet address for a website.
[3] See İFÖD, EngelliWeb 2019: An Iceberg of Unseen Internet Censorship in Turkey, August 2020, at https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf
[4] *Wikimedia Foundation v. Turkey*, App. No. 25479/19, communicated on 02 July 2019.
[5] *Wikimedia Foundation and Others*, App. No. 2017/22355, 26 December 2019.
[6] *Ibid.*
[7] EFF, Turkey Doubles Down on Violations of Digital Privacy and Free Expression, 4 November 2020.
[8] HRW, Video Unavailable" Social Media Platforms Remove Evidence of War Crimes, 10 September 2020.
[9] Freedom House, Freedom on the Net 2020 - Turkey, 31 May 2020.
[10] Report of the Special Rapporteur on FoE, Frank La Rue, A/HRC/17/27, 16 May 2011, para 2.
[11] *Ibid*., para 20.

[12] Joint declaration on freedom of expression and the Internet, signed by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information on 1 June 2011.
[13] *Ibid.*, para 1(d).
[14] General Comment 34, CCPR/C/GC/34, 11-29 July 2011, para 15.
[15] See MSI-MED (2016)09rev2, Recommendation of the Committee of Ministers to member states on media pluralism and transparency of media ownership.
[16] See UNESCO, Media Pluralism including the International Programme for the Development of Communication.
[17] See, e.g. RSF, Contribution to the EU public consultation on media pluralism and democracy, July 2016.
[18] *Ahmet Yıldırım v. Turkey*, App. No. 3111/10 (2012), para 54; *Times Newspapers Ltd (nos. 1 and 2) v. the United Kingdom*, App. Nos. 3002/03 and 23676/03 (2009), para 27.
[19] *Centro Europa 7 S.R.L. and Di Stefano v Italy,* App. no. 38433/09, (2012), paras. 129 and 156.
[20] *Cengiz and Others v Turkey*, App. Nos. 48226/10 and 14027/11 (2015), paras 54-55.
[21] UN Special Rapporteur on Counter-Terrorism, Ben Emmerson, A/HRC/31/65, para 24. A model offence of incitement to terrorism was also provided in A/HRC/16/51, paras 29-32; Article 5 of the Council of Europe's Convention on the Prevention of Terrorism on the "public provocation to commit acts of terrorism;" OSCE, Preventing Terrorism and Countering Violent Extremism and Radicalization that lead to terrorism: a community-policing approach, 2014, p. 42; or General Comment 34, *op.cit.*, para 46.
[22] *Ibid.*
[23] Namely, those were 171 websites, 24 news articles, 332 Twitter accounts, 76 tweets, 23 Facebook content, 31 YouTube videos and 14 other content.
[24] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996).
[25] General Comment No 34, *op.cit.*
[26] The Tshwane Principles, issued on 12 June 2013.
[27] *Amuur v. France*, App. No. 19776/92 (1996), para 36.
[28] *Michallef v Malta*, App. No. 17056/06 (2009), para 45; *Karner v. Austria*, App. No. 40016/98 (2003), para 25; Norris v Ireland, App. No. 10581/83 (1988).
[29] *Gorraiz Lizarraga and Others v Spain*, App. No. 62543/00 (2004), para 38.
[30] *Ibid.*
[31] *Michallef v Malta*, *op.cit.*, para 45; *Karner v. Austria*, App. No. 40016/98 (2003), para 25.
[32] *Cengiz and Others v. Turkey*, App. Nos. 48226/10 and 14027/11 (2015).
[33] *Ahmet Yıldırım*, *op.cit.*, para 54.
[34] *C.f. Magyar Helsinki Bizottsag v. Hungary* [GC], App. No. 18030/11 (2016), para 68.
[35] *Ibid.*
[36] *Vladimir Kharitonov v Russia,* App. No. 10795/14 (2020), para 37.
[37] *Ibid.,* paras 45-46; *OOO Flavus v Russia*, App. Nos. 12468/15 23489/15 19074/16 (2020).
[38] *Khurshid Mustafa and Tarzibachi v Sweden*, App. No. 23833/06 (2008).
[39] *Merabishvili v. Georgia* [GC], App. No. 72508/13 (2017), paras 287-317.
[40] *Navalnyy v. Russia* [GC], App. Nos. 29580/12 and 4 others (2018) and *Navalnyy v. Russia (no. 2)*, App. No. 43734/14 (2019).
[41] *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], App. No. 15172/13 (2019).
[42] *Kavala v Turkey*, App. No. 28749/18 (2019).
[43] *Selahattin Demirtaş v. Turkey (no. 2)*, App. No. 14305/17 (2018), para 273.
[44] The US Supreme Court, *Lamont v. Postmaster General*, 381 U.S. 301 (1965); Court of Appeal of England and Wales (UK), *ETK v. News Group Newspapers* [2011] EWCA Civ 439, para 3.
[45] The US Supreme Court, *Kleindienst v. Mandel*, 408 U.S. 753 (1972).
[46] Court of Appeals, Third Circuit (US), *Pansy v. Borough of Stroudsburg* (1994), 23 F.3d 772, p. 777.
[47] *ETK v. News Group Newspapers*, *op.cit.*, para 3.
[48] *Centro Europa* and *Di Stefano v Italy*, *op.cit.*