

Court of Appeal Classifies Game Characters and Virtual Properties as Data

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Turkey's Court of Appeal recently rendered an explanatory decision regarding the situations in which online game characters, items, and virtual money are displaced through wrongful acts or become inaccessible to the user.

The Court of Appeal has been referred to the characters, items, or virtual money in online games as data that is a commodity having economic value, in its previous decisions. Accordingly, the wrongful acts related to them should be considered within the scope of the "*hindrance or destruction of the system, deletion or alteration of data*" crime which is defined under Cybercrimes title in article 244 of the Turkish Criminal Code ("**TCC**") numbered 5237.

In line with its past decisions, the 13th Criminal Chamber of the Court of Appeal has provided significant explanations in its decision numbered E. 2019/9265 K.2020/258 dated 8 January 2020 ("**Decision**"). The Decision concerns a case regarding *Knight Online*, an online roleplaying game, where a user's ("**Complainant**") account information is obtained by accessing his e-mail address without permission, and then sold to a third person, again without his consent.

The first instance court considered the case within the scope of aggravated theft and rendered a decision accordingly. The court acquitted the defendant on the grounds that it was not certain whether he committed the crime he was accused of. The Complainant then appealed the first instance court's decision to the Court of Appeal. Court of Appeal examined the case and found no definite and credible evidence to convict the accused and approved the first instance court's decision. With that being said, the Court of Appeal deemed the legal description of the act inaccurate.

In this context, the Court of Appeal compared the crimes regulated under articles 142 and 244 of the TCC in terms of subject and action elements. Consequently, the court stated that the act subject to the case, which often misclassified as aggravated theft because the computer is used as the medium, may in fact constitute the "*hindrance or destruction of the system, deletion or alteration of data*" crime stipulated under article 244.

In its Decision, the Court of Appeal determined, firstly, the subject of the theft as movable property, and emphasized its material presence. Secondly, it explained that the subject of the crime of "*hindrance or destruction of the system, deletion or alteration of data*" stipulated under TCC article 244, is the data. Further, it also referred to the legality principle and stated that the act of data transferring without owner's consent could not be considered as theft in the absence of legal regulation accepting the data as movable property.

Subsequently, the court compared crimes in terms of elements of action. It stated that the action element of the theft was a physical displacement that took place in the real world, while the actions listed in article 244 of the TCC are virtual acts committed in an electronic environment. In this context, Court of Appeal's evaluation revealed that (i) the game character is a data that is a commodity with economic value, (ii) in the current case the character was not physically taken from a place, (iii) the action in fact was "*transferring existing data to another location*" as stipulated under article 244 paragraph 2 of the TCC (iv) in the incident an unlawful profit was obtained by the sale of the character to a third person, and in this context, the case constituted the crime defined in article 244 paragraph 4 of the TCC.

Although this Decision provides broader clarifications than previous decisions, it is not the Court of Appeal's first assessment in this regard. It seems that the court has characterized the online game characters and belongings as data with economic value in various cases.

You may find the full text of the Decision at this [link](#) (*Only available in Turkish*)

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