

COVID-19: Evaluation of Acting Contrary to the Measures Taken Under Covid-19 within Criminal and Administrative Sanctions

Introduction

The Covid-19 Coronavirus (**Covid-19**) outbreak, which emerged in Wuhan, China in December 2019, showing its effect worldwide and has been declared as a pandemic by the World Health Organization because of its “not being exposed to it before, causative factors that are likely to infect humans and cause a dangerous disease, and the continuous and easy spread of the disease” features, has become the most important problem of nowadays. The rapid spread of this virus caused both a global crisis and the deaths of thousands of people. Accordingly, in order to recover from the negative effects of the virus and put social life in order, a forced quarantine and certain mandatory and restricting measures in order to control the spread of the virus started to be implemented in many countries worldwide. As a matter of fact, such implementations and measures are in progress in many countries. At this stage, since the first case was diagnosed in Turkey, the measures taken in order to prevent and control the spread of the virus are on the rise. This situation has led to the question of whether people will be subject to legal consequences and criminal sanctions if they do not act in accordance with the measures taken.

Which diseases are within the scope of “Infectious Disease” in terms of “The Crime of Acting Contrary to the Measures relating to Infectious Diseases” stipulated by the Article 195 of Turkish Penal Code?

In our opinion, the most important provision to be evaluated in relation to this question is the crime of acting contrary to the measures relating to infectious diseases regulated in article 195 of the Turkish Penal Code. The crime in question was stipulated as “Any person who fails to comply with the quarantine measures imposed by the authorities on account of there being a person caught one of the infectious diseases or died from such, shall be sentenced to imprisonment for a terms of two months to a year”. In this context, not complying with the measures taken by the competent authorities for the quarantined place where being a person infected with contagious diseases or died from these diseases is defined as a crime. By this way, this provision aims to protect the public health.

What should be understood from the term, infectious disease in the law?

Infectious diseases are diseases caused by certain organisms that enter the human body. This type of diseases turns into an epidemic in a short period of time, in the event that a certain portion of the population is infected and the number of people getting infected rises in an unpredictable way. In this regard, when both its spreading rate and its local and global impact are evaluated, Covid-19 is evaluated within the scope of the “infectious disease” in the mentioned article of Turkish Penal Code, and those who do not comply with the measures taken by the competent authorities to prevent the spread of the Covid-19 outbreak, will have committed this crime.

Which measures are covered by this crime?

Pursuant to the article of law referred to above, the competent authorities have been granted a broad authority to regulate regulations, circulars and instructions and all measures aimed at preventing and stopping the spread of infectious disease are counted within this scope. However, it should be emphasized that in order for this crime to be the case, the measure that an individual fails to comply should be a measure regarding quarantined place where a

person anyone who has caught one of the infectious diseases or died from such. In other words, the violated measure should be taken upon the determination that the person is infected with one of the infectious diseases or his/her cause of death is this infectious disease. Therefore, for example, the curfew imposed by the Ministry of Interior Affairs on 21 March 2020 for people over 65 years of age or with chronic disease, is a general measure to prevent the spread, thus potential carriers of disease acting contrary to this measure is not considered within the scope of the crime in question. On the other hand, for example, if the workplace is quarantined upon the infection of one of the employees working in a workplace, those who do not comply with the measure and continue to go to the workplace may be liable for within the scope of this crime. Also for the individuals who came from abroad and do not comply with the quarantine measures taken after a health check at the airports, will be liable within the scope of this crime.

Does this crime cover the situation of spreading of the virus as a result of a violation of the measures?

The crime of acting contrary the measures relating to infectious diseases only imposes to individuals violating aforementioned measures. Therefore, it is not within the scope of this crime that a person spreads the disease to another one.

What sanction under Turkish Penal Code stipulates for the “Crime of Acting Contrary” the measures taken in relation to infectious diseases covered?

The sanction of the crime of acting contrary to the measures taken in relation to infectious diseases is determined as a prison sentence for a period of two months to one year in Turkish Penal Code. A complaint is not required for an investigation; therefore an investigation is initiated by the Prosecutor's Office ex-officio, about the persons who committed this crime. Although, in the current practice, the form signed after the quarantine for potential carriers is given a warning that “if the measures taken are not implemented, an investigation will be initiated for this crime”, in order for this crime to occur, it is necessary to determine that a person is infected with the disease or that the cause of death is from this disease. In this regard, this crime will not occur in case of a violation of general and preventive measures.

Can administrative sanctions be imposed on individuals in the event of acting contrary to the general measures?

As mentioned in detail above, the conditions for Article 195 are regulated under Turkish Penal Code, and the subject of this crime is the measures taken upon the determination of a person has infectious disease or that the cause of his death is this disease. However, persons may face administrative sanctions under the Misdemeanour Law and the Law on Public Hygiene in case of a violation of the general measures taken to protect public health. As it is known, with the first official diagnosis of the virus in Turkey to this stage, the measures taken in order to prevent and control the spread of the virus has been increasing.

In this context, the paragraph C of Article 11 of the Law for Provincial Administration sets forth that, “The Governor, may limit the entry or exit of certain places for everyone or people suspected to disrupt the public order for fifteen days, in the event of public order being disrupted or in case of serious indications that public order will be disrupted resulting to disrupt or suspend the ordinary life; may regulate or restrict the movement, gather of individuals, navigation of vehicles in certain places or hours, and may prohibit the transportation of any kind of weapon or projectile, even if it is licensed.”. In this way, it is

envisaged that governors may take measures to restrict the movement of individuals in certain places and hours if public order is disrupted or there is a possibility of disruption in a

way to stop ordinary life. In connection with this article, article 27 of the Law on Public Hygiene sets forth that the measures in question can be applied in case infectious diseases occur.

At the current stage in our country, in accordance with the recommendations of the Ministry of Health and the Science Board, the Ministry of Interior Affairs issued a curfew on individuals that are 65 years of age and older and with chronic disease with the circular dated 22 March 2020. Later on with the additional circular dated 3 April 2020, it is regulated to enforce this ban for the individuals born after 01.01.2000 (Under 20 years of age). This situation brings the question of what consequences would occur in case the curfew was violated.

With these circulars, governorships are authorized to implement the decisions and to determine the amount of administrative fines in case of a violation. Accordingly, considering the decisions taken by the governorships in accordance with the circular, in case of violation of such preventive and general measures such as curfew, suspension of entry and exit to metropolitan cities, obligation to wear masks and obligation to maintain social distance, an administrative fine of 3,150.00-TL will be imposed on the individuals for each violation. Therefore, those who violate these measures may face an administrative sanction in accordance with both the Law on Public Hygiene and the Misdemeanour Law.

Are there any exceptions to the curfew?

With the circular regulated by Ministry of Internal Affairs dated 5 April 2020, the individuals born between 01 January 2000-01 January 2002 (18-20 years of age) who meet one of the following conditions will be exempted from the curfew; the individual who is an officer in public institutions, who is a contracted employee or employed in private sector and documents it with a certificate of a social security, who has an important function in terms of the continuity of agricultural production or the seasonal agricultural workers whose travel and accommodation conditions are planned.

Are there any exceptions to the measure to suspend the entries-exits to metropole cities?

The circular dated 3 April 2020 issued by the Ministry of Interior decided to suspend all entrances and exits for 30 provinces (Adana, Ankara, Antalya, Aydın, Balıkesir, Bursa, Denizli, Diyarbakır, Erzurum, Eskişehir, Gaziantep, Hatay, İstanbul, İzmir, Kahramanmaraş, Kayseri, Kocaeli, Konya, Malatya, Manisa, Mardin, Mersin, Muğla, Ordu, Sakarya, Samsun, Şanlıurfa, Tekirdağ, Trabzon, Van) in metropolitan status and for Zonguldak province for a period of 15 days.

That being said;

- Individuals who are responsible for the logistics, production and transportation of products and/or materials required for the continuity of all commercial activities, especially basic necessities (food/cleaning, etc.) and pharmaceutical and medical materials, within the scope of domestic and international transportation,
- Individuals who carry out commercial freight/passenger transportation domestically and international freight transportation,
- Individuals who are in charge of the transportation and production of the material needed by the energy supply in the natural gas, electricity and oil sector,

- Managers, employees or business owners with different residences and workplaces,
- Individuals in charge of ensuring the continuity of public service, especially health and safety services, and
- In addition, individuals working in other sectors whose included by the decision of Provincial Public Sanitation Boards in line with the suggestions of the “Provincial Pandemic Committees” gathered with the participation of the relevant professional organizations (trade and / or industry, tradesmen and agricultural chambers etc.) under the chairmanship of the governors

will be able to enter/exit to the provinces provided that they have the documents proving the qualifications listed above in detail and present them to the authorized persons when necessary.

Conclusion

As explained above, within the scope of the current legislation, measures such as partial or general provincial curfew, suspension of entry and exit to metropolitan cities, and obligation to wear masks can be applied by the governorships. However, violation of these measures shall not constitute the crime of violation of the measures related to infectious diseases laid down in Article 195 of the Turkish Penal Code. In order for this crime to occur, the measure that the individual is violating should be a measure to quarantine the place where someone who has been infected or died from this infectious disease. On the other hand, in case of violation of general and preventive measures, individuals may be obliged to pay an administrative fine determined by the governorships.

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