

THE CONSTITUTIONAL COURT REMOVES 'OFFENSIVE ACT' FROM THE CRIMINAL CODE

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In 16 January 2014, the Constitutional Court (“**MK**”) granted the request for a judicial review of Article 335 of the Criminal Code (“**KUHP**”) and removed the phrase, “offensive act” from Article 335 of the KUHP. The reason for removing the phrase, “offensive act” is that it allows investigators and public prosecutors to act arbitrarily against certain people. In its considerations, the MK said that the phrase, “offensive act” in Article 335 paragraph (1) of the KUHP has caused legal uncertainty and injustice. The phrase is also considered contrary to the constitutional principle which guarantees protection of the right to legal certainty in law enforcement. Article 335 basically stipulates that a person is liable to imprisonment for up to a year if found guilty of an offensive act against another person. What constitutes an “offensive act” cannot be determined objectively. That is why this Article has been called a rubbery or junk provision. The MK sees the measure used as purely subjective and based on the opinions of the ‘victim’, investigators, and public prosecutors. A criminal law expert is of the view that with this MK’s decision, the law enforcement apparatus should automatically discontinue cases subjected to ‘offensive act’ provision.