

Gökçe –

Objection!

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05

**PROVIDING UNJUST BENEFITS
THROUGH THE INTERVENTION TO
INFORMATION SYSTEM**



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Information Technologies had made essential alterations in almost every aspect and area of our lives. Along with those solid changes, appearance of new crime definitions had become inevitable. One of those newly aroused crimes is “hindrance or destruction of the system, deletion or alteration of data” designated under the heading of cybercrimes in Article 244 of the Turkish Criminal Code numbered 5237 (TCC).

The acts constitute the aforementioned crime are as follows: (i) blocking of an information system’s activity with outside intervention; (ii) ruining the activity of thereto till it cannot function anymore; (iii) ruining the content or configuration of the data in the information system by an alien intervention; (iv) destroying the system wholly; (v) modifying the system; (vi) rendering the system’s status inaccessible; and (vii) placing additional data to the system or sending the existing data outside.

By committing the aforementioned acts, inter alia, in case the perpetrator had gained unjust benefit either on behalf of herself/himself or anyone, the acts as such are more severely punished in accordance with Article 244/4 of the TCC, unless the aforementioned acts do not constitute such another crime. However, as a consequence, there has to be a solid damage in regard of the victim or sufferer. Besides, there exists a gap in the TCC as to whether this damage is material or moral.

Everyone committing the aforesaid acts who gains unjust benefit could be a perpetrator in such crime. However, unless the legal entity suffer damage, they could be considered as the “injured party as a result of crime”, but it is not possible for the legal entities as being “perpetrator”. However, it is stipulated that it is only possible to implement the security measures for the crimes committed within the legal entities in accordance with the principle of individual criminal liability.

In practice, the crime of providing unjust benefits through the intervention to information system or data is aroused as money transfers from bank accounts of the individuals after obtaining the internet banking passwords of them. At this point, it should be noted that this crime is confused with fraud and theft. The main point distinguishes the aforesaid crime from fraud is that there is no fraudulent act addressed to individuals while providing unjust benefits.

For instance, the Court of Appeals ruled that the following act of an employee falls within the scope of the TCC 244/4: transferring money by obtaining the company’s internet banking password to her/his bank account opened with fake ID information.

The Article 244/4 of TCC has a very limited application area. The primary reason for such limited application is that its distinction with theft or fraud is not certain and clear. However, direct definition of the crimes in this context and prioritization of the crimes in practice are the vital requirements of our age along with the development of information technologies.

Answers. Not theories.

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