

Turkish Constitutional Court Annuls Advertisement Board's Power to Block Access to Websites

Turkish Constitutional Court ("Court") annulled the paragraph 12 of Article 77 of the Consumer Protection Law, which granted the Advertisement Board the power to partially or entirely block access to websites containing unlawful advertising content. The relevant rule was considered to be unconstitutional pursuant to the Court's decision dated 13 September 2023 and numbered 2022/70 E. - 2023/152 K. which was published on the Official Gazette dated 27 October 2023 and numbered 32352.

The Court, in its decision, stated that *"It is understood that the power granted to the Advertisement Board is not only limited to blocking access to the relevant commercial content that is found to be violating, but it can also be enforced by way of blocking access to the entire publication, part or section of where such violating commercial advertisement content was placed. In this framework, it is clear that the form of restriction envisaged in the subject rules will lead to the complete elimination of the exercise of freedom of expression and the liberty of labor and freedom to establish private enterprises vested with the users of the publication, section, or part to which access is entirely blocked. The rules do not provide any alternative restriction method that can be applied without blocking access to the entire website, such as informing the operator of the website where the content is available about the relevant content, notifying the owner of the content, or warning about the removal of the content before imposing such restriction. In this respect, the fact that the rules do not include alternative methods that cause less damage and that make it possible to achieve the desired goal, aimed to be achieved by limiting the freedom of expression and the liberty of labor and establish private enterprises, with a lighter restriction reveals that the restriction envisaged by the rules is not necessary within the context of proportionality."* Accordingly the Court ruled that the scrutinized legal rules do not meet the necessity principle, which is the sub-principle of the proportionality principle that is one of the elements required to be satisfied under the Constitution for a limitation of right to be constitutionally compliant. Hence, the Court found that the subject rules are contrary to Articles 13, 26 and 48 of the Constitution.

Pursuant to the decision, the part of the subject provision stipulating that *"In addition to these penalties, if the violation is committed on the Internet, the Advertisement Board may decide to block access to the publication, section, part (in the form of URL, etc.) of where the violation occurred. However, in cases where it is technically impossible to block access to the violating content or where the violation cannot be prevented by blocking access to the relevant content, the Advertisement Board may decide to block access to the entire website where the violating content is placed."* was annulled pursuant to their

