

## The Constitutional Court: Unlawful Recording of a Non-Public Conversation and Its Presentation as Evidence Violates the Right to the Protection of Personal Data

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The Turkish Constitutional Court evaluated a case where the recording of an applicant's conversation regarding the debt relationship and presenting it as evidence to a criminal investigation file in which he was founded as a suspect. The court decided that the act in question violates the right to request the protection of personal data.

The Turkish Constitutional Court ("**TCC**") evaluated a case where the recording of an applicant's ("**Applicant**") conversation regarding the debt relationship and presenting it as evidence to a criminal investigation file in which he was founded as a suspect. The court decided that the act in question violates the right to request the protection of personal data. TCC's decision dated 29 September 2022 regarding the application numbered 2018/16857 was published in Official Gazette dated 1 December 2022 and numbered 32030.

In the case at hand;

- The Applicant filed a criminal complaint with the Istanbul Chief Public Prosecutor's Office ("**General Prosecutor's Office**") regarding the recording subject to the decision. General Prosecutor's Office determined that M.R.A., who was the complainant at the investigation where the Applicant was the suspect, presented the audio, and initiated an investigation regarding the allegation that the conversation was recorded without the Applicant's consent and knowledge, within the scope of the crimes of violating the privacy of private life and recording the conversations between individuals.
- As a result of the investigation, the General Prosecutor's Office concluded that M.R.A. acted with the motive of presenting evidence, that a conversation which violated the privacy of the Applicant's private life was not spoken, and that there was no element of intention in recording the audio and presenting it as evidence to the investigation.
- Applicant claimed in his objection petition filed against the decision that the requested evidence was not collected, the identity of the audio recording was not investigated, no determination was made as to whether there was any interruption or montage in the audio recording; and his statements and those whose names were mentioned in the audio recording were not taken. He also claimed that the audio recording was taken in a planned manner with criminal intention so that the guarantees of his right to respect for private life were not fulfilled with the decision. However, the objection was dismissed.
- Upon dismissal, the Applicant applied to the TCC, and TCC examined the application in terms of the right to demand the protection of personal data. After evaluation, regarding whether the investigation initiated carried out in accordance with the guarantees of the right to request the protection of personal data and whether the decision given contains sufficient grounds, TCC decided that:
  - Based on the Applicant's rightful expectation that his privacy will be protected, recording his conversations with other people in a non-public environment contrary to his consent and the use of the said audio content against his consent constitutes an attack on his personal data, which is within the scope of his private life. Moreover, it is clear that the effects of the attack on the aforementioned legal values ??are severe.
  - In the decision not to prosecute, although it was stated that the persons who obtained the audio recording had a legitimate aim and that there was no criminal intention, no evaluation was made about how the said actions, which were carried out against the consent of the Applicant, affected his personal data and his private life,
  - There was no effort to balance the conflicting interests in the concrete case in a fair way,
  - The approach in question, which gives absolute priority to the purpose of obtaining evidence, will legally protect the attacks and violate the rights guaranteed by the Constitution.

Upon its assessment, the TCC concluded that the right to demand the protection of personal data within the scope of the right to respect for private life regulated in article 20 of the Constitution has been violated.

TCC ruled that a copy of the decision be sent to the Office of the General Prosecutor's Office for a re-investigation in order to eliminate the consequences of the violation of the right to request the protection of personal data in order to eliminate the violation of the right detected.

The full text of TCC's decision dated 29 September 2022 concerning the application numbered 2018/16857 and published in Official Gazette dated 1 December 2022 and numbered 32030, can be reached via this [link](#). (Only available in Turkish)

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