

# Amendments to collection of electronic evidence procedures

24 September 2018 | Contributed by [Gün + Partners](#)

## Amendments Comment

Computers, computer programs and records used by suspects are among the most important evidence for public prosecutors who carry out external investigations relating to white collar crime. There is no definition of 'electronic evidence' in Turkey, but Article 134 of the Code of Criminal Procedure sets out the procedure for searching, copying and seizing computers, computer programs and records. An amendment to Article 134 concerning the collection of electronic evidence procedures was published in the *Official Gazette* on 31 July 2018.

## Amendments

The previous version of Article 134's first paragraph stated as follows:

*Upon the motion of the public prosecutor during an investigation with respect to a crime, the judge shall issue a decision on the search of computers and computer programs and records used by the suspect, the copying, analyzing, and textualization of those records, if there is strong doubt based on solid evidence and it is not possible to obtain the evidence by other means.*

Under the new paragraph, a judge or public prosecutor can now issue such a decision where time is of the essence. However, in the latter case, a public prosecutor will submit their decision immediately to a judge for approval, who will decide within 24 hours. When the duration of an investigation expires or a judge decides against such a search, any seized copies and records will be destroyed immediately. Legal practitioners argue that this amendment may result in problems, as it will be easier and faster to obtain seizure decisions from public prosecutors and such decisions may not be questioned by judges. Accordingly, inspections are likely to become much easier to conduct.

The timing of the electronic evidence collection process has also been revised. Previously, Article 134's second paragraph stated that:

*If computers, computer programs and computer records are inaccessible, as the passwords are not known, or if the hidden information is unreachable, then the computer and equipment that are deemed necessary may be provisionally seized in order to retrieve and to make the necessary copies. Seized devices shall be returned without delay in cases where the password has been solved and the necessary copies are produced.*

The amendments to Article 134 have added a third reason for the seizure of computers during a white collar crime investigation: computers can now be seized where an investigation process is set to take a long time. This was a practical issue that necessitated change. The number of police who deal with cybercrime is limited and, as a result, copying the contents of numerous computers can be time consuming in cases involving several suspects. Thus, in practice, police tend to seize computers and take them to police stations to make copies of their contents. Following the amendment, it is expected that the police will seize computers more often by claiming that the investigation process will take a long time.

## AUTHORS

[Barış Kalaycı](#)



[Filiz Toprak Esin](#)



Article 134's other three paragraphs remain unchanged:

*(3) While enforcing the seizure of computers or computer records, all data included in the system shall be copied.*

*(4) A request, a copy of this copied data obtained as per paragraph 3 above shall be produced and given to the suspect or his representative and this exchange shall be recorded and signed.*

*(5) It is also permissible to produce a copy of the entire data or some of the data included in the system, without seizing the computer or the computer records. Copied data shall be printed on paper and this situation shall be recorded and signed by the related persons.*

### **Comment**

The dynamics of criminal investigations sometimes require procedural amendments to the Code of Criminal Procedure due to the practical problems of obtaining crucial evidence. However, it is hoped that the recent changes which make issuing search warrants and conducting dawn raids against private establishments and persons easier do not result in misuse and exploitation.

*For further information on this topic please contact [Barış Kalaycı](#) or [Filiz Toprak Esin](#) at Gün & Partners by telephone (+90 212 354 00 00) or email ([baris.kalayci@gun.av.tr](mailto:baris.kalayci@gun.av.tr) or [filiz.toprak@gun.av.tr](mailto:filiz.toprak@gun.av.tr)). The Gün & Partners website can be accessed at [www.gun.av.tr](http://www.gun.av.tr).*

---

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).