Amendments to the Law No: 5651 Concerning Social Media

The law amending the Law No. 5651 on the Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts (the "Law No: 5651") was accepted by the Turkish Grand National Assembly on July 29, 2020 and published in the Official Gazette on 31 July 2020. These amendments, which have been on the agenda for a long time and known as social media regulations, bring fundamental changes.

New provisions have been added to the Law No. 5651. Essentially, similar regulations are on the agenda of many countries; the Social Networks Sanction Act (Netzdurchsetzunggesetz, NetzDG) of Germany, which has been stated to be taken as an example, has been put into effect upon completion of the transition period as of January 2018. Apart from Germany, there are various draft laws on similar issues in England, Italy and Holland. In France, a legal regulation was adopted in May 2020 to prevent hate speech on the internet. All of these new regulations have been discussed heavily and been controversial in these countries as well.

Amendments to the Law No: 5651 can be evaluated under two sections; namely amendments regarding social network providers and other amendments. Amendments regarding social network providers will enter into force as of 1 October 2020 and other amendments entered into force on the date of their publication in the Official Gazette.

Amendments Regarding Social Network Providers

- The concept of "Social Network Provider" has been added to the Law No: 5651 for the first time. Accordingly, "social network provider" means real or legal persons that enable users to create, view or share content such as text, image, sound, location on the internet for social interaction.
- Social network providers, which are based abroad and have more than 1 million daily access to their services from Turkey shall designate at least one representative in Turkey to deal with requests and notifications that are sent by the Information Technologies and Communications Authority ("ICTA") as well as the judicial and administrative authorities

and to respond to the applications made by persons in accordance with the Law No: 5651 and to ensure fulfillment of other obligations under the Law No: 5651 and shall inform ICTA about identity and contact information of this representative. In case of appointment of a real person as the representative, the representative should be a Turkish citizen. The social network provider shall also publish the contact information of this person on the website in an easily seen and directly accessible way.

- A 5-step sanction system is envisaged for the social network provider, which does not fulfill the obligation to determine and report a representative. These are as follows in summary:
- Social network providers will be notified about this obligation by ICTA. In case of not fulfilling this obligation within thirty days after the notification, the social network provider will be sanctioned with an administrative fine of TRY 10 million.

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    1. If the obligation is not fulfilled within thirty days as of the notification of this fine, a second fine of TRY 30 million will be issued.
    2. If the obligation is not fulfilled after the second administrative fine, real or legal persons who are resident and taxpayer in Turkey will be banned from giving advertisement to these social network providers; in this case, establishment of a new contract or money transfer for such will not be possible.
    3. If the obligation is not fulfilled within three months after the advertising ban, ICTA may apply to the Criminal Court of Peace to reduce the internet traffic bandwidth by fifty percent.
    4. If the obligation to determine and report the representative is not fulfilled within thirty days after the implementation of judge’s decision regarding the acceptance of the application, ICTA may apply to the Criminal Court of Peace for the social network provider's internet traffic bandwidth to be reduced by ninety percent.

If the obligation to determine and report a representative is fulfilled, one fourth of the administrative fines imposed will be charged, advertising ban will be lifted, and the judges' decisions will automatically become null and void.

- Domestic or foreign social network providers, which have more than 1 million daily access to their services from Turkey, shall be obliged to respond to the applications within the scope of Articles 9 and 9 / A of the Law No: 5651 for the contents that violates the personal rights or right to privacy within 48 hours at the latest. An administrative fine of TRY 5 million will be imposed on the social network provider who does not fulfill this obligation.

Social network providers are obliged to complete the necessary preparations within three months as of the effective date of this article to meet these obligations.

- Domestic or foreign social network providers, which have more than 1 million daily access to their services from Turkey, shall inform ICTA every six months, by reports containing statistical and categorical information on the implementation of decisions notified to them to remove content and/or to block access and the above-mentioned applications. The first one of these reports will be submitted to ICTA in June 2021. The social network provider who does not fulfill this obligation will be subject to an administrative fine of TRY 10 million.
- The administrative fines to be imposed under Article 8 titled "Decisions on removal of content and access blocking and implementation of the same" and Article 8/A titled "Removal of content and/or access blocking in non-delayable cases" of the Law No: 5651 on social network providers, which are based abroad and have more than 1 million daily access to their services from Turkey, will be implemented as TRY 1 million while the judicial fines to be imposed under Article 8 titled "Decisions on removal of content and access blocking and implementation of the same" and Article 9 titled "Removal of content and access blocking" will be implemented as fifty thousand days;

and for each repetition of these violations, which require administrative fines, within a year, the penalties will be increased by one-fold.

- Obligations regarding data localization have been imposed on domestic or foreign social network providers, which have more than 1 million daily access to their services from Turkey, and thus relevant social network providers are obliged to store data of their Turkish users in Turkey.
- In the event of a content to be declared unlawful by a judge or court decision, the social network provider who does not remove the content or does not prevent access to the content within 24 hours will be responsible for the compensation of the relevant damages.
- Above-mentioned obligations of the social network provider shall not eliminate its responsibilities and obligations arising from its role as a content or hosting provider.

Other Amendments

- The definition of traffic information has been amended to include port information.
- The notifications of the administrative fines imposed under the Law No: 5651 can also be served by ICTA to foreign addressees via e-mail or through other means of communication using the information obtained from the websites such as contact detail, domain name, IP address, and the information obtained through other sources. Notification shall be deemed to be made at the end of the fifth day following the date of notification.
- The range of the administrative fine which will be imposed on the hosting providers who does not fulfill its obligation to make hosting provider notification or other obligations under the Law No: 5651 has been re-determined as TRY 100,000 to TRY 1,000,000.-.
- With the amendments made in Article 8 and Article 9, removal of content has been introduced as an alternative sanction to access blocking which can be applied in case of catalogue crimes and in case of violation of personal rights. With this amendment, removal of content can be decided instead of blocking access in case it is possible to

remove only the content that is deemed to constitute a crime or violation under the relevant articles.

- In case of the request of those whose personal rights have been violated due to the content broadcasted on the Internet, it may be decided by the judge not to associate the name of the applicant with the internet addresses subject to the decision. In these decisions, search engines will also be notified and relevant contents and applicants' names will be removed from the search engines.

Conclusion

The definition of social network provider introduced with the amendments has been drafted in a way that it can cover a wide range of platforms. The amendments include some ambiguities; particularly, the wide definition of social networks which is open to interpretation, the unclear status of the representative, and the fact that some sanctions are excessive (such as the consequences of reduction of internet traffic bandwidth) are already among the controversial issues.