

# Covid-19 Measures and Housing Immunity

In Article 6 of the New Restrictions and Measures Circular (“Circular”) of the Interior Ministry dated Nov. 30 , 2020, which came to the agenda with the announcements reminded that New Year’s parties will not be allowed and that a party will be intervened, events that will cause gathering at homes are not allowed (for example; periodical meetings, prayers, condolences, new year’s eve celebration) and not accepting guests to the houses.

The difference between the sections which I highlighted, is important; the person who should not allow the activities is the competent authority, but the person who should not accept guests, is the person who hosts guests in their home (although both issues are reminded to “citizens” at the end.)

In the implementations until today, we have witnessed that the competent authority intervened in such activities in order not to allow them, and as far as I have heard, those who accepted guests to their homes were not intervened.

In addition to the legal troubles I will write below, I think these two articles, which also have difficulties in terms of the technique of drafting legislation, were deliberately written this way, because this way the person who was hosting two friends in his house, keeping the sound of the music a little high (most probably does not know how many people hosted in his/her house and originally disturbed by the sound of music) will find the police at the door as a result of the notice made by their neighbor. The main issue I want to mention here is after this process (entering your residence or interfering with what you are doing in your house) but I gave the details above to emphasize how easy and quick it can be to come to this “after”.

It should also be noted that the Circular states that, how violations of the Circular will be punished, but not how it will be controlled and not “allowed.” In other words, the law enforcement officers are not given any authority such as “house raids” or “party raids”. In any case, whether or not it can not be given, that would be an unlawful authorization. In addition, criminal liability will come up for the relevant law enforcement for the officer who will have committed a criminal act while practising this order.

## *Housing immunity*

The right to housing immunity; (that is, the fact that nobody can enter your home, including law enforcement), is very sharp and clearly protected in Article 21 of the [Constitution](#) and it is very clear in what cases this right can be taken from us. “For the protection of general health” (which of course includes corona measures), only “by the decision of the judge”, or “by the written order of the authority authorized by law in cases where the delay is inconvenient, and that order is in need of approval by the judge within 24 hours”.

## *Illegality*

Ministry of Internal Affairs, which is the basis of the threats of intervention to the houses, wants the measures mentioned in the Circular to be implemented based on the decisions to be taken in accordance with Articles 27 and 72 of the General Hygiene Law.

Let's look at the illegality one by one. No law can be against the Constitution. "Fundamental rights and freedoms can only be restricted depending on the exceptions specified in the Constitution and by law. These restrictions cannot be against the essence and spirit of the Constitution" (Constitution Art.13). I think the General Hygiene Law is not contrary to the Constitution, but it is applied in a way contrary to the Constitution. The news regarding the new decision of the Ankara 3rd Criminal Court of Peace stating that the "curfew" cannot be valid because it is not included as a sanction in the General Hygiene Law, shows that the Circular is open to debate not only in terms of unconstitutionality but also against the law.

It is not difficult to guess that house or party raids that were or could be carried out under the circular will not be based on a judge's decision. Then there will be a situation where "delay is inconvenient" and the authority which is authorized by law will give a written order. What's wrong with being late at a house party? It may be that a sick person comes to the party and makes the others sick. Then, instead of violating the Constitution, those who join the party may be obliged to COVID-19 test (I'm sure the person who gave the party is very relieved in this case). Also, what I understand is that the coronavirus is already infected until the neighbor (possibly disturbed by the sound of the music) reports and law enforcement intervenes. I know this statement sounds frivolous, but I have deliberately said it to emphasize how the Constitution's "situations that are harmful to delay" condition is seriously ignored.

Even if the authority referred to in Article 21 of the Constitution is not the Public Prosecutor's Office, but the Sanitary Council, we know that the decision of the Assembly will not pass the judge's approval within 24 hours (it did not pass, the decision was taken 1 month ago), there is no harm in delaying it, measures can be taken without violating the Constitution. What is meant by the Constitution the decision of the judge or authority, is a decision about a particular house, not a decision that provides access to all houses as here. Anyway, the ministry that has to implement the General Hygiene Law is the Health Ministry, not the Interior Ministry.

As I read from the press, some governors even said that they would not be allowed to have more than "normal" people in the homes on [New Year](#)'s Eve. It is not hard to guess that he will say the same thing tomorrow for any party, meeting and guest visit. So the unlawfulness in our country has come to such a point that a governor dares to say that he will come out and determine our "normal" regarding the issue of how many people should be at home, even though it has not written anywhere, or not to be implemented, and probably never even in the thought of nobody. I wonder, on what other subjects he sees himself as the expert of "our" normal, it is impossible not to wonder. There is a saying that I find very appropriate; that "rights exist as much as they are demanded". If you do not claim your right, it means that others can determine your "normal".

Finally, I want to talk about one more observation. While making laws, as stated in Article 13 of the Constitution, it is stipulated that "the limitation of fundamental rights and freedoms can only be restricted without touching the essence of the relevant fundamental rights and freedoms, in accordance with the law, and the principles and spirit of the Constitution, in accordance with the principles of democratic and secular society, and the principle of proportionality". It is not

possible to interpret that states in the article 6 of the Circular and the interventions made or will be made within the scope of this article in accordance with these conditions. When was the last time “compliance with the essence and spirit of the Constitution” taken into account when making a law?

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