

Infringement Of Personal Rights On The Internet Some Legal Considerations

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Introduction

It is evident that the invention of Internet by connecting the computer with telephone line has provided significant easiness primarily in the area of communication and science. However, insufficient controls due to technological constraints and the opinion alleging that internet must be a freer area caused the virtual environment to become an area where infringement of personal rights are extremely widespread. In virtual environment, it is seen that there are anonymous statements of insults and swears and complaints, which are likely to be written by the competitors, about various companies as well as personal data.

In the presence of these developments arisen together with Internet, it is observed that especially the classic sanctions of Turkish Law do not provide sufficient protection. Today, it is attempted to fill the gaps in this area with new legal regulations. For instance, Law no 5651 on “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications”¹ has enacted favorable but limited arrangements on this matter. Besides this, the “Draft Code on Protection of Personal Data” has been delivered to the Prime Ministry².

This study will examine the existing legal sanctions against the personal right infringements on the Internet and the experienced problems, and will explain what kind of new regulations are needed in this area.

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¹ Official Gazete, 23.05.2007, 26530.

² <<http://www.kgm.adalet.gov.tr/kisiselveriler.htm>>

I- Definition And Nature Of Personal Rights

Personal rights, in short, are the rights that a person may request the protection of and that are related with legal, moral and physical interests of a person³.

It is possible to classify the personal rights as “capacity to acquire rights and capacity to act and personal freedoms”, “integrity of body” and “moral integrity”. Within this concept, a person has right on his/her moral-ethical values, bodily integrity, capacity and freedoms as well as his/her dignity and honor, memories, name, photo, professional-artistic and commercial personality⁴.

These rights are of absolute rights that cannot be expressed in terms of money and neither be transferred to others nor be waived. At this point, it should be mentioned that not expressing the personal rights in terms of money does not mean that it has no affect on the assets. Sometimes infringement of personal right can also have affects on the assets⁵.

³ TEKİNAY, S.S.; *Medeni Hukukun Genel Esasları ve Gerçek Kişiler Hukuku*, 6th Edition, İstanbul, 1992, p. 249 etc.; (TEKİNAY, Genel Esaslar); OĞUZMAN/M.K./SELİÇİ, Ö./OKTAY ÖZDEMİR, S.; *Kişiler Hukuku*, 9th Edition, İstanbul, 2009, p. 135 etc.; DURAL, M./ ÖĞÜZ, T.; *Türk Özel Hukuku Volume II, Kişiler Hukuku*, 9th Edition, İstanbul, 2009, p.93 etc.; ARPACI, A.; *Kişiler Hukuku (Gerçek Kişiler)*, 2nd Edition, İstanbul, 2000, p. 108 etc.; HELVACI, S.; *Türk ve İsviçre Hukuklarında Kişilik Hakkını Koruyucu Davalar*, İstanbul, 2001, p. 41 etc.

⁴ TEKİNAY, (Genel Esaslar); p.248 etc.; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 136 etc.; DURAL/ÖĞÜZ, p.98 etc.; KILIÇOĞLU, A.; *Şeref Haysiyet ve Özel Yaşama Basın Yoluyla Saldırlardan Hukuksal Sorumluluk*, Ankara, 1993, p. 5 etc.; (KILIÇOĞLU, Şeref, Haysiyet...).

⁵ TEKİNAY, (Genel Esaslar), p. 249; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 134-135; DURAL/ÖĞÜZ, p. 97 etc.; HELVACI, p. 46 etc.; KILIÇOĞLU, (Şeref, Haysiyet...) p. 7 etc.; In the case of infringement of personal rights of a dead person, relatives can bring an action (Code Of Obligation. 47) but it does not mean that this right is transferred by inheritance. Law recognizes this right because of the intervention to the personal rights of the relatives. Please see. AKKANAT, H.; *Ölümün Özel Hukuk İlişkilerine Etkisi*, İstanbul, 2004, p. 88.

II- Ways That Constitute Personal Right Infringement

The infringement of personal rights can occur mainly in two types. These rights can be infringed either by means of “legal transactions” or “tortious acts”. Agreements that limit the capacities or freedoms of a person in a manner infringing the legal and ethical rights are the examples of the first type of infringement. Infringements of personal rights on internet are generally the results of “tortious acts”.

III- Causes Of Legality In Case Of Infringement Of Personal Rights

In case of infringement of personal rights the causes of legality, namely the causes that remove the contradictions of law, are as follows:

“Consent of the person whose personal rights are infringed”,

“superior private interest (For example, urgently operating an unconscious patient)”;

“superior public interest (For example, dissemination of truthful news through newspapers, televisions or internet in a proper form and language within the scope of the freedom of obtaining information and freedom of press)” and

“Authorization granted by law”⁶.

In case of infringement of personal rights on the internet, it is required to investigate particularly whether “superior public interest” exists. Therefore, it will be appropriate to provide more detailed information on the cited cause of legality:

Most of the infringements of personal rights on the internet are committed by presenting degrading and humiliating articles, transmissions to the access of the public. At this point, it must be determined whether such transmissions have the character of news and thus whether

⁶ HELVACI, p. 99 etc; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 154; DURAL/ÖĞÜZ, p. 140.

can be considered within the scope of freedom of obtaining information and freedom of press (Turkish Constitution of 1982, Article 28).

In such case, first of all it must be evaluated whether the matter has the nature of news and whether it is true or not. Moreover, even a subject has the nature of news and is true, it must be stated in an appropriate language and in a manner serving to the appropriate aim. The truthfulness of the news does not constitute cause of legality in terms of infringement of personal rights. Despite it is free to make estimations within the limits of criticism, it is required not to suspect that unnecessarily degrading and non-objective estimations go beyond criticism and become contrary to law⁷.

Today, on the internet, in many websites, there are estimations regarding the personal characteristics of many senior bureaucrats, artists, academics and similar persons and it is seen that some websites are created solely for such purpose. Apart from the fact that the estimations in question have the nature of news, in many cases there exist statements that are degrading and even insulting and containing swears, and that went off the limits of criticism. Similarly, it is seen that there are many web sites collecting complaints regarding products and services. When it is taken into account that most of the cited complaints are sent under a nickname, it is a possibility that must always be considered that ambiguous competitors may commit unfair competition by sending notional complaints.

IV- Aspects Of Infringement Of Personal Rights On The Internet

It's a fact that the increase and diversity in infringement of personal rights are noticed due to the development in technology⁸. Internet be-

⁷ TEKİNAY, (Genel Esaslar), p. 263-264; HELVACI, p. 121 etc.; ARPACI, p. 136; KILIÇOĞLU, (Şeref, Haysiyet...), p. 128.

⁸ TANDOĞAN, in his article published in 1963, he stated foreseeing that the technical advances will improve the infringements of personal rights. TANDOĞAN, H.; Şahsiyetin Akit Dışı İhlallere Karşı Korumasının İşleyiş Tarzı ve Basın Yoluyla Olan İhlallere Karşı

came an area where infringement of personal rights are extremely widespread. Infringement of personal rights on the internet mainly arises in the following forms.

1 Infringement Of Personal Rights By Electronic Mail (E-Mail)

Infringement of personal rights by electronic mail⁹ prevalingly occurs by sending statements and photos/pictures that infringe the personal rights. For instance sending insulting or threatening messages to a person.

Moreover, sending messages infringing the personal rights of a person to others can be the case. In verdict no E. 2005/13871, K. 2005/13964 dated 22.12.2005 of 4th Civil Chamber of Supreme Court of Appeals it was adjudicated in summary as; *“The lawsuit is regarding the request of moral compensation. Plaintiff has requested moral compensation by alleging that the company, which he had worked for as finance director, has attacked his personal rights with the content of the e-mails sent to many companies on 11.4.2002 through the user name of the other defendant E, who also works for the same company as human resources director, by showing the defendant company as sender, and the defendant had requested the rejection of the lawsuit by stating that it was announced in the e-mail that no reference could be furnish to the plaintiff and that there was no attack to any personal right in the text subject to the lawsuit, and the local court has adjudicated to partially accept the lawsuit.*

In the text subject to the lawsuit, it was stated as “ To All, we would like to inform you some changes recently made in our company in order to avoid any misunderstanding and any references to be furnished in the future, for all of you. The employments of Sales and Marketing Director E., Finance Director G. and Sales Representative Y. have been terminated due to their practice totally against our “Management Rules”. Therefore, we, as management, do not furnish any reference to these mentioned persons. We submit this to your

Özel Hayatın Korunması, A.Ü.H.F.D., 1963, Volume. XX, p. 1-4. (p. 1-36), p.1 etc.

⁹ For E-mail please see. TOPALOĞLU, M.; Bilişim Hukuku, Adana, 2005, p.88-89.

information". The aim of the above text published on the internet is to provide information to the related parties in order to avoid the reference request for the plaintiff and when the text is considered as a whole, it is seen that there is no attack for personal rights. The adjudication of the local court in partially accepting the lawsuit, although it is required to reject the lawsuit, is against the procedures and law, thus it is required to be overruled¹⁰".

Contrary to this, it is possible to send messages that infringe personal rights to another person by accessing the e-mail address of a person or by getting a fake e-mail address as if it belongs to that person.

It is not always easy to determine who actually sent an e-mail. It is very easy in virtual environment to get a totally fake e-mail and to show himself/herself as a different person. Moreover, it is possible to send messages from the e-mail of a person by secretly learning or cracking his/her password. In fact, this matter related with technique and proof is very important in achieving a result in terms of law. It is seen that Supreme Court of Appeals issues some verdicts on the responsibility of a person, who causes the access to his/her very own line by not using a highest level security system on the internet and thus the damage of third parties. For instance, the verdict no E. 2003/12313, K. 2004/2672 dated 04.03.2004 of 4th Civil Chamber of Supreme Court of Appeals reads as below:

"The lawsuit is regarding compensation request. The plaintiff alleged that he was prosecuted as indictee by Public Prosecutor upon the complaint of a person, not party to this lawsuit, since the defendant had sent insulting e-mails to that person, not party to the lawsuit, by using his name on the internet line and that he was student at Police Academy and that he was worried about losing his job and that the criminal lawsuit has been removed since the complainant has waived from his/her complaint and thus the plaintiff has requested a moral compensation of 10.000.000.000 TL as a result of the act of the defendant against his/her personal rights. The lawsuit was rejected by the local court.

Due to the expert, whose opinion was obtained during the judgment, it is possible for any person to send e-mail to any place by accessing the e-mail

¹⁰ For the verdict please see Kazancı Legal Data Bank.

address of another person. There is an IP (Internet Protocol) number of each computer on the internet. In personal computers the IP number is given by the service provider when the computer is connected to internet. Similarly, a person that receives internet service from a service provider can distribute the same to his/her neighbors without another service provider. In such case, in the determination the IP number, the computer, to which the modem is connected, and that telephone number are seen. Other than this, when an e-mail is sent from an e-mail address that is cracked by a person defined as Hacker, it will be possible that the IP number of the computer, from which the e-mail has been sent, will be displayed different and thus the telephone number that has connected to the computer. As can be understood from these explanations, although it is possible for the third parties to access the internet line of the defendant, such access can only be in question, when the internet security system is kept lower. Yet the defendant can prevent such use by using the internet security system at highest level. Although the defendant is required to keep the system he/she uses in a manner harmless to third parties, he/she should be responsible from not having the above explained measures. The adjudication of the local court in rejecting the lawsuit without taken into account the points explained is contrary to procedure and law thus it is required to be overruled¹¹”.

Other than those infringements mentioned, tracing and monitoring of someone's e-mails also constitute infringement of personal rights. Today, many employers can see the computer screens of their employees with installed systems and thus can trace the e-mails of the employees. Here it must be stated that illegal access to an information system totally or partly and continuing to stay there constitute the crime regulated in article 243 of Turkish Criminal Code and also the crime of infringement of confidentiality of communication as indicated in article 132 of Turkish Criminal Code.

Finally, it must be indicated that e-mail messages sent without request for advertisement, informative, etc. purposes and named as “Spam”

¹¹ 4th Civil Chamber of Supreme Court of Appeals decided in the same direction in its verdict no E. 2005/366 and K. 2005/1918 dated 28.02.2005 (For verdicts please see Kazancı Legal Data Bank).

(Sending Personally Annoying Mail) sometimes can have the character of infringing personal rights.

In article 7 of EU Directive no 2000/31 on Electronic Commerce, there are regulations on spam. Accordingly this Directive does not prohibit the “spam”. It is possible for the Member States to prohibit “spam”. However, in the countries, which do not prefer to prohibit spam, it must be provided that a “spam” e-mail must be indicated as “spam” in a manner to be understood before opening the e-mail.

Today it is seen that some countries like Germany, Great Britain, Italy and Spain have ratified some regulations called Anti-Spam Codes. In our country there is not a special regulation and any prohibition in this parallel and in case of infringement of personal rights protection can be requested in accordance with the general regulations¹².

2. Infringement of Personal Rights Through the Messages on Websites

Infringement of personal rights is also possible through the contents on the websites. For example it is the case when insulting someone on a webpage or disclosing his/her confidential matter and secrets and disclosing of personal datas. Today publication of some newspapers also on the internet or newspapers only peculiar to the internet is very common.

In the Article 9 of “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications”, a regulation is arranged to remove the content of publication and reply¹³.

Enacting such a special provision regarding the removal of the infringing content in case of infringement of personal rights through websites is appropriate. Since before the mentioned regulation, there was hesitation whether it can be decided to remove a content infringing personal rights from a site on the internet. In verdict no E. 2001/755, K.

¹² SIRABAŞI, V.; *Internet ve Radyo-Televizyon Aracılığıyla Kişilik Haklarına Tecavüz (İnternet Hukuku)*, İstanbul, 2007, p. 185.

¹³ Please see following VI-1.

2001/1157 dated 08.02.2001 of 4th Civil Chamber of Supreme Court of Appeals it was decided as follows;

“The lawsuit is the request of moral compensation arising from the attack on personal rights by press and the discontinuance of news on the internet. The court has partially accepted the moral compensation request and also adjudicated on the “discontinuance of the news on the internet”.

Yet there is not any regulation on the transactions to be made due to the publication on the internet. However, for the court verdicts to be finalized as binding the verdict must be enforceable and thus sanctions are applicable. In this stage, there is not any legal regulation on the removal and discontinuance of the publication on the internet, including those sent through the publication on the internet. In this context, the enforceability and non-finalization of the verdict to be issued is a matter that can be discussed. And this can bear the result of non-effectiveness of a court verdict and thus becomes discussable. Therefore, it is required to overrule the verdict since it was required to reject such request, not to accept as written¹⁴”.

However, even before the special regulation enacted in article 9 of Law no 5651, it, for sure, was also possible and required to come to conclusion within the frame of article 25 “Lawsuit for Discontinuance of Infringement” of Civil Law in case of infringement of personal rights. Even for a moment it is deemed that there was not any legal regulation in Law on this matter, it is required to conclude that the verdict of Supreme Court of Appeals is incorrect in accordance with article 1 of Turkish Civil Code. Since in article 1 of Turkish Civil Code it is clearly regulated that in the absence of an applicable provision in law, judge is required to decide in accordance with customary law, and in the absence of customary law the judge is required to decide in accordance what the judge rules, as if he/she is the legislator; in other words the judge cannot avoid to rule

¹⁴ YKD. 2001, Volume 27, No. 7, pp. 994-996 or KazancıLegal Data Bank.

on a matter before him/her with the reason of non-existence of any applicable legal provision¹⁵.

On this matter verdict no E. 2002/11093, K. 2003/2586 dated 11.03.2003 of 4th Civil Chamber of Supreme Court of Appeals is also interesting; "... *The lawsuit is the request of moral compensation due to attack on personal rights through press. The plaintiff has requested moral compensation by claiming that the allegations of the publication dated 12.3.2001 on the website www. (...).com constitute attack to his/her personal rights. The defendant has defended that he/she did not have any connection with the internet site subject to the lawsuit and he was not the owner of that site and did not write the publication subject to the lawsuit.*

From the documents existing in the file it is understood that on the date of the publication, the internet site was registered on the name of A.Y, not party to this lawsuit. Despite the local court is required to reject the lawsuit, partially acceptance of the lawsuit by the local court by depending on the acceptance of the defendant in writing articles on the website www.(...) com before and defendant's failure to prove that the defendant has no more connection with the mentioned website, is contrary to procedure and law, since it was not proved that the article subject to the lawsuit was written by the defendant although it is technically possible to make publication from the website of any other person¹⁶.

3. Infringement of Personal Rights within the Context of Domain Name

Domain name is the electronic address used for the access to websites. In other words, the domain name is the internet address that introduces the internet website you want to access or the person or entity you want to send e-mail. Domain names are not trademarks. The addresses,

¹⁵ DOĞAN, M.; İnternetteki Yayınla Kişilik Hakkının İhlaline Karşı Durdurma Davası; A.Ü.E.H.F.D, 2003, Volume. VII, N. 1-2. (p. 387-406), p. 387.

¹⁶ Kazancı Legal Data Bank.

which are in fact numbers, are alternatively determined as domain names and enable easy remembering and understanding.¹⁷

Infringement of personal rights through domain names is especially realized by obtaining the name of the persons without informing them and then offering the transfer of the same with higher prices. Especially when the internet was newly and slowly getting developed and at the times when it was not known what a domain name is for and not used by most of the population, some people with bad intention had taken the names of celebrities, politicians etc as domain names and when the person whose name was taken without his/her permission wanted to use his/her name as a domain name, he/she would have noticed that the name was already taken. It is observed that some of those who had taken these domain names made offers to the persons, whose names were taken without permission, the transfer of the domain names in consideration to a fee; and that some of those were illegally transmitting messages through these domain names. Due to this event which is very common in the world and Turkey, many people applied to WIPO (World Intellectual Property Organization) to provide the transfer of the domain names to themselves¹⁸. In Turkish Law, articles 24 to 26 of Civil Code or as the case may be, article 49 etc. of Code of Obligations or article 56 etc. of Turkish Commercial Code regulating the unfair competition, are applicable¹⁹.

Here the crucial point is that once the domain name is registered it is technically not possible to re-register the same. In Turkey the domain name registration is made by ODTÜ DNS Group. ODTÜ, in the determination of the domain names, gives attention on not taking the names of other organizations. It is accepted that the organizations can only be registered with their own trade names and registered trademarks as well

¹⁷ NALBANTOĞLU, L.; İnternet'te Alan Adı Olarak Kullanılması Suretiyle Marka Hakkının İhlali, Bilişim Toplumuna Giderken Psikoloji, Sosyoloji ve Hukukta Etkiler Sempozyumu, Türkiye Bilişim Derneği, Ankara, 2001. (215-226) p. 215 etc.; SIRABAŞI, p. 174.

¹⁸ SIRABAŞI, p. 177.

¹⁹ Please see following VI-3.

as directly related names²⁰. Nevertheless, it is obvious that the mentioned area needs to be regulated by law. Since when the persons with same names want to take a domain name, many issues will be needed to be resolved.

V- The Responsible People For The Infringement Of Personal Rights On The Internet

The crucial issue regarding the infringement of personal rights on internet is the determination of the perpetrator. The issues such as covering the identities of the persons in the virtual environment, showing themselves as different persons, transmission from abroad and other technical difficulties arise from the very own nature of the internet. Although this difficulty is mainly a technical difficulty, for sure it directly makes the achievement of legal results difficult.

An internet transmission is provided by various people for different purposes at different stages. At this point it should be examined whether they are responsible for the infringements occurred on the internet area.

For the transmission occurred on the internet, an administration performing telecommunication, an internet service provider, an internet server, a content provider and a host serve.

An administration performing telecommunication provide the connection of telephone lines necessary for the access of internet. Because these are the technical services, an administration performing telecommunication service is not concerned for the infringements of personal rights through internet.²¹

Internet service providers provides the service of access to the internet for the users. Superonline and TTNET can be given as examples

²⁰ MEMİŞ, T., *İnternette Cins ve Meslek İsimlerinin alan İsmi Olarak Kullanılması ve Ortaya Çıkan Hukuki Sorunlar*, A.Ü.E.H.F.D., 2000, Volume. 4, No. 1-2. (p. 463-478) , p. 466.

²¹ SIRABAŞI, p. 141; TOPALOĞLU, p. 99-101; GÜRAN, S./AKÜNAL, T./BAYRAKTAR, K./YURTCAN, E./KENDİGELEN, A./BELER,Ö./ SÖZER, B.; *İnternet ve Hukuk*, Superonline Workshop Copy, İstanbul, 2000, p. 17.

of service providers. For the Article 6 of Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications, a service provider has right to block the access to the illegal content of the user's in the case of having knowledge of the event through this Regulation and within the technical possibilities. However, service provider is not obliged to control the content of the information accessed through itself whether they are legal or illegal. In this case, service provider will not be responsible for the illegal content. Internet service providers use internet servers to carry out their services.²²

According to the Article 12 of EC Electronic Commerce Directive it is accepted that having no chance to select and check the transmission, the service provider cannot have any responsibility of it. Again according to the Article 12, whether the service provider has not started the transmission, selected the receiver, selected and changed the information, then the service provider has no responsibility²³.

However, according to U.S. and British Law regulating the internet transmission, the responsibility of the service provider is accepted in cases where the service provider took reasonable care in relation to the transmission and knew the content or has to know it. In this context, in a sense, service providers are forced to control the content.²⁴

The content providers prepare the contents of any Internet transmission that can be accessed by Internet users. For example, a person who creates a web page is the content provider. For the Article 4 of Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications, content provider is responsible for all the contents offered in the internet area. It's obvious that the content provider is responsible for illegal acts in the contents according to both private law and criminal law.²⁵

²² SIRABAŞI, p. 141; GÜRAN/ AKÜNAL/ BAYRAKTAR/ YURTCAN/ KENDİGELEN/ BELER/ SÖZER, p. 18; TOPALOĞLU, p. 101-103; ÖZEL, S.; Uluslararası Alanda Medya ve İnternette Kişilik Hakkının Korunması, İstanbul, 2002, p. 186.

²³ ÖZEL, p. 196-197.

²⁴ ÖZEL, p. 192 etc.

²⁵ SIRABAŞI, p. 143 etc.; ÖZEL, p. 185; TOPALOĞLU, p. 103-104.

The location provider is considered as Internet service providers which store digital information within itself and the host. According to the Article 5 of Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications, host has the right to block the access to the illegal content of the user's in the case of having knowledge of the event through this Regulation and within the technical possibilities. However, host is not obliged to control the content of the information whether they are legal or illegal.²⁶.

VI- Legal Measures To Be Taken In Case Of Infringement Of Personal Rights On The Internet

Firstly, it has to be expressed that legal measures that can be taken by a person whose rights are infringed on the internet are not regulated in a specific code.

Though there are some special regulations take place about this issue on Code no 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications". However, it has to be mentioned that in this Code, the regulations do not protect completely against the infringement of the personality and people whose personality is infringed can benefit from the arrangements that protect personal rights take place in other codes .

1) Arrangements in Code no 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications"

Article 9 of this Code under the heading "Removing the Content from Publication and Right of Reply" reads as follows:

" (1) A person, who allege the infringement of his/her personal rights due to the content, can request the content provider, or in its ab-

²⁶ SIRABAŞI, p.145; GÜRAN/AKÜNAL/BAYRAKTAR/YURTCAN/KENDİGELEN/BELER/SÖZER, p. 21; ÖZEL, p. 186-187.; TOPALOĞLU, p. 103.

sence the hosting, the removal of the content related to him/her and the publication of a reply that she/he prepared not longer than the published content, on the internet for one week. The content provider or the hosting takes the necessary action for the fulfillment of the request within two days, upon its receipt. If no action is taken for the fulfillment of the request within this time, then the request is deemed as rejected.

(2) If the request is deemed as rejected, the related person can request the criminal peace court having the jurisdiction within the area he/she resides within fifteen days to decide on the removal of the content from publication and the publication of his/her reply not longer than the content on the internet for one week. Judge of criminal peace court decides on this request within three days without holding a hearing. The decision of the judge of criminal peace court can be opposed in accordance with the provisions of Code of Criminal Procedure.

(3) Within two days upon the service of the final verdict of judge of criminal peace court to the content provider or hosting that failed to fulfill the application made in accordance with first paragraph, the content is removed from publication and the reply is started to be published.

(4) The responsible person who do not fulfill the requirements of the verdict of the judge of criminal peace court timely and in accordance with the conditions indicated in this article, shall be imprisoned for a period starting from six months to two years. In case the content provider or hosting is a legal entity, the provision of this paragraph is applied to the person in charge of publication”.

It is seen that a provision similar to the one indicated in article 14 of Press Code under the heading Right of Correction and Reply, is regulated in the mentioned article. In this context, the person whose personality is infringed, would be able to request the content to be removed from the transmission and can also publish his/her reply text.

2) **Civil Actions Protecting The Personal Rights In Accordance With Civil Code And Code Of Obligations**

The person whose personal rights are infringed can bring any civil action in order to protect his/her personal rights regulated in Turkish Civil Code and Turkish Code Of Obligations. At this point, it should be mentioned that the regulations of civil actions protecting the personal rights in the Turkish Law are parallel with the Swiss Law²⁷. Below some brief information regarding these civil actions will be given:

a) **Action for Terminating an Infringement:**

It is possible to bring an action for terminating an infringement in those cases where an infringement has already commenced and continues against personal rights. Moreover, if the effects of the infringement continue after the infringement ends, it will be required to bring this action for the removal of the results in question. As the prerequisite of bringing this action, the act is supposed to be against law, on the other hand the fault of the perpetrator or loss is not required²⁸.

However, as mentioned above, it must be indicated again that in case of infringement of personal rights through transmissions made on websites, there is a special regulation and procedure in Article 9 of Code no 5651 on "Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications" under the heading "Removing the Content from Publication and Right of Reply"²⁹.

²⁷ For Swiss Law please see HONSELL, H./ VOGT, N. P./ GEISER, T.; Basler Kommentar, Zivilgesetzbuch I, Art 1-456, 3th Edition Basel-Genf-München, 2006, Art. 28a; BUCHER, A.; Natürliche Personen und Persönlichkeitsschutz, 3th Edition Basel-Genf-München, 1999, N.477 etc and 598 etc.

²⁸ HELVACI, p. 130 etc.; TEKİNAY, (Genel Esaslar) p. 268; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 171 etc.; DURAL/ÖĞÜZ, p. 144; ARPACI, p.151.

²⁹ See above VI-1.

b) Action For Prevention:

This action may be brought when the infringement against personality has not yet begun but threatening. The aim of this action is to prevent an infringement which has not yet begun but possible to begin. To bring this action the infringement risk must be serious though the fault of the person creating such risk and possibility of risk are not required³⁰.

c) Declaratory Action

This action is regulated peculiarly for the infringement of personal rights in article 25 of Turkish Civil Code. If the person, whose personal rights are infringed, only wants the infringement to be determined, then this action shall be brought. In article 25 of Turkish Civil Code as a prerequisite to bring such an action, the infringement is supposed to be ended while the effects continue. Within the scope of article 25/2 of Turkish Civil Code, the announcement of the related verdict is also possible³¹. In the doctrine the prerequisite of “end of the infringement” to bring declaratory action is incisively criticized and it is stated that this action shall also be brought in cases where the infringement continues³².

d) Action For Non-pecuniary Damages

Non-pecuniary damages can be claimed for the remedy of the moral loss, namely the agony and distress, arising from the infringement of personal rights. (Turkish Civil Code Article 25/3 and Code of Obligations Article 49). For the mentioned claim it is required that the person, whose personal rights were infringed, has to suffer from moral loss. Not mentioning “fault” in the text of the article after the amendment made in article 49 of Code of Obligations with the Code no 3444, some concerns

³⁰ HELVACI, p. 128 etc.; TEKİNAY, (Genel Esaslar) p. 269; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 173 etc.; ARPACI, p.152; DURAL/ÖĞÜZ, p. 144.

³¹ DURAL/ÖĞÜZ, p.146; TEKİNAY, (Genel Esaslar) p. 273-274.

³² HELVACI, s. 131 etc.; TEKİNAY, (Genel Esaslar) p. 273.-274; OĞUZMAN/SELİÇİ/OKTAY ÖZDEMİR, p. 175; ARPACI, p.161.

had arisen whether the legislator accepts strict liability here with regard to moral compensation. According to the dominant opinion, which we accede, in the said article strict liability is not foreseen but it is made clear that non-pecuniary damages can be claimed even in case of strict liability³³.

In article 49/2 of Code of Obligations it is foreseen that the judge shall take the titles, occupations and economical situations of the parties into consideration while determining the compensation. The cited provision is incisively criticized in the doctrine and it is stated that discriminating people due to their titles, occupations and economical situations is not so appropriate³⁴.

e) Action for Pecuniary Damages

The person, who experiences loss in terms of his/her properties as a result of the infringement of his/her personal rights, can bring an action for pecuniary damages based on Article 25/3 of Turkish Civil Code. To bring this action there must be fault and loss. Certainly if the infringement of personal right arises from a situation of strict liability, the condition of fault shall not be required³⁵.

³³ OĞUZMAN/SELİÇİ/ OKTAY ÖZDEMİR, p. 179 etc.; DURAL/ÖĞÜZ, p. 149 etc.; ARPACI, p. 155 etc.; Please see for the detailed information regarding the amendment made in article 49 of Code of Obligations with the Law no 3444. TEKİNAY, S., Kişilik Haklarına İlişkin Yasal Değişiklikler Hakkında Eleştiriler, Haluk TANDOĞAN'ın Hatırasına Armağan, Ankara, 1990, p 55 etc. OĞUZMAN, K.; İsviçre ve Türkiye'de Medeni Kanun ve Borçlar Kanunu'nda Şahsiyetin Hukuka Aykırı Tecavüze Karşı Korunması ve Özellikle Manevi Tazminat Davası Bakımından Yapılan Değişiklikler, Haluk TANDOĞAN'ın Hatırasına Armağan, Ankara, 1990, p. 7 etc.; KILIÇOĞLU, A.; Medeni Kanun'da Manevi Tazminatta Ağır Kusur Konusunda Yapılan Değişiklik, Haluk TANDOĞAN'ın Hatırasına Armağan, Ankara, 1990, p.106 etc.

³⁴ DURAL/ÖĞÜZ, p.151-153.

³⁵ OĞUZMAN/SELİÇİ/ OKTAY ÖZDEMİR, p. 177 etc.; DURAL/ÖĞÜZ, p. 148-149; ARPACI, p.153.

f) Request on the Transfer of Revenue

Article 25/3 of Turkish Civil Code regulates that the person, whose personal rights were infringed, can claim the revenue that the perpetrator has achieved by doing so in accordance with the rules of “acting without authority”. This lawsuit mainly arises from notional acting without authority regulated in Article 414 of Code of Obligations. According to our opinion, the request for the transfer of the revenue gained from notional acting without authority can be claimed together with non-pecuniary damages. However, it is required to make a differentiation to the extent of pecuniary damages. It will be appropriate to accept that the request for transfer of revenue can be claimed together with the actual loss but not with loss of profit within the context of unfair enrichment dominating the law on responsibility³⁶.

3) Other Legal Regulations on this Issue

If the infringement of personal rights constitutes unfair competition, the person whose personal rights are infringed can raise a claim relying on unfair competition in accordance with Article 56 etc. of Turkish Commercial Code.³⁷

However, in case of an insult, he/she can raise a claim relying on Article 125 et seq. of Turkish Criminal Code . Besides those, in accordance with the Article 135 of Turkish Criminal Code under the heading “Recording Personal Data”, any person who illegally records personal data and information on the political, philosophical or religious opinions, races, ethical tendencies, sexual life, health situations or syndicate contacts of other persons as personal data shall be punished. Uniformly in accordance with the Article 136 of Turkish Criminal Code, any person that illegally obtains, discloses or disseminates personal data to others

³⁶ ARKAN AKBIYIK; A., *Gerçek Olmayan Vekaletsiz İş Görme*, İstanbul, 1999, p. 76 etc.; DURAL ÖĞÜZ, 147-148 etc.; OĞUZMAN/SELİÇİ/ OKTAY ÖZDEMİR, p.185.

³⁷ MEMİŞ, T., *İnternet Ortamında Haksız Rekabet Halleri ve Türk Hukuku*, İnternet ve Hukuk, (compiler ATAMER, Y.) Bilgi Üniversitesi Yayınları 51, Hukuk 2, İstanbul, 2004, p.93 etc.

shall also be punished. Moreover, in article 138 it is foreseen that those, who are obliged to destroy the data within the system after the expiry of the durations indicated by law, shall be punished when they do not fulfill their obligations.

Today, publishing a newspaper on the Internet is a very common condition. In the way of personal rights' infringement, our belief is that it is also possible to take the advantages of the provisions of the Press Code.

In accordance with the Article 13 of Press Code: "For moral and material loss arising from the acts committed through printed works, the author and the publisher and his/her representative, if any, shall jointly and severally be responsible in case of periodical publications and the author and the publisher or the pressman/printer, where the publisher is not known, shall jointly and severally be responsible in case of non-periodical publications.

This provision is applicable to publishers, trademark or license owners, lessees, operators or real or legal entities acting under any name as publishers in periodical and non-periodical publications. In case of legal entities; the chairman of board of directors in joint stock companies and the superior executive in other forms of companies shall jointly and severally be responsible with the company itself.

In case of transfer of the publication under any condition, merging with another publication or any change in the real or legal entity owner of the publication after the commitment of the act that has caused the loss, the transferee of the publication, the merging party and real or legal entities acting as publisher under any name and chairman of board of directors in joint stock companies and the superior executive in other forms of companies shall jointly and severally be responsible with those indicated in first and second paragraph for the compensation to be adjudicated due to such act".

Uniformly in article 14 of Press Code it is foreseen that in case of degrading and humiliating or publications related to someone through periodical publications, that person who suffers from such act will be entitled to claim the right of correction and reply. However the right of

correction and reply is also arranged in the Article 9 of “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications”.

In addition, the “Draft Code on Protection of Personal Data” has been delivered to the Prime Ministry³⁸.

Conclusion

Due to the insufficiency of classical instruments within the framework of infringements of law in internet area, special regulations are needed. In Turkey the Code no 5651 on “Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publications” coming into force is the result of this necessity. However, this code mostly contains criminal sanctions.

In Internet environment since there are no special provisions regarding civil actions to protect personal rights, the classical civil actions may also be brought to protect personal rights in these cases. Besides this, the sanctions regulated in the codes such as Criminal Code, Press Code and Commercial Code may also be used. Together with the complexity of legal regulations on this issue being involved in different codes, the determination of the one who would be responsible for the infringement in the internet environment is another issue. It has to be stated that, the determination of the perpetrator is not always possible.

In this study, assessing the new legal regulations; we try to give a general view of how the personal rights are infringed in internet environment, what are the legal measures that can be taken in case of such infringements and who are responsible for such infringements.

³⁸ <<http://www.kgm.adalet.gov.tr/kisiselveriler.htm>> For the protection of personal data in Turkish Law please see BAŞALP, N.; *Kişisel Verilerin Korunması ve Saklanması*, Ankara, 2004, p. 99 etc and For the view of infringements of personal data on internet please see BAŞALP, N.; *Kişisel Verilerin Korunması ve İnternet, İnternet ve Hukuk*, (compiler ATAMER, Y.) Bilgi Üniversitesi Publish 51, Law 2, İstanbul, 2004, p. 5 etc.; TOPALOĞLU, p. 163. For example in Switzerland there is a special law about the protection of personal data (*Das Bundesgesetz über den Datenschutz*) BUCHER, N. 485.

As a result, it should be expressed that existing regulations are very scattered and unsystematic in our legislation and there is no doubt that new legal regulations would be functional in this regard.