

Turkish Constitutional Court Revoked the Provision Regarding Punishment of Preliminary Injunction Decisions' Opponents

30 Apr 2019

In its decision dated 11 July 2018 and numbered 2018/83, the Turkish Constitutional Court revoked the Turkish Civil Procedural Law's ("**CPL**") provision—which set forth disciplinary imprisonment from one month to six months for individuals who do not obey the preliminary or act contrary to it—for being in breach of Constitution's Article 2 and 36.

The applicant Istanbul 1st Intellectual and Industrial Rights Court ("**Applicant**") has requested the annulment of the contested provision by claiming that:

- Although the trial court was a civil court, the decision rendered within the scope of the contested provision has conclusions that fall into the scope of criminal law.
- Per the principle of legality, the acts to be punished, the legal elements of the crime and the aggravated circumstances were not provided clearly.
- There was no regulation regarding the rules and procedures of the judgment and the legal remedies that can be used against the decision.
- The Turkish Constitutional Court has defined the preliminary injunction as temporary legal protection having a wide range of application in various legal disputes in terms of qualification and quantity, and highlighted the following points:
- In the contested provision the acts to be punished and the punishment's type, minimum and maximum limits were clearly provided. Therefore, the provision could be predicted and known.
- The provision is appropriate and necessary to ensure the efficiency of the preliminary injunction decisions and respect to the court's decision. In this regard, the provision conforms with *the principle of proportionality*.

On the other hand, the Turkish Constitutional Court has decided to the annulment of the first sentence of CCP's Article 398/1 on the grounds of the following points:

- There is no specific provision on the trial procedures and principles concerning the disciplinary imprisonment to be imposed as a result of failure to abide by the preliminary injunction.
- There are various case-law concerning the legal remedy to be used against the disciplinary imprisonment imposed due to failure to abide by the preliminary injunction. In this respect, there is no stable and assuring practice or legal provision indicating the legal remedy to be used against the disciplinary imprisonment as well.
- In this scope, the contested provision is neither predictable nor accurate in terms of the trial procedures and principles for the disciplinary imprisonment, as well as the legal remedies to be used.
- Although the disciplinary imprisonment does not have the characteristics of a prison sentence and falls outside the concept of crime that is the subject matter of the criminal proceedings, the disciplinary imprisonment restricts the individual's freedom. In this regard, the uncertainty of the mentioned points damages the individuals' legal security and right to legal remedies.

The annulment decision of the Turkish Constitutional Court has been published in Official Gazette numbered 30692 on 20 February 2019 and will enter into force nine months after the date of publishing.

Please see this [link](#) for the full text of the Constitutional Court's decision published in Official Gazette numbered 30692 on 20 February 2019 (only available in Turkish).

Related Practices

- [Administrative Procedures and Actions](#)

Related Attorneys

- [I?IK ÖZDO?AN, LL.M.](#)
- [ECE BERKMAN](#)