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## Is Alternative Dispute Resolution Effective Enough for ".tr" Domain Names?

This article discusses the alternative dispute resolution mechanism for ".tr" domain names in Türkiye. It highlights the efficiency of the alternative dispute resolution mechanism and addresses some concerns over the transparency of proceedings.

TRABIS (".tr" Network Information System), established by the Turkish Information and Communication Technologies Authority ("BTK"), became operational on September 14, 2022 and undertook the management of ".tr" domain names. Upon the introduction of TRABIS, the "first come, first served" principle entered use for allocation of domain names such as 'com.tr', 'org.tr', 'net.tr', 'gen.tr', 'biz.tr', 'tv.tr', 'web.tr', 'info.tr', 'bbs.tr', 'tel.tr', or 'name.tr'. The obligation for submitting any documents to prove the rights of the applicant was abolished. Introduction of the "first come, first served" principle necessitates an effective dispute resolution mechanism for domain name disputes.

Dispute Resolution Service Providers, which are accredited by TRABIS, have started to handle the alternative dispute resolution process regarding ".tr" domain names. It can be said that the regulatory rules and proceeding are quite similar to the Uniform Domain-Name Dispute-Resolution Policy ("UDRP") system. Yet, there are subtle differences compared to the UDRP rules in terms of criteria for the examination of the complaints.

The Dispute Resolution Service Providers shall decide to cancel the disputed domain name or to transfer it to the complainant if the following conditions are cumulatively met:

- i) The subject domain name is similar or identical to the trademark, trade name, business name or other identifying signs owned or used by the Complainant in trade,
- ii) The registrant of the domain name has no legitimate interests in respect of the domain name, and
  - iii) The domain name is registered or used in bad faith by the registrant.

Unlike UDRP rules, not only is the trademark right taken into account when examining the priority rights of the complainant, but the complainant's tradename, business name or any other identifying marks used in the commercial life are also taken into account. Another important point is related to the bad faith examination. According to UDRP rules, the contested domain name must be both registered and used in bad faith. However, in the Turkish Regulation, the presence of one of either of these conditions is considered



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sufficient for the third condition to be met due to the use of the word "or" in the legislation concerning the relevant condition.

In the period of over a year since the new legislation came into force, an applicable body of case law has begun to develop with decisions rendered by the Dispute Resolution Service Providers. There is a broad and comprehensive examination of the conditions mentioned above.

On the other hand, there is an essential difference in terms of disclosure of the registrant, in possession of the disputed domain name, during proceedings for alternative dispute resolution. This may affect the complainant's interests and effective exercise of their right to legal remedies.

In contrast to the UDRP, registrant information is not disclosed by Dispute Resolution Service Providers under any circumstances, even after filing the domain name complaint or during the alternative dispute resolution proceeding. As a result, domain name complaints are typically submitted by the complainant without any knowledge of the registrant's identity. Dispute Resolution Service Providers do not disclose registrant information during the proceeding, so the complainant is not given the right to modify the complaint based on registrant information. Disclosure of the registrant information is, in principle, a very effective process in terms of proper enforcement of the complainant's right to legal remedies. Because the complainant, having access to the registrant information, is granted the opportunity to provide more satisfactory additional information and evidence about the use or registration of the domain name in bad faith by the domain name owner. Such a practice also allows the complainant to effectively evaluate whether the registrant has legitimate rights or interest in the relevant domain name.

The short periods for notification of complaint, submission of response, as well as the rapid decision-making process provided by the Dispute Resolution Service Provider make the alternative dispute resolution mechanism efficient and preferable for right owners. It is also possible to file a court action before the competent authorized courts for infringement of domain names. However, these court actions are not are costly and lengthy.

In conclusion, it is evident that the alternative dispute resolution mechanism, allowing the litigation-free resolution of domain name disputes, operates in an effective and beneficial manner. It is expected that the deficiencies will be completed so that the new process in ".tr" extended domain names will be integrated in a wider scope.