

## Recourses for Legal Entities Against Reputation Damaging Attacks on The Internet

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### 1. Introduction

Misleading, false or defamatory attacks may be carried out against legal entities through news, reviews, blog posts, comments, videos and many other means on the internet. Such attacks can cause reputational damage to the legal entity, loss of trust in the eyes of customers and consequently direct and indirect damages. Turkish law provides various recourse mechanisms against these unjustified actions committed on the internet.

Turkish Civil Code No. 4721 ("**TCC**") does not make any distinction as to whether the person whose personal rights are violated is a real person or a legal entity. Furthermore, Article 48 of the TCC states that *"Legal entities are entitled to all rights and obligations other than those that are inherent to human beings by nature, such as sex, age, kinship."* thus indicating that legal entities have rights other than those specifically related to human beings. In this regard, it is accepted that values within the moral integrity such as honor, dignity, reputation, prestige, privacy and title are also present in legal entities<sup>[1]</sup>. Therefore, violations of the rights within the legal entity's moral integrity will be subject to same protection regime as personal rights.

### 2. The Removal of Content and Blocking of Access Within the Scope of Law No. 5651

Law No. 5651 Regarding the Publications on the Internet and Combating Crimes Committed through Such Publications ("**Law No. 5651**") is the primary legislation on crimes committed through the internet and unlawful violations of personal rights. Essentially, it provides provisions on combating certain crimes committed on the internet through content, hosting and access providers.

Article 9 of Law No. 5651 contains the core provisions regarding the recourse of real persons and legal entities, institutions and organizations who claim that their personal rights have been violated due to the contents published on the internet. As stated above, Turkish civil law does not differentiate whether the person whose rights are violated is a real person or a legal entity, and this is clearly stated in this article.

#### 2.1 Applying to the Content or Hosting Provider

As stated in Article 9 of the Law No. 5651, real persons and legal entities, institutions and organizations claiming that their personal rights have been violated as a result of the contents published on the internet may apply to the content provider, or to the hosting provider if they cannot reach the content provider and request the removal of the content through the warning method.

Law No. 5651 defines a content provider as *"a real person or legal entity who produces, modifies and provides all kinds of information or data available to users over the internet"*. In this case, for example, the author of a blog post on a blog site, the uploader of a video on a video sharing site, the commenters on internet forums, interactive dictionaries, etc. are content providers. A hosting provider is defined in Law No. 5651 as *"real or legal persons who provide or operate systems that host services and content"*. In this respect, the operator of the website where different blog pages are located, the operator of the video sharing website where videos are being shared, and the operator of the website where formations such as forums are available can be defined as hosting providers. In

addition, with the amendment to Law No. 5651 dated 29.07.2020, the term social network provider has been introduced into Turkish law. A social network provider is defined in Law No. 5651 as *"real persons or legal entities who enable users to create, view or share content such as text, image, sound, location on the internet for social interaction purposes"*. In this regard, social networking sites and applications such as Twitter, Facebook and Instagram are defined as social network providers.

In this case, the person whose personal rights are violated will be able to request the removal of the content by applying to the content provider or to the hosting provider if the content provider cannot be reached. Under Law No. 5651, these requests must be responded to within 24 hours, except for social network providers with more than one million daily accesses. Otherwise, the request will be deemed to have been rejected and as will be explained below, it will be possible to request the court to block access to the content in question. For social network providers with more than one million daily accesses from Turkey, the response period is 48 hours, and any negative response must be substantiated. Failure to fulfill this obligation will result in an administrative fine of TRY 5,000,000 on the social network provider.

## 2.2 Applying to the Criminal Court of Peace

Real persons and legal entities, institutions and organizations claiming that their personal rights have been violated due to the contents on the internet can apply to the content provider or hosting provider as stated above or can directly apply to the criminal court of peace and request the removal of the content and/or blocking of access. In this respect, the right to choose whether to remove the content or block access will be left to the applicant.

The criminal court of peace will consider and decide on the application without a hearing, within 24 hours. The parties may file an objection against this decision within 7 days from the date of learning of the decision to the next sequential numbered court after the criminal court of peace that has issued the decision. If the Court to whom the objection has been submitted deems the objection appropriate, the decision shall be corrected within a maximum of three days.

On the other hand, if the court deems the application to be appropriate, it will decide to remove the content or block access in accordance with the request of the applicant. As a rule, the decision of the court to block access will only be issued in relation to the publication, section or episode in which the violation of the personal right has occurred. However, if it is deemed that the violation cannot be prevented by blocking access to the content by specifying the URL address, it may also be decided to block access to the entire publication on the website.

The decision of the court to block access or remove content is then sent to the Access Providers Association ("**Association**") for enforcement. The Association can object to decisions that it considers to be incompatible with the legislation. In the absence of any objection, the decision to remove content and/or block access is sent by the Association to the relevant content, hosting and access provider. In this case, the decision must be executed by the relevant content, hosting and access provider within four hours at the latest. Otherwise, such content, hosting and access provider will be punished with a judicial fine ranging from five hundred days to three thousand days.

Lastly, a regulation has been introduced regarding search engines. If the person whose personal rights are violated due to the content on the internet makes a request in this regard, the judge may decide not to associate the name or the commercial title of the applicant with the internet addresses subject to the application, where blocking of access or removal of content took place. The decision should indicate which search engines will be notified by the Association.

## 2.3 Applying to the Association

As stated above, the decision to block access or remove content will be made for a specific URL address. However, the content subject to the decision may also appear on other websites simultaneously or afterwards. In this case, making an application for each website individually may lead to a delay, resulting in an increase in damages, and it

may also be possible for different courts to issue different decisions. To prevent such inconveniences, the legislator provides in Law No. 5651 the possibility to remove or block access to content by applying directly to the Association in certain cases.

To be able to directly apply to the Association, there should be a content removal or access blocking decision issued by a criminal court of peace for any website containing the content in question. If the same content is subsequently published on different internet addresses, it will be possible to remove the content or block access by applying directly to the Association without the need for a new court decision. In this case, since the illegality of the content has been determined by the court, there is no need for a new determination of illegality.

### **3. Criminal Complaint for the Offence of Libel under Turkish Criminal Code**

The offence of libel is defined in the Turkish Criminal Law No. 5237 ("TCL") as *"attacking the honor, dignity and reputation of a person by attributing a tangible act or a fact that may offend the honor, dignity and reputation of a person or by swearing"*.

It has been explained above that in terms of TCC, it is accepted that legal entities can enjoy all kinds of rights other than those specific to human beings, and in this context, the legal entities also have the attributes of honor and dignity. However, commonly in criminal law, a different view than in TCC is accepted. Although there are conflicting opinions in the doctrine, the dominant opinion is that legal entities cannot be victims of the offence of libel, however, they still might be damaged by the crime<sup>[2]</sup>. Similarly the opinion of the Court of Cassation is that legal entities cannot be victims of this crime, however, they can still be harmed by the crime<sup>[3]</sup>.

Therefore, since it is considered impossible by the Court of Cassation to commit the offence of libel against a legal entity, the legal entity will not be able to file a criminal complaint before the public prosecutor with the allegation that it has been defamed on the internet.

However, if the representative, organs or members of the legal entity are targeted and insulted along with the legal entity, the representatives, real person members of the organs and of the legal entity may be considered as victims of the crime<sup>[4]</sup>.

In this case, the representative of the legal entity, real person members of its organs or real person members of the legal entity may file a criminal complaint before the public prosecutor and at the same time request the removal of the content in question or the blocking of access. Especially in cases of libel, it may be preferable to file a criminal complaint before the public prosecutor in order to conduct the necessary investigations, since the identity of the perpetrator is often unknown to the victim.

### **4. Methods of Application in Civil and Commercial Law**

As stated above, in terms of civil law, legal entities are entitled to all rights other than those specific to human beings. As such, they may benefit from the protection regime regulated under the TCC regarding the protection of personal rights.

Article 25 of the TCC provides that those who are victims of attacks against their personal rights may request from the court;

- The prevention of the danger of the attack,
- The cessation of an ongoing attack,
- The determination of the illegality of an attack whose effects continue even if it has ceased.

As such, the legal entity who is aware of an attack on the internet has the opportunity to apply to the Civil Court of First Instance before the content is published on the internet and can request the Criminal Court of Peace to prevent the publishing of the content or to remove the content after it is published.<sup>[5]</sup> However, since the above-mentioned

method of removing and blocking access to the content in case of an attack on personal rights can provide a very fast remedy, it may not be preferred to request the removal of the content pursuant to Article 25 of the Civil Code. Finally, even if the attack has ceased, it is possible to request for the determination of its ongoing effects, if any.

As a result of the attack on the personal rights in question, the legal entity may have suffered from loss of reputation, profit or opportunity, and the attacker may have gained a profit. In Civil Code, the compensation of financial losses is regulated under Article 25, paragraph 3, which states: *"The plaintiff reserves the right to claim material and moral damages and the right to demand the profit obtained due to the unlawful attack in accordance with the provisions of acting without authority"*. In addition, in the same article, regulations that can prevent the loss of reputation and allow for the compensation of damages have been included, providing for the correction or decision regarding the content in question be notified to third parties or be published.

Although there may be no difficulty in proving the direct material damage caused by the attack on personal rights on the internet, the issue of proving the damages resulting from the loss of reputation or loss of opportunity may be difficult, as it may take a long time for the damage items such as these to emerge. In this case, it is important whether the loss of reputation can be claimed as an item of moral damage. The Court of Cassation is of the opinion that legal entities may also claim moral damages due to an attack on their personal rights<sup>[6]</sup>.

Another problem regarding proof is the identity of the perpetrator of the attack. This is because the identity of the content owner cannot be easily identified by external third parties in publications made on the internet. In this case, the determination of evidence can be requested by applying to the criminal court of peace and in this way, it is possible to prevent the disappearance of these unfair publications and identify those responsible.<sup>[7]</sup>

In the light of the above information, the legal entity whose personal rights have been attacked on the internet; may request compensation for the material and moral damages, the profit obtained by the perpetrator to be given to them in accordance with the provisions of acting without authority, and finally, the correction or announcing of the decision to the relevant persons in order to prevent the loss of commercial reputation.

While the above explanations apply to all legal entities, Section 4 of the Turkish Commercial Code No. 6102 ("**Commercial Code**") titled "Unfair Competition" introduces a protection regime for persons who produce goods or services in the marketplace. Accordingly, among the acts which are deemed unfair competition, the acts of *"defaming others or their goods, business products, prices, activities or commercial affairs with false, misleading or unnecessarily offensive statements"* are explicitly listed.

Within the scope of this article, legal entities whose goods, business products, prices, activities or commercial affairs have been defamed through false, misleading or unnecessarily offensive statements on the internet may seek protection under the unfair competition provisions of the Commercial Code. However, such statements do not necessarily have to be made by another competitor. Legal recourses can also be initiated with the claim of unfair competition, against another legal entity or real person or the statements of consumers<sup>[8]</sup>. In fact, posts made by consumers on blogs, complaint, video sharing or social media sites also fall within the scope of this article. However, such comments must be false, misleading or unnecessarily offensive.

According to the Commercial Code, a person whose customers, professional reputation, commercial activities or other economic interests are damaged or may face such a danger due to unfair competition may request for the;

- Determination of whether the act was unlawful,
- Cessation of unfair competition,
- Elimination of the material circumstances resulting from the unfair competition, the correction of statements if the unfair competition has been made with false or misleading statements, and the destruction of the means and goods that are effective in the committing of unfair competition, if it is necessary for the prevention of infringement,
- Compensation for damages and losses if found to be at fault,
- Granting of moral damages if the conditions exist,

As stated above, it is accepted that legal entities can also claim moral damages.

## 5. Conclusion

Protection mechanisms are regulated in different areas of Turkish law against false, misleading, unnecessarily offensive, and defamatory content against legal entities on the internet. In the event of such an attack on personal rights, the fastest recourse mechanism will be applying to the criminal court of peace for the removal of content and/or blocking of access as stipulated in the Law No. 5651, which is a specialized law. In addition, if the offence in question is deemed to have been committed against the representatives of the legal entity, the real person members of its organs or the members of the legal entity, it will be possible to file a criminal complaint and initiate a criminal investigation before the public prosecutor in accordance with the provisions of the TCL. Apart from these, various methods have been determined for the compensation of the damage caused by the unjust attack, which is one of the basic pillars of private law. In the light of the above information, it is possible to claim that there are many legal instruments that can be implemented for the attacks on the internet.

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[2] **Mahmut KOCA, ?brahim ÜZÜLMEZ**, Türk Ceza Hukuku Özel Hükümler, Adalet Yay?nevi, Ankara, 2013, p. 427; **Mehmet Emin ARTUK, Ahmet GÖKÇEN, A.Caner YEN?DÜNYA**, Ceza Hukuku Özel Hükümler, Adalet Yay?nevi Ankara, 2014, p. 405; **Hakan HAKER?**, Ceza Hukuku Genel Hükümler, Adalet Yay?nevi, Ankara, 2014, p.132; **Do?an SOYASLAN**, Ceza Hukuku Özel Hükümler, Yetkin Yay?nlar?, Ankara 2006, p. 234.

[3] **18th Criminal Chamber of the Court of Cassation, File No: 2016/18978 Decision No: 2017/1193 Date: 06.02.2017 and File No: 2015/4362 Decision No: 2015/8545 Date: 21.10.2015.**

[4] **Devrim AYDIN**, Türk Ceza Kanunu'nda Hakaret Suçu, Marmara Üniversitesi Hukuk Fakültesi Hukuk Ara?t?rmalar? Dergisi (Prof. Dr. Nur Centel'e Arma?an), 19 (2), p. 887 <https://dergipark.org.tr/tr/download/article-file/813305>

[5] **Ayan**, a.g.e. p. 87

[6] **Court of Cassation General Assembly of Civil Chambers, File No: 2011/4-687 Decision No: 2012/26 Date: 01.02.2012, 4th Civil Chamber of the Court of Cassation, File No: 2007/8212 Decision No: 2008/3486 Date: 17.03.2008 ve Esas No: 2001/4164 Karar No: 2001/8421 Tarih: 24.09.2001**

[7] **Yasemin DURAK**, ?nternet Yoluyla Ki?ilik Haklar?na Sald?r? ve Hukuki Koruma, 2014, 22 (1), p. 110, <https://dergipark.org.tr/tr/pub/suhfd/issue/26653/281288>

[8] **Füsün NOMER ERTAN**, Yürürlü?ünün 7. Y?l?n Türk Ticaret Kanunu Sempozyumu, University of Istanbul, ?stanbul, 2019

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