

***Another Patchwork Amendment to Turkish Internet Law***

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There has been a new amendment to the recent legislative proposal (“Proposal”) on amendment to the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Law No. 5651”), which is known as “Internet Law”. The amended Proposal is submitted to the Turkish Grand National Assembly (“TGNA”) on January 23, 2015.

The amended Proposal is currently pending at the TGNA’s Planning and Budget Commission’s (“Commission”) agenda and it is expected to be discussed at the Commission soon.

The amended Proposal introduces an Article to the Law No. 5651, i.e. Article 8/A, which may be subject to changes as it has not been enacted yet. You may find the latest original text of the amended Proposal at <http://www2.tbmm.gov.tr/d24/2/2-2616.pdf>.

Among the provisions the proposed article introduces, paragraph 3 of the proposed Article 8/A particularly and contradicts with laws. As of February 16, 2015, paragraph 3 of the proposed Article 8/A states that access ban decisions within the scope of the article shall be given by access ban to the content method, only for the part, section, broadcast where the personal right violation occurs (URL, etc.) and clarifies the scope of the access ban decision given under the first two paragraphs of the Article. However, the proposed provision also proposes that an entire website may be access banned in cases where it is technically possible to access ban the allegedly illegal content or the violation may not be prevented through access ban of the relevant content.

Access ban of an entire website for any reason, constitutes a serious intervention to freedom of speech and information since it will also result in access banning millions of contents millions of users share and it is clearly against the Constitutional Court’s recent decisions.

The Turkish Constitutional Court, which is the highest court in Turkish jurisdiction, rendered two important decisions in 2014 on this matter. In its decision rendered regarding the access ban of an entire Twitter website, the court states that: “Internet has an essential instrumental value for exhaustion of fundamental rights and freedoms, especially the freedom of expression in modern democracies. The social media ground the internet provides is indispensable for people to express, mutually share and disseminate their information and thoughts. Therefore, it is clear that the states and administrative authorities must be extremely sensitive in the regulation and practice for internet and social media instruments, which became one of the most effective and widespread methods to express thoughts.” (Constitutional Court Application No: 2014/3986 2.4.2014, S.39).

After emphasizing the special status of social media ground of the internet, the Constitutional Court also decided that access ban of entire Twitter violates freedom of expression, which is a fundamental human right by stating that: “Taking the rules of Law No. 5651 into

consideration, it is clear that the complete access ban by TK of the entire social media network twitter.com with millions of users, by overlapping the Court orders, which are shown as the basis for TIB's order, has no legal grounds, and the access ban of this social network with no legal grounds, and with an order of prohibition with vague limits is a serious intervention to freedom of expression, and it must be decided on a violation of the applicants' freedom of expression secured in Article 26 of the Constitution." (Constitutional Court Application no: 2014/3986 2.4.2014, S.48).

The Constitutional Court also certifies its position regarding the access ban of an entire website regarding the websites having countless URL addresses and content in its order regarding the access ban of an entire video sharing platform having millions of content under it. The Constitutional Court, in its decision, emphasized that access ban of an entire website having countless URL addresses also causes access ban of users or content, which have no relation to the contents subject to the order by stating that: "...without even searching for a less restrictive method, implementation of a general access ban to a great amount of URL address which is numerically incomparable and irrelevant to the contents subject to the measure, leads broadening the measure by access banning users who are not content providers or hosting providers of the contents which are subject to the order" (Constitutional Court Application no: 2014/4705 29.5.2014, p.61)

The Constitutional Court decided that access ban of entire website violates the freedom of expression, which is a fundamental human right by stating that: "...the administrative act which constitutes a serious intervention to freedom of speech of all the users of the website, is in violation of freedom of speech which is protected under Article 26 of the Constitution." (Constitutional Court Application no: 2014/4705 29.5.2014, p.64).

Moreover, the provision allowing the access ban of an entire website in certain situations paves the way for access ban of entire news websites or websites of national newspapers. Therefore, such provision will not just cause violation of freedom of speech and information; it also creates the possibility for violation of freedom of press.

As per Article 28 of the Constitution, "the press is free and cannot be censored". In case this sanction provided by paragraph 3 of Article 8/A is applied to a website having news related contents, dissemination of news will be ceased and the freedom of information will be excessively restricted.

Constitutional Court stated in its decision with case number 1996/70 and decision number 1997/53 that: "A distribution institution, whose distribution activity was ceased for a specific period, will not be able to distribute any published work for that period. Therefore, for readers to reach the news, their right to information will be removed for a specific period. Legislator cannot take precautions, which restrict or remove the freedom of press and freedom of information." The Constitutional Court further expresses that the penalty to cease distribution "conflicts with the purpose of providing right to information to the individual by obligating distribution" and "it cannot be defended that such a penalty, which is not in accordance with reaching the purpose, is necessary". Finally the Constitutional Court emphasized that "Excessive restriction of an individual's right to reach news even for a short period, conflicts with the necessities of a democratic social order."

Considering the foregoing legal framework, a provision, which may result in access ban of an entire website even it is for a short period, will result in restriction of freedom of expression in a way to create conflict with the necessities of a democratic society and will be against the Constitutional Court decisions. The proposed provision grants a wide authority to administration to intervene to the online contents, accordingly to freedom of speech and information, and to impose excessive administrative fines based on vague grounds, which may also make the new and current market players hesitate from investing in this jurisdiction.

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