

14 Mar
2019

Imprisonment for breaching injunctions is annulled by Constitutional Court

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- Constitutional Court has annulled Article 398 of Code of Civil Procedure, which established imprisonment for breaching preliminary injunction
- This court ordered that this come into effect within nine months
- It is hoped that proposals for new punishment for acting against preliminary injunction will come before Parliament within this period

Upon the application of the Istanbul First IP Court, the Constitutional Court has cancelled Article 398 of Code of Civil Procedure, which stipulates that the punishment for breaching a preliminary injunction is imprisonment. The court found that since the article fails to explicitly regulate the judicial remedies against the ruling of disciplinary imprisonment and given that the procedures and principles of the examination or trial are not regulated explicitly, this results in the violation of legal certainty and the right to legal remedies.

Article 398 established that persons who do not comply with a preliminary injunction decision or who act against such a decision shall be punished with imprisonment for between one and six months.

During proceedings before the Istanbul First IP Court, it was requested that the court order disciplinary imprisonment since one of the parties was acting against a preliminary injunction prohibiting the use of the title of a cinematographic work of 1999 to advertise and promote another cinematographic work. However, the opposing party argued that Article 398 conflicted with the Constitution. The Istanbul First IP Court deemed this opposition rightful and applied to the Constitutional Court to annul this regulation.

As a result, the Constitutional Court (Decision 2018/83, merit number 2018/1, published in the *Official Gazette* on 20 February 2019 (number 30692)) decided to annul the first sentence of Article 398(1) of the Code of Civil Procedure, which deals with disciplinary imprisonment for acting against a preliminary injunction decision.

The court argued that the punishments regulated under this article – namely the features and length of the prison term – are not in fact contrary to the principle of proportionality set out in the Constitution. However, legal certainty and the right to legal remedies were damaged due to the lack of clear regulation of the procedure and merits of the proceedings, and legal remedies against a possible punishment for acting against a preliminary injunction. This decision is final and binding on legislative, executive and

judicial bodies, administrative authorities, real and legal entities as of its publication in the *Official Gazette*.

The court ordered that the decision be in force within nine months of this publication. Therefore, the cancelled provision remains active until the annulment comes into force. It is expected that proposals for a new punishment for acting against a preliminary injunction will be argued before the Turkish Parliament and finalised within this nine-month period.

Considering the workload of IP courts and how long court proceedings last, preliminary injunctions are crucial for preventing loss of rights, especially when infringement is current. Accordingly, an effective punishment for breaching a preliminary injunction is vital to force parties to comply strictly. Therefore, a new regulation should be integrated into the Code of Civil Procedure within this nine-month window. Unless this happens there may be difficulties and legal gaps and a preliminary injunction will not offer the same protection as once it did as there will be no applicable punishment for breaching it. We will wait to see what kind of punishment will be suggested as an alternative to the annulled article.

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