



The High Court of Appeals Rules on Non-Admissibility of Unauthorized Audio-Visual Recordings in Employment Disputes

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1. Introduction

While surveillance systems can help ensure workplace safety and improve workflow efficiency, legal admissibility of such recordings as evidence has become a matter of discussion. Use of surveillance cameras in the workplace is primarily governed by employment law, personal data protection regulations, and human rights principles. This article analyzes the decision of the 22nd Civil Chamber of the High Court of Appeals dated June 1, 2020, numbered 2020/1482 E. and 2020/5244 K. (“**Decision**”) on whether an employer can use camera recordings obtained through employee monitoring as evidence in a potential dispute under Turkish labor law.

2. Employee Surveillance Through Cameras and Employer Monitoring: From the Turkish Employment Law Perspective

Under Turkish law, there is no specific regulation prohibiting the use of cameras in other types of workplaces, but such practices must still be evaluated within the framework of labor law, the protection of personal data, and the right to privacy. Precedents rendered on this matter have established certain limitations and conditions for employers. While use of surveillance cameras in the workplace is indeed a significant issue under personal data protection law as well, this article will address the matter solely from an employment law perspective.

The relationship between employer and employee consists of three core elements: (i) performance of work, (ii) remuneration, and (iii) dependency. Among these, dependency is the defining characteristic of the employment relationship. The employee is obligated to carry out their work under the supervision and control of the employer. This dependency relationship naturally grants the employer the right to manage the execution of the work. The right to manage

includes authority over how, where, and when the work will be done, how the workflow will be organized, and the establishment of rules to be followed within the workplace.

The employer may, within the scope of their management rights and authority to supervise, install cameras in the workplace to monitor the activities of employees. However, it is crucial to observe an important balance. Indeed while the employer may have certain legal powers, these powers must be exercised in a proportional, purposeful, limited, and legitimate manner. Furthermore, the principles of protecting personal data and respecting the privacy of employees must be strictly observed. Surveillance through camera systems must not be in violation of the employee's fundamental rights and freedoms and be based on explicit and informed consent, with appropriate technical and administrative measures in place to ensure data security.

These points are also clearly emphasized in the decision of the 22nd Civil Chamber of the High Court of Appeals dated June 25, 2018, numbered 2015/28830 E. and 2018/15646 K. In this decision, the High Court stated that reasons, such as protecting the image of the workplace, monitoring production processes and surveillance of equipment and departments that are important in terms of security, may constitute justifiable reasons for surveillance. However, the High Court also concluded that audio recording could not be deemed legitimate where employees have a legitimate expectation of privacy, especially when employees were not informed about it in advance and their consent was not obtained for it, in which case such surveillance was ruled to be unlawful.

In conclusion, under Turkish employment law, use of cameras in the workplace can be considered within the scope of the employer's management rights and authority to supervise, both for effective execution of work and ensuring security. However, this authority must be limited by principles, such as legality, proportionality, clarity and the obligation to inform, and it must be applied in a way that does not violate the employee's fundamental rights.

3. Analysis of the Decision

In the Decision of the 22nd Civil Chamber of the High Court of Appeals, the dispute mainly focuses on whether the termination of the plaintiff's employment is rightful or not. The plaintiff, who worked at a gas station owned by the defendant company, claimed that the employment

contract was terminated without just cause, and demanded severance and notice payments and other labor-related receivables.

The defendant employer, on the other hand, mainly argued that the plaintiff's employment contract was terminated for just cause upon detection of the plaintiff's offensive and insulting remarks towards the employer's representatives.

The High Court of Appeals firstly makes note of Article 25/II-d of the Labor Law and points out that expressions that harm the honor and dignity of the employer or their family, false accusations, or instances of provocation are considered just causes for termination. However, words that are not of this severity but still disrupt the work order may constitute a valid reason for termination. The High Court adds that expressions directed at the employer's representatives or individuals associated with the employer may also be considered a valid reason under certain conditions.

In evaluation of the specific case, the High Court determines from the CD resolution report that the plaintiff had made statements about the employer's representatives, such as "*they are a gang*" and "*he is not a real man.*" However, it was also established that these remarks were made during a private conversation between the plaintiff and another employee. The plaintiff had not been informed in advance that the surveillance cameras also recorded audio, nor had the employee given consent for audio recording. Moreover, no legitimate business interest justifying the audio recording was demonstrated.

As a result, it was concluded that the plaintiff's statements were obtained by means of unlawful evidence, and in this context, it could not be accepted that there had been a direct and public attack on the employer's honor and dignity. For these reasons, the High Court of Appeals found that the lower court's decision to dismiss the plaintiff's claims for severance and notice payment was unlawful and unanimously decided to overturn the decision.

4. Conclusion

In conclusion, while the employer may monitor employees as part of their management rights and authority to supervise, the use of cameras in the workplace for this purpose, especially when combined with audio recording, must be carefully balanced *vis-a-vis* employees' right to

privacy and the protection of their personal data. The decision of the 22nd Civil Chamber of the High Court of Appeals in this case, which addresses submission of audio-recorded evidence in conjunction with camera recordings that are obtained without the consent of the employees, is an important reminder that evidence obtained through unauthorized or unlawfully conducted monitoring cannot be used to justify actions such as termination of the employment contract.

The decision specifically stresses that employers must comply with legal requirements in informing employees about and obtaining their consent to any such monitoring and in ensuring that such measures serve a legitimate business interest. It also emphasizes that employers must exercise their management rights in a proportionate and transparent manner and ensure that any monitoring system does not violate employees' fundamental rights.

The decision also demonstrates the importance of legality and admissibility of video or audio recordings submitted as evidence, even if they support the claims of the defendant. For this reason, employers must ensure that their use of surveillance practices, which may fall within the scope of management rights and authority to supervise, is lawful, transparent, and compliant with legal rules on both labor and personal data protection.

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(First published by Mondaq on July 7, 2025)