

## Litigation - Turkey

### Court rules on liability for secret recording of private conversations

Contributed by [Cerrahoglu Law Firm](#)

July 05 2011

On June 23 2010 the Fourth Chamber of the Court of Appeals ruled that to record private conversations secretly is against the Turkish Constitution, the European Convention on Human Rights (ECHR) case law and the Turkish Penal Code.<sup>(1)</sup> It ruled that both the notaries who transcribed such records and the attorneys who ordered the notaries to make the transcription were liable.

#### Facts

In order to prove that an attorney fee agreement had been executed by deception, a person secretly recorded a conversation with Attorney A, which took place at the attorney's house. Such person then gave the recording to Attorney B, who submitted it to a notary public for transcription and safekeeping. The principal secretary of the notary public performed the transcription, the associate secretary prepared the transcription minutes and finally the principal secretary signed such minutes on behalf of the notary public and placed the recording in the custody of the office of the notary.

On discovering what had happened, Attorney A filed suit against Attorney B, the notary public and his principal and associate secretaries to claim moral damages. The court rejected the lawsuit with respect to all defendants. Attorney A appealed.

#### Decision

In its decision, the Court of Appeals took both national and international legislation into consideration. Article 8 of the ECHR stipulates that everyone has the right to respect for his or her private and family life, home and correspondence. There must be no interference by a public authority with the exercise of this right. The only exceptions are where such action is provided for by law and necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, with the purpose of:

- preventing disorder or crime;
- protecting health or morals; or
- protecting the rights and freedoms of others.

In line with the above, the right to privacy falls under the protection of Article 20 of the Turkish Constitution and Articles 24 and 25 of the Civil Code. Article 49 of the Code of Obligations regulates the indemnity for damages to personal rights. Moreover, Articles 132, 133 and 134 of the Penal Code (Law 5237) stipulate that eavesdropping on personal conversations, recording them and breaching the right to privacy are separate criminal acts.

The Court of Appeals stated that the legal exceptions to the right to privacy, which are granted to public authorities, do not extend to private persons. A person's privacy cannot be harmed and disclosed without such person's consent, independent of his or her title and position in the society. Recording the private conversation of a person - even if the content of that conversation is contrary to the law - and disclosing such record constitute separate attacks on that person's privacy and personal rights.

The Court of Appeals further stated that the evidence clarified that the recording had been obtained secretly, in an unlawful manner. It concluded that the act of Attorney B, who could be expected to know that a secret recording cannot be used as legal evidence, was an attack on the personal rights of the plaintiff, even if the purpose was not to attack such rights.

With respect to the defendant notary public, the Court of Appeals concluded that he had breached Circulars 93/27, 95/55 and 98/16 of the Ministry of Justice, which stipulate that a notary public cannot make any determination in a matter that may lead to criminal proceedings. Moreover, he failed to inform his principal and associate secretaries about these circulars and to perform the necessary supervision.

Regarding the secretaries, since the associate secretary merely wrote the minutes of transcription, the Court of Appeals accepted the dismissal of the lawsuit against him. On the other hand, the principal secretary, who transcribed the recording and signed the minutes on behalf of the notary public, was found legally liable.

As a result, the Court of Appeals overruled the original decision and stated that the court must acknowledge that the defendants, except for the associate secretary of the notary public, had attacked the personal rights of the plaintiff by their acts (which breached the ECHR, the Turkish Constitution and the Penal Code) and must determine a suitable indemnity for the plaintiff.

*For further information on this topic please contact [Ayşegül Gürsoy](mailto:aysegul.gursoy@cerrahoglu.av.tr) at Cerrahoğlu Law Firm by telephone (+90 212 355 3000), fax (+90 212 266 3900) or email ([aysegul.gursoy@cerrahoglu.av.tr](mailto:aysegul.gursoy@cerrahoglu.av.tr)).*