

Litigation - Turkey

Court rules on employers' right to monitor employee computer and email use

Contributed by **Cerrahoglu Law Firm**

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Background

On December 13 2010 the Ninth Chamber of the Court of Appeals ruled that an employer was entitled to monitor its computers and email addresses, as well as the emails sent and received by these email addresses.⁽¹⁾ It further ruled that when an employee uses its employer's computers and email addresses for private purposes and makes libellous remarks about the employer, this constitutes justifiable cause for termination of employment.

Facts

An employee filed suit against his employer stating that he had worked at the defendant's workplace for almost four years as a technician (although his employment was not declared to the Social Security Institution by the employer). Further, when the employee requested that the employer execute the social insurance transactions and his past rights, he was threatened with termination. The employer had additionally wanted him to sign a waiver of his past rights and credits. The employee claimed that he had been terminated for not signing the waiver and requested severance and notice pay, as well as other labour receivables.

The defendant employer claimed that the termination was based on justifiable cause and explained that the employee had indulged in malignant and mischievous behaviour by using the company email address for private emails. Furthermore, the employer claimed that in such emails the employee had defamed the workplace, damaged the employer and disclosed confidential company information. The employer also claimed that the employee had sent emails to the employer's agent that contained insulting remarks. The employer filed a criminal complaint about such acts of the employee and also filed suit against him to claim damages. Finally, the employee was terminated.

The employee responded to the arguments of the employer by stating that the emails were exchanged between the employee and his friend for information purposes only and the employer was not addressed at all. Furthermore, such emails were private and must therefore be legally protected. The employee argued that the employer had accessed such emails by cracking the employee's password; thus, they were obtained unlawfully and could not form the grounds of a court decision.

At the end of the proceeding, the court accepted the employee's case, arguing that the employer could not prove the termination was just. The employer appealed.

Decision

In its decision the Court of Appeals underlined that, from the contents of the lawsuit file, it was evident that the employee had used the company's computer and email addresses to exchange private emails with an ex-employee, and in such emails he had made libellous remarks about the employer in person and disclosed confidential company information.

The Court of Appeals stated that the employer was authorised to monitor its computers and email addresses, as well as the emails received at such addresses, at any time. It concluded that using company computers and email addresses for private purposes and making libellous remarks about the employer constituted abuse, which is a justifiable cause for termination under Article 25/II-b of the Labour Law. Thus, the Court of Appeals overruled the previous court decision and stated that the employee's request for severance and notice pay should be rejected.

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Endnotes

(1) Decision of the Ninth Chamber of the Court of Appeals, December 13 2010, 2009/447 E. and 2010/37516 K.