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40

**European
Court of Human
Rights says
Turkey's
YouTube
Ban Violated
Freedom of
Expression**



Highlights of this issue

Effective date of the provisions on comparative advertising is postponed to 31 December 2016

Banking: What's New?

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European Court of Human Rights says Turkey's YouTube Ban Violated Freedom of Expression

European Court of Human Rights (ECHR) ruled the Turkey's Youtube ban between 2008 and 2010 violated rights to receive and impart information and ideas under Article 10 of the European Convention on Human Rights (European Convention).

YouTube was blocked in Turkey from 5 May 2008 to 30 October 2010 on the grounds that the website contained ten videos which insulted the memory of Mustafa Kemal Atatürk, the founder of the Turkish Republic. Three academics applied to have the Criminal Court's decision set aside. However, the higher court ordered that the ban is legitimate and the applicants lacked capacity to sue, because they were not personally affected by the ban.

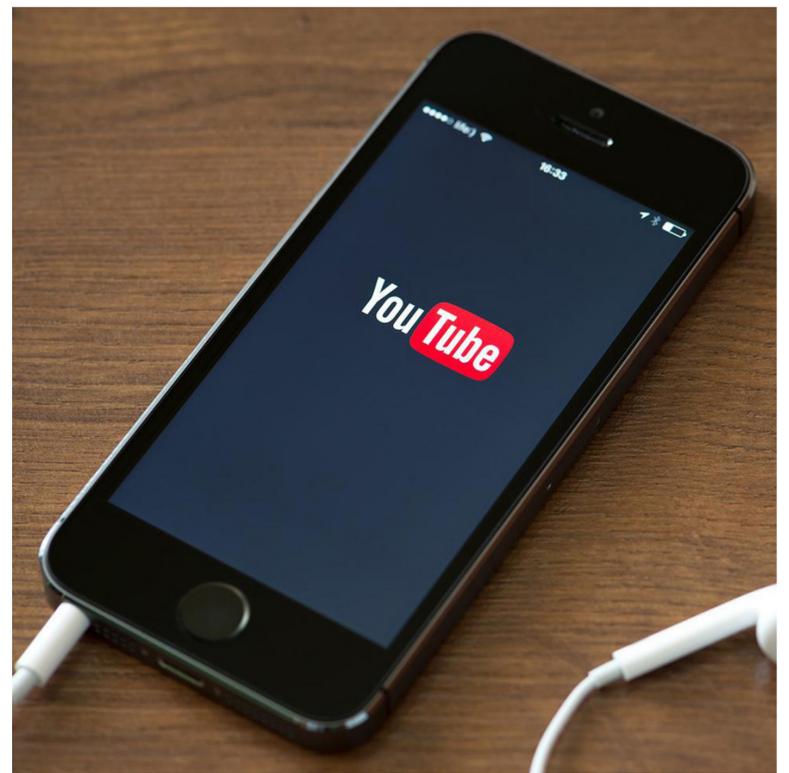
These academics then applied to the ECHR. The ECHR held that applicants had actively used YouTube for professional purposes particularly downloading or accessing videos within their academic work; hence they were affected by such ban.

ECHR considered that Turkey's YouTube ban violated rights to receive and impart information and ideas of all users not only the "applicants". The ECHR also emphasized the importance of citizen journalism. According to the ECHR, blocking access to YouTube is to ban to receive information.

ECHR noted that the YouTube platform enables broadcasting of information regarding specific interests, particularly about political and social matters. Therefore, it held that YouTube is an important source of communication and the blocking order precluded access to specific information which is unavailable via other means.

ECHR also noted there was no provision under Turkish law which allowed domestic courts to impose a blanket blocking order on an entire website. In particular Law no. 5651 (Law on Regulating the Publications Made on Internet Environment and Combating Crimes Committed through such Publications) did not authorize the blocking of access to an entire Internet site on account of one of its contents. Under section 8(1), a blocking order could only be imposed on a specific publication where there were grounds for suspecting an offence.

ECHR press release in English can be downloaded at the following link: <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-5241080-6502267&filename=Judgment%20Cengiz%20and%20Others%20v.%20Turkey%20-%20blocking%20of%20access%20to%20YouTube.pdf>



Effective date of the provisions on comparative advertising is postponed to 31 December 2016

As you may recall our previous issues, the conditions of the commercial advertisements are restructured with the Regulation on Commercial Advertising and Unfair Commercial Practices. The Regulation, which was prepared by the Ministry of Customs and Commerce was published in the Official Gazette on 10 January 2015, and came into force as of such date except its provisions on comparative advertising, which would be in effect after 1 year as of its publication (i.e. 10 January 2016).

However, an Amendment to the Regulation, which was published in the Official Gazette on 25 December 2015, postponed the effective date of the provisions on comparative advertising to 31 December 2016. So companies, who prefer a tough competition, have to wait for another one year.

Turkish version of the Amendment to the Regulation can be found at the following link:
<http://www.resmigazete.gov.tr/eskiler/2015/12/20151225-1.htm>



New disclosure requirement on intermediary e-commerce activities and other certain business activities

Tax Procedure Law General Communiqué series no. 464 was published in the Official Gazette on 24 December 2015. The Communiqué requires certain taxpayers to provide information to the Revenue Administration on e-commerce and other business activities starting from 1 July 2016 on a continuous basis.

Parties required to provide information

- Intermediary service providers (persons, who provide electronic environment for e-commerce activities of other persons),
- banks,
- online advertising intermediary service providers and
- certain cargo and logistic establishments.

Type of information to be provided

Abovementioned persons must provide the details of the service that they provide and the name of persons, who receive these services, together with their ID and tax numbers on a monthly basis.

E-archive system requirement

As you may recall, in our previous issues we mentioned that the taxpayers, who are involved in e-commerce business and have gross sales of minimum 5 million TL in their 2014 balance sheet, are required to register with the e-archive system until 1 January 2016.

Pursuant to this Communiqué, taxpayers, who are involved in e-commerce business and have gross sales of minimum 5 million TL in their balance sheets for 2015 and the following years, are required to register with the e-archive system.

Reporting Method

The format and standard to be used to submit related data shall be declared via BTRANS (Revenue Administration Information Transfer System).

Record Keeping Obligation

Taxpayers are required to store electronic data, which they are required to submit to the Revenue Administration pursuant to the Communiqué, for the same keeping periods which apply to company books, records and documents under the Tax Procedure Law.

Penalties

Taxpayers, who do not comply with these obligations defined under this Communiqué, shall be subject to penalties set forth in the Tax Procedure Law.



The Turkish language version of the Communiqué can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2015/12/20151224-7.htm>

BANKING

Changes to the Calculation of the Coverage Ratio of Banks' Liquidity

Regulation Amending the Regulation on the Calculation of the Coverage Ratio of Banks' Liquidity was published in the Official Gazette dated 20 January 2016 and will come into effect as of 31 March 2016. Some of the important changes introduced by the Regulation are, (i) the method of calculation of coverage ratio, (ii) features of high quality liquidity assets, (iii) first quality liquidity assets, (iv) 2B quality liquidity assets, (v) unsecured debts provided to the real persons and retail clients, (vi) considerations on cash-flow statement, (vii) irrevocable or contingent recoverable off-balance sheet liabilities and (viii) the annexes of the Regulation regarding term sheets on consolidated and unconsolidated liquidity coverage ratio.

The Turkish language text of the Regulation can be found at the following link: <http://www.resmigazete.gov.tr/eskiler/2016/01/20160120-2.htm>

For further information please contact us at contact@gokce.av.tr

Evaluation of Banks' Internal Systems and Capital Adequacy

A new regulation by the Banking Regulation and Supervision Agency on the Evaluation Process of Internal Systems and Capital Adequacy of Banks was published in the Official Gazette dated 20 January 2016 and will come into effect as of such date. With the amendment in Article 5(3) of such Regulation, the Board of Directors is now obliged to provide enough capital present for the application and institution of ISEDES (Process of Internal Capital Adequacy). In addition to that, an exception is regulated for the Bank's audit committee members -who were assigned by the Board among its members to carry out the supervision operation- on prohibition of taking role in a different commercial institute.

The Turkish language text of the Regulation can be found at the following link:

<http://www.resmigazete.gov.tr/eskiler/2016/01/20160120-1.htm>

Communiqué on the Techniques of Credit Risk Reduction

Communiqué Amending the Communiqué on the Techniques of Credit Risk Reduction by the Banking Regulation and Supervision Agency, was published in the Official Gazette dated 20 January 2016 and will come into effect as of 31 March 2016. Securities financing transactions definition and quantitative criterion on volatility approach based on internal estimation are changed by the Communiqué.

The Turkish language text of the Communiqué can be found at the following link.

<http://www.resmigazete.gov.tr/eskiler/2016/01/20160120-9.htm>

Accounting Practice and Financial Tables of Financial Leasing, Factoring and Financing Companies

A new Regulation on the Accounting Practice and Financial Tables of Financial Leasing, Factoring and Financing Companies was published in the Official Gazette dated 8 January 2016 and will come into effect as of such date.

Scope of the first and second group securities regarding company's receivables has been changed by the Regulation.

The Turkish language text of the Regulation can be found at the following link:

<http://www.resmigazete.gov.tr/eskiler/2016/01/20160108-2.htm>

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Answers. Not theories.

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About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

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