

The Constitutional Court: Termination of Employment Based on Messages in the Messaging Program Downloaded on the Employee's Computer for Private Use Constitutes a Violation of the Right to Respect the Privacy and Freedom of Communication

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The Constitutional Court ("**Court**") decided that the employer's access to the content of private messages on WhatsApp application downloaded by the applicant ("**Applicant**") to his computer and the termination of his employment contract based on the content, violates the right to respect the privacy guaranteed in article 20 and the freedom of communication guaranteed in article 22 of the Constitution.

In the present case:

- The Applicant has filed a reemployment lawsuit before the local court and demanded reemployment by claiming that his employment contract was terminated unjustly, that his WhatsApp conversations were in the nature of personal data and therefore had the quality of illegal evidence.
- The local court decided that the termination was invalid due to the fact that the notice of termination was not in written form and did not comply with the form requirement, and the attorneys of the defendant appealed against this decision. Samsun Regional Court of Justice 8th Civil Chamber overturned the decision of the local court and decided to dismiss the case with prejudice.
- The Applicant submitted an individual application to the Court. While examining the subject in question, the Court evaluated the employer's authority to monitor the employee's communication within the scope of respect for privacy and freedom of communication, by taking into account the balance between the employer's interests and the employee's fundamental rights and freedoms.

The Constitutional Court addressed the following issues in its examination on the merits:

- It is clear that employer can foresee that the employee may use the work computer for private messaging if such employee is not fully and clearly informed in advance regarding the terms of use of communication tools.
- Therefore, if such information is not provided to the employee in advance, it is concluded that the employee should benefit from his fundamental rights and freedoms when there is an interference to these rights and freedoms.
- In the event in question, no notification was made which shows the scope of the employer's authority to examine the work
- In this context, accessing the contents of the personal messages of the Applicant without his consent and without prior notification constitutes a violation.
- In addition, it is a well-known fact that the WhatsApp program is an application for personal use due to its nature.
- Additionally, the concrete case does not include any aspect which requires the employee's private messages to be accessed.
- During the trial, the above-mentioned issues were not addressed by the courts, and no evaluation was made regarding the effects of termination of employment being based on the messages with personal content upon the private life and communication of the employee.

In light of the above-mentioned reasons, the Court has stated that accessing the personal messages of the employee without his prior consent and terminating the employment contract due to these messages constitute a violation of the right to respect the privacy and freedom of communication, which are guaranteed under the Constitution.

The full text of the Court's decision dated 28 December 2021 and application numbered 2018/34548, published in Official Gazette dated 11 February 2022 and numbered 31747, is available at this [link](#). (Only available in Turkish)

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