

Constitutional Court annuls provision on imprisonment for opposition to interim injunctions

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Article 398 of the Code of Civil Procedure previously set out that parties which failed to comply with an interim injunction or that violated an injunction would face one to six months' imprisonment.

However, following an application to the Istanbul First Intellectual and Industrial Property Court for the annulment of Article 398, the Constitutional Court decided to cancel the first sentence of Article 398(1) regarding imprisonment for opposition to interim injunctions.⁽¹⁾

The Constitutional Court's decisions stated that the penalties set out in Article 398 regarding imprisonment were not contrary to the principle of proportionality set out in the Constitution. However, the court concluded that legal certainty and the right to legal remedies were harmed due to Article 398's lack of clear regulation and the merits of the proceedings and legal remedies in this regard.

The Constitutional Court's annulment decisions are final and as of publication in the *Official Gazette*, are binding on:

- legislative, executive and judicial bodies;
- administrative authorities; and
- real and legal entities.

Further, the Constitutional Court decided that the annulment decisions will enter into force nine months after their publication in the *Official Gazette* to prevent the legal gap or confusion that could arise on their immediate entry into force.

The annulment decisions will not be retrospective and previous decisions will not be considered unlawful. Further, Article 398 will remain in force until the annulment decisions come into force.

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Endnotes

(1) Decisions 2018/1 and 2018/83 published in the *Official Gazette* (30692) on 20 February 2019.

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