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In the Spotlight

Blocked Access to Twitter

Taking a very surprising step, access to Twitter from Turkey was blocked by the Presidency of Telecommunication and Communication (the Presidency) as of 20 March 2014.

The Twitter blockage created a serious public reaction. The Presidency made a press release that the government authorities had requested from Twitter to remove certain content due to several court decisions. These decisions were said to be rendered based on the grounds of "breach of personal rights" and "rights of privacy". According to the government officials, Twitter was "blamed" for remaining inactive to fulfill these requests by not honoring the court decisions; thus access to Twitter had been blocked by the Presidency

as a preliminary precaution. A considerable part of the Turkish community sees the blockage as a breach of their constitutional freedom of speech and communication rights. A large number of Turkish Twitter users by-pass the blockage by using VPN programs and changing DNS settings of their computers and smart phones.

As providing access to a "blocked website" is not defined as a "crime" under the Turkish Criminal Law; the authorities could not take any action so far against users who managed to by-pass the Twitter blockage. The blockage had considerable media coverage in local and international media. The US and the EU made public statements that such a government action clearly harms people's freedom in Turkey. Currently, the government has not taken any step back to end the blockage.

Friendly Reminder: Ordinary General Assembly Meetings

As per Articles 409 and 617 of the Turkish Commercial Code, ordinary (annual) general assembly meetings of companies are required to be held within three months as of the end of their

fiscal years. Based on the foregoing, general assembly meetings regarding 2013 should be held by the end of March 2014 for companies whose fiscal years ended on 31 December 2013.

Significant Changes to the Internet Law

Law on Regulating the Publications Made on Internet and Combating Crimes Committed through such Publications (Internet Law) was amended on 19 February 2014.

Some important changes in the Internet Law are as follows:

1- A content provider (a person/entity, who provides the content of an internet publication) and a hosting service provider (a person/entity, who hosts websites in its servers) must deliver any information requested by the Telecommunications Presidency (Presidency) and must take any precaution that is requested by the Presidency in this respect.

2- A hosting service provider and an access provider (an entity, who provide internet access to public) cannot avoid fulfilling any request for removing or restraining the content of the publication with their systems due to the reason of technical impossibility.

3- A hosting service provider must keep traffic information related to the hosting services for a certain period, which will be specified in the upcoming regulations. Such period shall not be less than a year and more than two years. A hosting service provider shall also assure accuracy, integrity and confidentiality of such information.

4- A hosting service provider, which does not notify the Presidency of its activities, or does



not comply with its requirements under the Internet Law, will be fined up to 10,000 Turkish Liras to 100,000 Turkish Liras.

5- An access provider, which does not comply with its requirements under the Internet Law, will be fined up to 10,000 Turkish Liras to 50,000 Turkish Liras.

6- Access Providers' Association (Association) is established for the purpose of enforcement of access restraining decisions except for the ones rendered for certain crimes prescribed in the Internet Law. An access restraining decisions, which is sent to the Association, is deemed to be served to the relevant access provider. The Association may object to an access restriction decision if such decision does not comply with the legislation. An access provider, which is not a member of the Association, is not permitted to operate in Turkey.

7- A public commercial usage provider (a person/entity, who provides access to a computer with an internet connection for a limited period of time such as internet cafes or hotels) must take any precautions, which will be determined by the upcoming regulations, in order to protect family and children, prevent crimes and spot criminals. A public commercial usage provider, which does not comply with its requirements in the Internet Law will be fined up to 1,000 Turkish Liras to 15,000 Turkish Liras and/or be imposed a penalty of suspension of commercial activities up to 3 days depending on degree of the violation.

8- An access restraining decision can be given for a limited period time if it is found that restraining the access of a limited period of time serves the aim of such decision.

9- Presidency may restrain access to a publication ex officio if such publication causes the in-currence of the following crimes: sexual abuse of children, obscenity and/or prostitution.

10- A person/entity, who/which claims a violation of his/her/its rights due to content of the publication published the internet environment, may apply to content provider requesting the restriction of access; in case of inability of accessing the content provider he/she/it may apply to the hosting provider for the same request. Alternatively, such person may directly request to suspension of access from Magistrate Court.

11- In the event that access restriction is requested due to a violation of rights, the court shall principally restrain access to the part or section (such as URL etc.) which violates such rights. Hence, a court shall not decide for restraining the access for whole website/URL unless it is necessary to do so.

12- If a court renders a restriction decision over a publication due to the violation of rights, such person/entity, whose rights are violated, may apply to the Association to have a restriction decision for the same or similar content in publications other than the one that is subject to the court's decision.

13- A person/entity, who claims that his/her/its right of privacy is violated by a publication, he/she/it may be directly apply to Presidency requesting it to take measures for restricting access to such publication. Such person/entity shall apply to a Magistrate Court requesting its approval to such measure within



period of 24 hours after submission of his/her/its request to the Presidency. The court shall submit its judgment on such measure within a period of 48 hours. Otherwise access restriction decision will be revoked automatically.

14- In case of a violation of the rights of privacy, access restriction decision may be given by the Presidency upon a direct order of the Telecommunications President provided that delay of rendering such decision will be harmful. Such decision must be submitted to Magistrate Court for approval within 24 hours and the court shall submit its judgment on such decision within a period of 48 hours.

15- Regulations relating the above matters, which will clarify the application the amended provisions of the Internet Law, will be published within a period of 4 months starting from 19 February 2014.

Newsfeed

Decision of the Constitutional Court with respect to the Urban Renewal Laws

The Constitutional Court (Court) has annulled a number of articles of the Law Regarding Renewal of the Territories under Risk of Natural Disaster with no. 6306 (Urban Renewal Law) on 27 February 2014. Provisions of some of the annulled articles are as follows:

- Immovables owned by state entities other than Treasury may be transferred to the Ministry of Environment and Urbanization (Ministry) or to the Housing Department Administration (TOKİ) at no cost upon request of the Ministry;
- Immovables other than the ones, which are under disaster risk, may be included in the scope of the Urban Renewal Law in order to maintain integrity of implementation;
- In case the demolition work of the immovable under disaster risk are carried out by the Ministry or the relevant municipality (or the provincial administration) the related directorate of land registry shall put in a lien over the immovable in favor of the Ministry or the relevant municipality (or the provincial administration) with respect to the demolition expenses; and
- The state is entitled to arrange negotiated tendering process for any purchase of goods and services

es for any work to be conducted within the scope of the Urban Renewal Law.

Along with the annulment decision, the Court also has ruled for the suspension of effectiveness with respect to the articles provisions of which are as follows:

- The constructions within the scope of the Urban Renewal Law shall not be subject to any restriction or limitation stemming from the Zoning Law or any other related legislation,
- The Urban Renewal Law shall prevail over the other laws e.g. Coastal Law, Pasture Law, Soil Preservation and Land Use Law and Protection of Cultural and Natural Properties Law,
- Suspension of enforcement against the administrative actions conducted within the scope of the Urban Renewal Law is not permitted.

The Turkish language text of the Decree can be found at the following link: Annulment Decision: <http://www.anayasa.gov.tr/Gundem/Detay/549/549.pdf> Suspension of Effectiveness: <http://www.resmigazete.gov.tr/eskiler/2014/03/20140301-9.htm>

Changes to Qualifications for Companies Subject to External Audit

The decree amending the decree on companies subject to external audit was published in the Official Gazette dated 14 March 2014 and entered into force to be effective as of 1 January 2014.

There are certain criteria required for companies to be subject to external audit. Such criteria is changed with the Decree as follows; (i) total assets of companies is equal to or more than TL 75 million, (ii) annual net sale rev-

enues is equal to or more than TL 150 million, (iii) number of employees is equal to or more than 250. Companies which satisfy at least two of the aforementioned criteria will be subject to external audit.

In accordance with the Capital Market Law, subjected companies to regulation and supervision to the Capital Market Board, "Joint-Stock Companies which issue capital market instruments to sell qualified investors except the share" has been added.

"Joint stock companies issuing capital market instruments (other than shares) to be sold to qualified investors" is included among the companies subject to the regulation and audit of Capital Markets Board in line with the Capital Markets Law.



The phrase "Istanbul Gold Exchange" mentioned in "authorized institutions, intermediary firms of precious metal, joint stock companies engaged in the production or trade of precious metal which are authorized to act as a member of the Istanbul Gold Exchange", is changed to "Istanbul Stock Exchange".

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

<http://www.resmigazete.gov.tr/eskiler/2014/03/20140314-9-1.pdf>

Banking Regulation and Supervision Agency Decision

The Banking Regulation and Supervision Agency decided to revoke the operation permit of Citilease Finansal Kiralama A.S., upon the company's request, with its decision dated 6 March 2014 and numbered 5750.

Competition Board Decisions

- The Competition Board granted exemption to the Bonus Credit Card Program Share

Agreement entered into between Türkiye Garanti Bankası A.S. and Fibabanka A.S. by its decision dated 19 February 2014 and numbered 14-07/149-64.

- The Competition Board approved the acquisition by Malaysia Airports Holdings Berhad through its subsidiary Malaysia Airports MSC Sdn Bhd - of 40% of the shares of Istanbul Sabiha Gökçen Uluslararası Havalimanı Yatırım Yapım ve İşletme A.S. and LGM Havalimanı İşletmeleri Ticaret ve Turizm A.S. from Limak Group joint venture by its decision dated 12 February 2014 and numbered 14-06/113-52.



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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