

Gökçe

# Objection!

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## CRIMINAL LAW REGULATIONS IN SCOPE OF THE “LAW NO. 5651”



## **CRIMINAL LAW REGULATIONS IN SCOPE OF THE “LAW NO. 5651”**

In our country, until 2007, various interventions on internet content were made on the basis of decisions taken under the Turkish Criminal Code, the Law on The Establishment of Radio and Television Enterprises and Their Media Services (**RTUK Law**) and the Press Law or under certain regulations. In 2007, the Law on the Regulation of Broadcasts via Internet and Fight Against Crimes Committed Through Such Broadcasts (**Law**) was enacted. All detailed regulations regarding the internet are covered by this Law. Subjects on the Internet under this Law, categorized as hosting provider, content provider and access provider and their roles are separated from one another. Although certain penal regulations were made under the Law before 29.07.2020, with the last amendment; criminal liability of content, hosting and access providers are strictly determined.

### **What should be understood from the concepts of content, hosting and access provider under the law?**

Within the scope of the Law, content provider refers to real or legal person creating, modifying and providing all kinds of information or data presented to the users on the internet. Hosting provider refers to real or natural persons providing or operating systems hosting services and content. The main difference between these two concepts is that the content provider plays an active role in creating the content while the hosting provider only provides or operates the system necessary for the content to be hosted.

In addition, an access provider refers to real or legal person providing its users with access to the internet environment. In this context, the operators that provide internet access to their subscribed users are considered within this scope. Finally, with the amendment dated 29.07.2020, the concept of social network provider was introduced into the Law. Thus, an internet subject is allowed to be evaluated as both a social network provider and a content or hosting provider at the same time on a case-by-case basis.

### **What are the regulations in the criminal law before the amendment dated 29.07.2020?**

Primarily, Article 10 of the Regulation on the Procedures and Principles Regarding the Regulation of Internet Broadcasts (**Regulation**), which entered into force after being published in the Official Gazette dated 30.11.2007, sets forth the removal of the content of the broadcasts made on the internet and violating the rights of individuals and it also stipulates the right to response.

Failure to comply with the decision of the Criminal Peace Judgeship is considered a crime within the scope of Article 11 of the Regulation.

Furthermore, during the same time, the catalog crimes referred to in the first paragraph of Article 8 of the Law, were established. With this regulation, it has been pointed out that access to a broadcast on the internet may be blocked if there is sufficient suspicion that the content constitutes one of the crimes herein: (a) crimes set forth under Turkish Criminal Code: provocation for committing suicide; sexual harassment of children; to ease the usage of drugs; supplying drugs which are dangerous for health; obscenity; prostitution; to provide place and opportunity for gambling; (b) crimes in the Law on Crimes Committed Against Atatürk and (c) crimes in the Law on Betting Activities Related to Soccer and Other Sports Matches.

Subsequently, paragraph 10 of the same article introduced the following regulation to be imposed only for hosting and access providers: “If the person responsible for hosting or access provider fails to comply with the access blocking decision given as a protection measure is sentenced to imprisonment from six months to two years, unless the crime does not necessitate a heavier penalty.”

After 2007, especially in 2015 and 2016, there were critical amendments in the mentioned law. In the period before 29.07.2020, the principles of certain criminal regulations have been set out within the scope of the Law. With the Emergency Decree Law dated 15.08.2016, under the paragraph 4 of Article 8/A of the Law, the following regulation has been made: “The President shall make a denunciation to the Public Prosecutor’s Office against those who create and disseminate the internet content subject to the crime within the scope of this article. The information required in order to reach out to the perpetrators of these crimes shall be submitted to the judicial authorities by the content, hosting and access providers upon the judicial decision. Those responsible for content, hosting and access providers who do not provide the information shall be punished with a judicial fine from three thousand up to ten thousand days, unless the crime does not necessity a heavier penalty.” Subsequently, it was fully adopted and added to the Law. Under this regulation, the obligation of content, hosting and access providers to share with the judicial authorities the personal information of persons committing illegal activities is enforced. If such information is not provided, judicial fine from three thousand up to ten thousand days shall be imposed. Thus, it is aimed to prevent the commission of crimes in the internet environment and to ensure public order by imposing an obligation to the President of the Information and Communication Technologies Authority to file a criminal complaint to the Public Prosecutor’s Office regarding the perpetrators of the content that constitutes a crime.

## **Who are the subjects of the amendment dated 29.07.2020 and which sanctions have been imposed on the subjects?**

In the period before 29.07.2020, certain penal regulations were made within the scope of the Law. However, with the recent amendment, criminal liabilities of content, hosting and access providers have been systematized. In particular, the criminal liabilities of content, hosting and access providers have been examined in more detail. Critical sanctions have been levied on internet subjects for content that may damage individuals or constitute a crime.

The first of these amendments is the amendment of access blocking as a protection measure for the access blocking or removal of content decisions within scope of the Article 8.

When the difference between the two concepts are examined; in access blocking decisions, the content cannot be accessed although it exists. On the other hand, if the content is removed, the content is removed directly from the broadcast.

Paragraph 10 of the same article is regulated as follows: “If the person responsible for content, hosting or access provider fails to comply with the access blocking or the removal of the content decision given as a protection measure s/he may be punished with judicial fine from five hundred days up to three thousands days.” It has been stipulated that content providers will also be liable if the access blocking or removal of content decision, given as a protection measure, is not complied with.

Another important regulation is that real or legal persons and institutions and organizations claiming that their personal rights are violated due to the content published or broadcasted on internet can apply to the content provider or hosting provider in case of failure to reach content provider, and they can request the removal of content via notice and take down method. As another option, they can request such access blocking or removal of content from by directly applying to the Criminal Peace Judgeship. Paragraph 11 of Article 9 of the Law is as follows: “Those responsible for the content, hosting and access providers who fail to fulfill the decision of the Criminal Peace Judgeship in accordance with the terms specified in this article shall be punished with a judicial fine from five hundred days up to three thousand days.” In this context, it has been stipulated that the relevant decision must be fulfilled within due time, and if the request is not answered within 24 hours, the content, hosting and access providers shall be responsible.

Prior to this amendment, in case the access blocking or removal of content decision of the Criminal Peace Judgeship is not enforced, since no sanction is stipulated in the Law, individuals have had to apply either to the content/hosting/access provider itself or to the Access Providers Union. Within this amendment, a judicial fine of five hundred days up to three thousand days shall be imposed on content, hosting or access providers who fail to comply with the decision. In this way, the personal rights of the persons damaged by the content subject to the decision are secured with a more secure protection mechanism.

## Answers. Not theories.

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