

A NEW COURT DECISION on TWITTER in TÜRKİYE

(Information Note and Summary Translation)

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► Firstly

Social media crosses the borders of countries. It is very fast to interact and get information. People express themselves on social media, advertise, provide training and use it in many subjects. This usage includes not only positive situations. Sometimes it can cause problems. Fraud, fake news, slander, manipulation are the most known of them. It is possible to "complot of dignity" with such expressions. It is very common to spread false information about the person, to insult him, to slander him by implying.

All states are wishing to take opposite action and they want to solve the problems. We can say that the most important need of this age is "safety internet media". We are trying to help those who victim in this regard. For this, we created the e-magdur.com (ie digital victimization center) team. We are study on this issue for a long time. We applicant to social media company, to search engine platforms, to internet media firms. A lawsuit we filed with the work we have done recently has been concluded.

The lawsuit was against Twitter. The court stated that Twitter should pay compensation for not preventing hateful and discriminatory expressions. We wish share some important points about this decision.

I. Cause of Action

In 2019, some posts were made about our two clients, who are journalists, via the address "@bisimiturfa63". These posts claimed that the clients belonged to another race. He said they were terrorists.

There was no such truth. However, this expressions were included slander, hatred, insult and discrimination. It was aimed to create a social pressure against our clients. For this, the public prosecutor was asked to file a lawsuit. The public prosecutor said, "Twitter does not inform us. We cannot find the perpetrator for this," he refused our request. Twitter, which does not provide information and allows such sharing, should have had a responsibility.

We have filed a claim for compensation for this. In the lawsuit, we stated that Twitter caused damage by not providing information and not removing hate posts despite being reported. The court reviewed our request. Twitter decides to pay compensation

II. Decision Information

The trial was held in Şanlıurfa, the residence of our clients. The court was determined as Şanlıurfa 2nd Civil Court of First Instance (Local Court). The trial took about 4 years. The reason for this was that Twitter did not have a judicial representative in Turkey. However, the court accepted this company, of which Twitter is a partner, as the representative in Turkey.

Court was sent judicial notice to company in Türkiye. And continued this trial. The court decided with the file numbered File: 2021/215 and Decision: 2023/1010

III. Summary of Decision

The decision is stand on this points in below:

■ *Decision Content;*

- It is a lawsuit for moral damages arising from tortious act. After the attack on personal rights (discrimination, hate and violence discourses) on the social media and sharing platform called Twitter, within the scope of the Turkish Civil Code No. 4721, the defendant has strict responsibility because these attacks were not eliminated by the defendant server.
- E-Notification to Twitter Internet Content Services Limited Company, which is the representative of the defendant in Turkey (the company designated by the defendant company as the legal addressee in Turkey), includes the petition, the applicant letter of the and the hearing paper (in accordance with article 7/a of the Notification Law No) on 27.03.2023 at the date it reached the address.
- The Turkish Legal System and the Turkish Judiciary get the rule under Constitution of the Republic of Türkiye. Regulated the "sovereignty right" (Article 6) and "main objectives and duties of the State" (Article 5) in Consitution. In those regulations aim to State should proteciton against acts of aggression, discrimination and harassment suffered by individuals able to protect them before the law. In the light of all these explanations, it is undisputed that the Turkish Courts are competent in the case at hand.
- The defendant Twitter, which is in the position of "Social Network Provider" within the scope of the definitions in the Law on Regulation of Broadcasts on the Internet and Combating Crimes Committed Through These Broadcasts (article 2); As a social network provider from abroad, a natural or legal person has to designate a representative. This representative is fully authorized and responsible for technical, administrative, legal and financial aspects, without prejudice to the responsibilities of the social network provider. If this representative is a legal person, it must be a branch established directly by the social network provider as a capital company. As can be seen, the representative of the defendant, who is a foreign-based social network provider, established as a capital company in Turkey, is in the position of legal interlocutor.
- The lawsuit petition containing the claims and demands of the plaintiff and the legal notice of our court containing the legal warnings of the parties have been duly served. Despite this, the respondent company deliberately did not provide an answer on the merits. It has been insisted that the representative of Türkiye did not have the right to present evidence. However, this claim was not found acceptable by the court.
- The expressions used are in the nature of an attack on personal rights within the scope of the Turkish Civil Code. Again, the same expressions are considered to be tortious acts within the scope of the Turkish Code of Obligations. The statements link the plaintiffs to a terrorist organization. He insults them by claiming that they belong to a race, although in reality they are not. This is hate and discrimination. They are expressions that would mean discrimination against the plaintiffs in religious, ethnic or ideological contexts. As a result of the criminal complaint made by the plaintiffs on this issue, Twitter did not cooperate to find the perpetrator. Again, although Twitter itself was complained about the

situation on the system, the account and its share were not removed for a long time. This situation had a negative impact on the plaintiffs morally.

- The relationship between the plaintiffs and the defendant company is essentially a contractual relationship. Within the scope of this relationship, the parties have obligations and obligations to each other. These acts and obligations are determined under the "Terms of Service" (TOS) and "Twitter Rules and Policy" (RAP) determined by the defendant Twitter, and the defendant company has contractual responsibility towards its members under these conditions. The Twitter company has stated that it will observe the rights and laws of all its users within the scope of these terms, policies and rules, and will do whatever is necessary, especially with regard to hateful and discriminatory posts. It has admitted that such situations are against Twitter's rules. In this regard, the defendant company has a clear commitment to its users.
- In the 14th article of the European Convention on Human Rights, to which Turkey is a party, discrimination is prohibited on the grounds listed in the enjoyment of rights and freedoms. With the European Union's Racial Equality and Employment Equality Directives, the prohibition of discrimination has been discussed in detail, the definition of discrimination, types of discrimination, and the personal and material scope of discrimination have been determined. Four types of discrimination are mentioned in the said Directives. These are direct discrimination, indirect discrimination, harassment and discrimination instruction. Harassment is when a person is humiliated, humiliated, exposed to a hostile and aggressive attitude because of his or her different characteristics. Harassment is an attack on human dignity. Therefore, harassment is a violation of basic human rights. It is clear that the plaintiffs are exposed to harassment and discrimination through Twitter.
- The Turkish judiciary has jurisdiction over the case at hand. Twitter has neglected its obligations in line with its commitments to the plaintiffs under the terms of the contract. It has not taken steps to eliminate attacks and eliminate or mitigate their effects. The defendants suffered moral damage. The following provision has been established to compensate for these losses.

■ **Final Judgement (Local Court)**

- The local court was accepted of the action.
- In favor of each of the plaintiffs, 5,000,00 TL of non-pecuniary damages were collected from the defendant and given to the plaintiffs.
- The decision can be appealed to the Regional Court of Justice within two weeks from the notification.

► **After This Decision...**

An important decision against the imposition of their own rules by social media companies. Thus, social media companies may have to pay compensation if they do not cooperate on crimes or take the necessary measures. Especially if there is hatred and discrimination in insult crimes, this decision will set a precedent. The decision has not been finalized yet. It will be finalized after the appeal. We will see the process together.