

Disciplinary Imprisonment in Opposition to Interim Injunction was Annulled

It was regulated in Article 398 of the Code of Civil Procedure that persons who do not comply with the order for enforcement of interim injunctions or who violate the decision of the injunction shall be punished with disciplinary imprisonment of one month to six months.

As a result of the application made to Court by the Istanbul 1st Intellectual and Industrial Property Court for the annulment of the mentioned article, the Constitutional Court, in its decision with the merit number 2018/1, decision number 2018/83 which was published in the Official Gazette dated February 20, 2019 and numbered 30692, decided to cancel the first sentence of paragraph (1) of Article 398 of the Code of Civil Procedure on the disciplinary imprisonment in opposition to interim injunction.

It has been stated in the relevant annulment decision of Constitutional Court that the sanctions stipulated in the article, namely with regards to the features and amount of disciplinary imprisonment, is not contrary to the principle of proportionality set out in the Constitution. However, the Constitutional Court came to the conclusion that legal certainty and right to legal remedies of the persons is harmed due to the lack of a clear regulation of the procedure and the merits of the proceedings and legal remedies against the decision of disciplinary imprisonment.

We would like to point out that the annulment decisions of the Constitutional Court are final and as a rule, are binding on legislative, executive and judicial bodies, administrative authorities, real and legal entities as of publication in the Official Gazette. Adding to this Constitutional Court may decide on the date of entry into force of the annulment decision, not exceeding one year from the date of publication of the decision, in order to prevent the legal gap or confusion that may arise due to the immediate entry into force of the annulment decision upon publication in the Official Gazette. In this regard, it is also decided in the subject matter decision of the Constitutional Court that the decision will be in force 9 months following its publication.

In cases where the date of entry into force is delayed, to fill the legal gap created by the decision of annulment, preparation of legislative proposals and discussion with this regard shall be finalized by Turkish Grand National Assembly within the postponement period. However, it can be seen that in practice, legal regulations could not be made in a timely manner, occasional difficulties and legal gap may occur.

On the other hand, we would like to point out that the annulment decisions rendered by the Constitutional Court are not retrospective and shall not deem results already occurred unlawful, in the period in which the annulment of the provisions of a legal provision are effective. Adding to this cancelled provision continue to remain in force until the annulment decisions comes into force.



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