

REVIEWS LEGAL INDUSTRY



Pelin Baysal, founding partner at **Baysal & Demir**, writes about the expansion of artificial intelligence and how it could impact legal decision making.

Ayça Demir, Legal, Compliance and Administrative Affairs Group Manager at **OPET Petrolcülük A.Ş.**, talks about her experience and the evolution of in-house legal role.

Dr. Ziya Akıncı, owner of Akıncı Law Offices speaks about his career in arbitration, his books and the upcoming new one.

Litigation

The Omnibus Law introduced "Public Dissemination of Misleading Information" as a new crime

The Law on the Amendment of Press Law and Certain Laws ("Omnibus Law") is published in the Official Gazette No. 31987 on 18 October 2022. The Omnibus Law introduced amendments on certain laws including mainly the Turkish Criminal Code No. 5237, the Press Law No. 5187, and the Law No. 5651 on the Regulation of Broadcasts via the Internet and the Prevention of Crimes Committed through such Broadcast.

A new crime "public dissemination of misleading information" is introduced under Turkish Criminal Code No. 5237 as article 217/A:

"A person who publicly disseminates unsubstantial information regarding the country's domestic and foreign security, public order and general health in a way suitable for disturbing public peace, with the mere motive of creating concern, fear and panic among public, should be punished with imprisonment from one (1) year to 3 (three) years. If the crime is committed by concealing the identity of the perpetrator or within the scope of activities of an organization, the punishment shall be increased by half."

As the Criminal Procedure Code provides, the decisions of criminal chamber of regional court of justice on "public dissemination of misleading information" may be appealed before the Court of Appeals.

The introduction of this new crime led to complimentary amendments in the regulations. One of the major ones is introduced in Law No. 5651 on the Regulation of Broadcasts made on the Internet and Combating Crimes Committed Through These Broadcasts. The duties of the social network providers ("SNPs") are extended. SNPs are obliged to act within the principle of accountability, to provide transparency in compliance with the law, to provide to the Information Communication and Technologies Authority all the required information and documents regarding compliance with the law when asked. They should also give information to judicial authorities via their representatives in Turkey upon the request of judicial authority of information regarding crimes - sexual abuse of children, disrupting the unity and territorial integrity of the state, crimes against constitutional order and functioning of such order, crimes against state secrets, espionage and the new crime "public dissemination of misleading information" in order to access to the criminals providing/disseminating internet content. If this information is not provided to the requesting public prosecutor and/or court, the public prosecutor may

GOKALP | ARSLAN LAW FIRM



Alper Arslan

alper@gokalparslan.com



Burcu Dal Gokalp

burcu@gokalparslan.com

request gradual bandwidth throttling and may decide on advertisement ban decision.

Amendment Law also foresees novelties for the Access Providers Union ("Union"). The Union is equipped with wider authorities and duties regarding the implementation of access-block and content-removal decisions. In addition, prior to Omnibus Law, the cases in which the Information and Communication Technologies Authority could decide to remove the content or block access were limited according to the catalog crimes and the presence of the content or hosting provider in the country or abroad. With Omnibus Law, they have the authority to block access or remove content for all catalog crimes, regardless of the location of the access provider. The Union can notify the content and hosting providers via e-mail regarding the received court decisions.

Additionally, it is stipulated that an access-block or content-removal decision for a content will extend to other websites and platforms if the relevant person applies to the Union. Their decisions may be objected before the criminal Court of peace.





Practice Area News

The Constitutional Court Annulled Objection to Suspension of the Pronouncement of a Judgement.

The Constitutional Court annulled the objection right (article 231 (12) of the Criminal Procedure Code) to suspend the pronouncement of a judgement (Decision No. E. 2021/121, K. 2022/88). The decisions on suspension were subject to review by a first instance court. The Constitutional Court invalidated the article on the grounds that it does not offer sufficient, proper legal security and chance of success. The annulment decision shall come into force on 23 June 2023.

Transfer of Distribution Rights for Musical Recordings does not Include the Transfer of Distribution Rights on Internet.

The Court of Appeals held in a recent decision that an approval for distribution of musical recordings does not include the distribution of those through Internet as financial rights cannot be transferred before provision for distribution through Internet was included into the law (Decision of the Court of Appeals, File No. 2020/5890, 2021/3300).

The Constitutional Court Annulled the Provision Limiting the Maximum Application Period for Retrial to Ten Years.

The Constitutional Court invalidated the "limitation on maximum application period for retrial request to ten years" (Article 377 (1) of the Legal Procedural Law) (Decision No. E.2022/7, K. 2022/79). The court reasoned its decision that it was breaching article 36 and 40 of the Constitution "right to legal remedies" and article 40.

News Websites are Regulated under

Omnibus Law. The Press Law introduced some provisions to control the content and activities of the News Websites. The suspension of the broadcast shall not be applicable to the news websites. In case of non-compliance, the public prosecutor is equipped with authorities to request the completion/correction and filing an application to the criminal court of first instance for having a declaratory decision for failure to be qualified as a news website.

In the Firm

Gökalp Arslan is a full-service law firm founded in Istanbul by Burcu Dal Gökalp and Alper Arslan, after many years of legal experience to offer robust, timely, high quality and cost-effective legal services to meet their clients' needs. The firm offers a broad range of services, mainly, on dispute resolution (litigation-arbitration), mergers and acquisitions, corporate law and labour law.