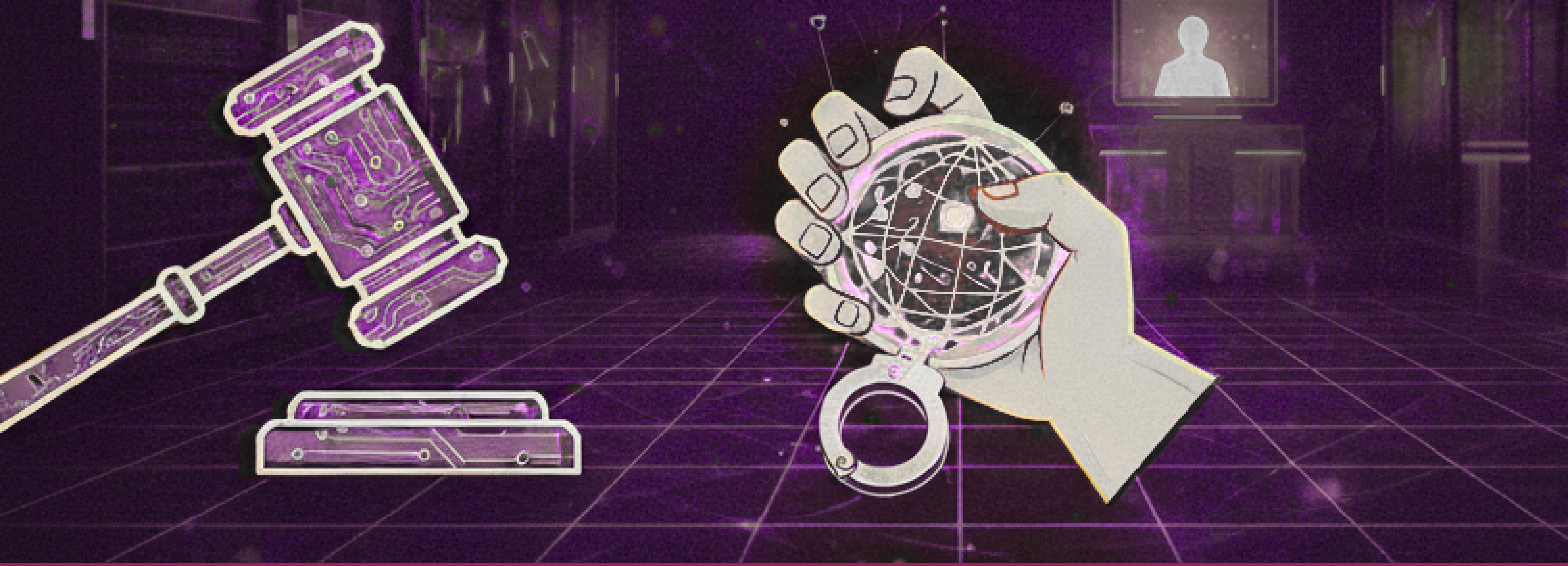

11TH JUDICIAL PACKAGE – DRAFT ARTICLE 128/A OF THE CPC SUSPENSION AND SEIZURE OF ACCOUNTS IN CYBERCRIME CASES

I. General Framework

The 11th Judicial Package is a new legislative proposal introducing amendments to criminal law regulations and is expected to be submitted to the Grand National Assembly of Türkiye in the near future. Within this framework, Article 128/A is to be added to the Criminal Procedure Code No. 5271 (the "**CPC**") under the title *"Suspension and Seizure of Accounts Containing Proceeds Derived from Cybercrime."* The purpose of this amendment is to prevent the rapid transfer of proceeds obtained through offences committed by means of information systems, to ensure redress for victims, and to enhance the effectiveness of criminal investigations.

II. Scope and Content

The proposed regulation is specifically tailored to the following offences:

- Aggravated theft (Article 142/2-e of the Turkish Penal Code) (the "**TPC**"),
- Aggravated fraud (Article 158/1-f, l of the TPC), and
- Unlawful use of bank or credit cards (Article 245 of the TPC).

Where there is information or documentation giving rise to reasonable suspicion that any of the above offences has been committed, banks, payment service providers, or crypto-asset service providers will be authorised to suspend, for up to three days, any account used in connection with the offence that has been, or has been attempted to be, operated through or with the involvement of such institutions (*Draft Article 128/A, paragraph 1*). In this respect, the draft provision confers upon an authority other than the judiciary the power to impose a measure that constitutes a direct interference with the right to property.

III. Procedure and Control Mechanism

Pursuant to the draft provision, the suspension of an account and its related transactions must be promptly reported to the competent Chief Public Prosecutor's Office by the relevant bank, payment service provider, or crypto-asset service provider, together with all accompanying information and documentation.

In addition, the account holder must be notified of the suspension. The account holder may apply to the Chief Public Prosecutor's Office for the lifting of the suspension. The public prosecutor shall decide on such application within twenty-four hours *(Draft Article 128/A, paragraph 2)*. Thus, by introducing a mechanism for judicial review of the suspension decision, the regulation aims to ensure the protection of individuals' right to property.

Under the draft provision, if it is determined that the proceeds of the offence have been transferred to another financial institution before the suspension is completed, the relevant institution shall immediately notify the other financial institution in order to enable the suspension of the transferred assets (*Draft Article 128/A, paragraph 3*).

IV. Seizure Procedure

According to the draft provision, material proceeds alleged to have been obtained through the offence and held in an account suspended either directly by the bank, payment service provider, or crypto-asset service provider, or upon the written order of the public prosecutor, may be seized by virtue of a judicial decision, or, where delay would be prejudicial, by a written order of the public prosecutor within the suspension period.

Where a seizure is effected without a judicial decision, judicial approval must be obtained within twenty-four hours; if the judge fails to render a decision within forty-eight hours, the seizure shall automatically be lifted.

For seizure procedures carried out under this article, the provisions of Article 128 of the CPC shall apply, and the necessary actions shall be taken accordingly. However, pursuant to the draft regulation, the requirement set forth in Article 128 to obtain a report, as applicable, from the Banking Regulation and Supervision Agency (the "**BRSA**"), the Capital Markets Board, the Financial Crimes Investigation Board (the "**FCIB"**), the Undersecretariat of Treasury, and the Public Oversight, Accounting and Auditing Standards Authority shall not apply (*Draft Article 128/A, paragraph 4*).

The draft further provides that, if during the investigation or prosecution phase it is established that the seized proceeds of the offence belong to the victim, such assets shall be returned to their rightful owner without waiting for the completion of those proceedings (*Draft Article 128/A, paragraph 5*). Thus, the regulation aims to ensure that victims' losses are remedied in the shortest possible time.

V. Liability of Institutions

- Persons or institutions that carry out the suspension of accounts shall be exempt from legal liability *(Draft Article 128/A, paragraph 6*).

- On the other hand, it is stipulated that, within the scope of an investigation or prosecution conducted in connection with an offence, any information or document requested by the public prosecutor, judge, or court from a bank, payment service provider, or crypto-asset service provider must be submitted, in physical or electronic form, within ten days (*Draft Article 128/A, paragraph 7*).

- The draft further provides that, in cases where the requested information or document is not submitted or is submitted incompletely, the public prosecutor shall impose an administrative fine ranging from 50,000 Turkish liras to 300,000 Turkish liras on the relevant bank, payment service provider, or crypto-asset service provider.

This provision aims to prevent delays in fulfilling requests made by judicial authorities and to ensure the faster conclusion of proceedings. In addition, the administrative sanction shall be applied separately for each request.

VI. Comparison with Existing Regulations

Pursuant to Article 19/A of Law No. 5549 on the Prevention of Laundering Proceeds of Crime (the "**Law No. 5549**"), in cases where there is a suspicion that a completed or ongoing transaction is related to the offence of laundering proceeds of crime or the financing of terrorism, following a notification to the FCIB, such transactions may be suspended by FCIB for a period of seven days in order to conduct an analysis or to refer the matter to the competent Chief Public Prosecutor's Office.

Accordingly, while FCIB has the authority under Law No. 5549 to impose a seven-day freeze on an account held by an obliged party, the draft 11th Judicial Package introduces a new provision under the CPC granting banks, payment service providers, and crypto-asset service providers the power to suspend suspicious transactions for a period of three days.

At present, pursuant to Article 128 of the CPC, assets may be seized by a judge's order (*or, in cases where delay would be prejudicial, by a decision of the public prosecutor to be subsequently submitted to a judge in accordance with Law No. 5549*). However, under the current regulation, namely Article 128 of the CPC, the imposition of a seizure measure requires a report from the relevant authority, such as the FCIB or the BRSA. Under the new regulation proposed by the 11th Judicial Package, the requirement to obtain such a report has been removed.