

CLIENT ALERT

INTELLECTUAL PROPERTY LAW | TÜRKİYE

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THE CONSTITUTIONAL COURT HAS ANNULLED CERTAIN AMENDMENTS TO THE INTERNET LAW

The Turkish Constitutional Court (the “**Court**”) has declared certain amendments made to the Law on the Regulation of Broadcasts via the Internet and Combatting Crimes Committed by the Means of Such Broadcasts numbered 5651 (also known as the “**Internet Law**”) unconstitutional. The Court partially annulled Article 8 and annulled Article 9 in full, determining them to be in violation of the presumption of innocence and freedom of the press, respectively.

The annulment decision, published in the Official Gazette dated 10.01.2024, primarily focused on the expanded authority granted to the President of the Information and Communication Technologies Authority (the “**President**”). To summarise the background of this matter, the amendment in Article 8 section 4 empowered the President not only to issue a 'blocking access' but also to make a 'content removal decision' and impose administrative fines for non-compliance when a crime under Article 8 section 1 of the Internet Law was committed. An amendment to Article 8 section 11 meant that, if the decision to remove content and/or block access is not followed, the President can impose administrative fines not only on the 'access provider' but also on the 'relevant content and hosting provider.'

The Court found this grant of power to the President contrary to the presumption of innocence, as it relies solely on the President's evaluation of a suspected crime in a specific case. The Court emphasised that this measure, while not a criminal punishment itself, is established upon the detection of a committed crime. According to the Court, the measure implemented by the President cannot be reviewed during the subsequent criminal investigation process. Furthermore, even if the legal proceedings result in a conviction other than imprisonment, the decision to remove the content continues to stand. In conclusion, the Court found that granting the President the authority to make unilateral decisions, not subject to challenge, and imposing fines for non-compliance would undermine the presumption of innocence. It is noteworthy to mention that the President's previous authority to block access remains intact, with only the access provider held responsible for failing to comply with the blocking access order.

The Court also annulled Article 9, which allowed individuals and entities to directly apply to a criminal judge of peace for the removal of content or to block access, claiming violations of personal rights due to internet publications. The Court stated that this article granted excessive discretion to judicial authorities, leading to unjustified abstract decisions that do not uphold the principle of adversarial proceedings, thus failing to maintain a fair balance between conflicting rights. The Court emphasised the need for a gradual protection system against attacks on personal rights while restricting internet content. The Court concluded that the failure to establish such a system would result in the indefinite prevention of access to certain internet content within the country's borders, contravening fundamental rights and freedoms guaranteed by the Constitution. As a result, the entire Article 9 was annulled, as its remaining clauses could not survive independently.

The Court, however, approved the amendment to Article 3 section 5, allowing the official notification of administrative fines to be sent via electronic mail or other means of communication when the addressee resides in a foreign country. According to the legislation, the Information and Communication Technologies Authority may send an official

notification of the administrative fine decision via email, starting the statutory period within five days of the email being delivered. The recipient's email address or other means of communication will be retrieved from the addressee's website using this method.

The annulment decision will come into effect nine months after its publication, i.e. on 10.10.2024. The Court has granted this period to allow Parliament enough time to introduce new legislation to address the void created by the annulment decision.



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