

Turkey Regulates Broadcasting Services Provided Through the Internet

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I. Introduction

Turkey recently enacted an amendment to the Turkish radio and television legislation that will regulate radio, television and on-demand broadcasts provided through internet and have these services and their providers (media service providers and platform operators – please see their definitions under II) under the supervision and authority of the Radio and Television Supreme Council (“RTUK”). The amendment entered into force on March 28, 2018. Providers of radio, television and on-demand services through internet and platform operators transmitting these broadcasts will need to obtain a license from the RTUK as of this date.

The amendment does not only relate to local broadcasters in Turkey, but also concerns and covers foreign media service providers and platform operators targeting audience in Turkey, regardless of whether they provide their service and broadcasts in Turkish language.

This amendment was included in “the Draft Law Amending the Tax Law, Certain Laws and Certain Decrees”, which was enacted on March 21, 2018 with the law number 7103 (“Law No. 7103”) and published in the Official Gazette of March 28, 2018 and entered into force on the publication date. The amendment proposes addition of a new article (Article 29/A) to the Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Enterprises (“RT Law”) with the title “Broadcasting services through internet”.

This amendment had wide media coverage and created a serious public discussion throughout its legislative process. The initial text of this amendment was quite controversial and raised concerns as to whether RTUK will be vested with an authority to regulate, monitor and supervise all contents in the internet medium and to impose restrictions on social media websites, video

sharing platforms and other websites. By virtue of these discussions, the text of this amendment was subject to certain modifications before its enactment, in a way to make its scope clearer.

II. Legislation Prior to the Amendment

RT Law was previously not applicable to and RTUK did not have authority over broadcasts through internet. The scope of the RT Law covered the services that are provided by conventional broadcast entities operating under a license obtained from the RTUK who broadcast directly to customers, such as radio programs or television channels operating under an authorization obtained from RTUK.

RT Law defines media service providers under Article 3 as legal entities that have the editorial responsibility to choose content for radio, television and on-demand-broadcast services and who choose the way to regulate and broadcast these services. As per RT Law, media service providers are obliged to obtain broadcast license from RTUK to broadcast through means of terrestrial, satellite and cable transmissions. RT Law also defines platform operators as enterprises which transform multiple media services or multiple signals into one and provide their transmission, through satellite, cable and similar networks either in an encoded and/or decoded form that is accessible directly by viewers. As both definitions did not refer to broadcasts through internet and only refer to means of terrestrial, satellite or cable transmission, RTUK did not have authority over broadcasts through internet under the legislation.

However, now that the new amendment (Article 29/A) entered into force, RT Law is applicable to certain broadcasts through the internet.

III. Changes Introduced by the Amendment

According to first paragraph of Article 29/A of RT Law, which has been introduced by the recent amendment, even if the services are provided through internet, media service providers willing to broadcast their radio, television and on-demand broadcast services through internet are obliged to obtain a broadcasting license from RTUK and platform operators willing to transmit these

broadcasts are obliged to obtain broadcast transmission authorization from RTUK. The article also states that media service providers which have temporary broadcast right and/or broadcast license from RTUK (e.g. radio and television channels operating under a license and/or right issued by RTUK) may broadcast through Internet and in accordance with the RT Law and the Law No. 5651 on Regulation of Broadcasts via Internet and Prevention of Crimes Committed through Such Broadcasts (“Law No. 5651”). In other words, RTUK is now authorized to monitor such broadcasts and their contents, and decide on measures such as banning broadcasts or imposing monetary fines that are determined within the scope of RT Law.

The reasoning of the foregoing as explained in negotiation process of the amendment indicates that *“Due to technological developments in information technologies sector and the widespread use of broadband internet services, radio and television broadcasts started to gravitate to the internet. Special contents to be broadcasted through internet are also being produced frequently. Media service providers making licensed broadcasting through terrestrial, satellite and cable means started to broadcasting through internet at the same time. Additionally, many institutions that do not have a license obtained from RTUK began to broadcasting their radio and television contents through internet without permission.”*. Taking into account the reasoning and the letter of the law together, the main purpose behind this article appears to be to regulate institutions that are broadcasting through both conventional means and internet such Fox TV, CNN Turk or the institutions broadcasting radio and television contents through internet such as BluTV.

The second paragraph of Article 29/A states that, in the event that RTUK determines that broadcasting services of real persons or legal entities who do not have temporary broadcast right and/or broadcast license or whose broadcasting license has been cancelled are transmitted through internet, criminal judgements of peace may render a decision for removal and/or access ban of contents upon RTUK’s request. While the initially proposed version of second paragraph stated that criminal judgements of peace decisions shall be sent to Access Providers Union for execution, the final and published version of Article 29/A refers to Information and Communication Technologies Authority (“ICTA”) instead of Access Providers Union. Criminal judgement of peace judge shall render its decision within twenty four hours at the latest, without

hearing. However, it is still possible to appeal such decisions within the scope of provisions of the Turkish Code of Criminal Procedure. The article also refers to third and fifth paragraphs of Article 8/A of the Law No. 5651 which requires access ban decisions to be rendered regarding specific URL addresses and sets forth monetary fines for those who do not comply with access ban decisions, respectively.

The newly introduced Article 29/A further states that even if the content or hosting provider is in a foreign country, the foregoing principles and restrictions also apply to transmission of broadcasting services of platform operators or of media service providers that are under the jurisdiction of another country if RTUK determines these broadcasts to be in violation of RT Law, international treaties which the Republic of Turkey is a party to and RTUK's assigned position; and in terms of broadcasting institutions which broadcast in Turkish through internet targeting Turkey or in another language but targeting Turkey and including commercial broadcasts. The provision explicitly dictates that such entities are obliged to broadcast license if they fall under the definition of media service operators; or transmission authorization certificate if they fall under the definition of platform operators.

The initial text of Article 29/A (prior to modifications) consisted of four paragraphs. However, the latest published version includes an additional paragraph, which is the main change that is made on the amendment before it became effective. This additional paragraph (paragraph four) clarifies the concerns on the scope of this regulation and states that, notwithstanding, duties and authorizations of ICTA, individual communication cannot be considered within the scope of Article 29/A and platforms that are not dedicated to transmitting radio, television and on-demand broadcast services through internet medium and real persons and legal entities who only provide hosting services to radio, television and on-demand broadcast services shall not be considered as platform operators within the scope of this article.

The last and fifth paragraph of Article 29/A provides that RTUK and ICTA shall jointly issue a regulation that determines the procedures and principles regarding presentation of radio, television and on-demand broadcasting services through internet, transmission of such services,

broadcast license for the media service providers through internet, broadcasting transmission authorization for platform operators, monitoring of broadcasts and implementation of Article 29/A.

IV. Conclusion

The latest changes on the amendment certainly brought some degree of clarity to the scope of this provision and RTUK's authority over internet medium. Still, as the implementation and interpretation of this new article is yet unknown, all broadcasters and platforms whose services could fall under the scope of Article 29/A will need to assess whether this provision will be applicable to them, whether they would need to obtain a license from RTUK and adjust the contents of their broadcasts in line with the RT Law to avoid potential restrictions on or penalties related to their services in Turkey.

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