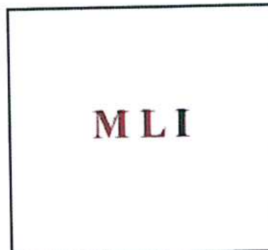

TURKEY

The Bliss of Forgetting - An Analysis of the Right to be Forgotten under Turkish Law Practice

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On 17 June 2015, the General Assembly of the Civil Chambers of the Court of Appeals rendered an interesting verdict regarding the right to be forgotten. According to this verdict, an individual could ask for his or her name to be erased from even law books, if the relevant book includes personal information which the relevant individual would not like to share with public.

The verdict is interesting from a number of aspects. Firstly, it is a decision made by not only a single chamber of the Court of Appeals but by the General Assembly where all of the Civil Chambers of the Court of Appeals attend. This means that at least for a certain period of time - even though it is not mandatory - the local courts and the individual Civil Chambers of the Court of Appeals will most likely take into consideration the standards set forth by this decision while rendering a verdict regarding the right to be forgotten.

Secondly, the verdict recognises that the right to be forgotten is a concept generally analysed within the context of digital content but further states that the right to be forgotten must be analysed within the context of printed content as well. Lastly, the verdict states that the right to be forgotten can be applied to even the content in academic materials. This approach emphasises the importance of this right and leads to a result that even scientific content is not immune to the limits imposed by the right to be forgotten.

In this article, we will first provide a brief summary of the case and then analyse the implications of the verdict on the interpretation of the right to be forgotten under Turkish law.

Summary of the Case

In 2006, a public officer in Turkey was sexually harassed by one of her superior officers. A criminal lawsuit was filed against the harasser and the harasser was found guilty in 2010. The harassment was explained in detail in the verdict finding the harasser guilty. The verdict was then included in a law book with the same wording and without using an alias for the victim. The victim filed another lawsuit for the authors and the publisher of the relevant law book requesting that the relevant law books should be collected from the market and her moral damages must be compensated on the basis that she has a right to request her name not to be affiliated with such an harassment and a right to request that this painful event should not be recorded in the public memory with her actual name documented. The local court made a decision in favour of the victim.

The decision was appealed and the relevant Chamber in the Court of Appeals reversed the decision of the local court. However, the local court did not change its previous decision and again made a decision in favour of the victim. The decision was then brought before the General Assembly of the Civil Chambers of the Court of Appeals which made the verdict briefly explained above.

This is a progressive verdict that will definitely constitute a resource for interpreting the right to be forgotten under Turkish law. The principles set forth below which are accepted by this verdict will be of importance.

The Right to be Forgotten Should Apply to Both Digital and Printed Content

The right to be forgotten is a concept generally applied to digital content. Some may argue that this concept can only be applied to digital content as the concept was born from the need to erase personal data from the giant brain of the internet that keeps everything and is mostly accessible by everyone.

The internet became the public and almost-eternal memory of our age and the act of forgetting which is hardwired to humans as a survival mechanism is not a feature of the internet. The fact that an unsettling experience of an individual can become public knowledge through the internet and remain accessible to the public for the whole of the relevant individual's life, and can be found out with a simple search on the search engines, was the main reason that led to the concept of the right to be forgotten. However, the Court of Appeals took this concept a step further and decided that non-digital content which can be easily accessed by the public must also be subject to the right to be forgotten.

The Court of Appeals has taken into consideration the fact that law books have a very limited readership target but has not deemed it a sufficient ground for not applying the right to be forgotten stating that the law books are still a part of public memory and that they can be easily accessed by the public. It is clear that digital content is more easily accessed by the public than the non-digital content and therefore this verdict lowers the required level of accessibility to content in order for the right to be forgotten to be applied.

Even the Academic Materials are subject to the Right to be Forgotten

One of the most important discussions about the right to be forgotten is its effects on the right of the public to have access to knowledge. This discussion is generally made for non-academic content, which is more relevant to the public attention. Academic content is regarded more sacred than ordinary content and is immune to most of the interventions imposed on ordinary content. Academic content is regarded as the fuel of public progress and therefore is deemed to serve public welfare in the long run. That is why generally additional precautions are taken to make academic content accessible to public.

However, although the Court of Appeals has taken into consideration that the data of the victim was included in a law book, it didn't see this as a reason for it to be immune to the intervention of the right to be forgotten. It stated that the name of the victim could simply be replaced with an alias.

This should not not be interpreted as though the Court of Appeals considers that all academic content must be strictly subject to the right to be forgotten. It can be stated that even while preparing the academic content, the content provider should pay attention to the personal data and privacy rights of the individuals and avoid interfering with such information if this does not affect the core of the academic content (e.g. anonymising the data by using an alias).

The Court of Appeals also referred to the "Google Decision" of the European Court of Justice and stated that if there are no specific reasons such as the importance of the data for the public welfare and the data being a focus of public attention, then the personal data should not be revealed.

Even if the Content is Copied from Publicly Available Criminal Records, the Right to be Forgotten Still Applies

In principle, after a criminal lawsuit is filed, all of the hearings and the verdict is open to public access unless the competent court gives a decision of secrecy. This means that the verdict of the criminal court about the victim of sexual harassment can be accessed by everyone even now. The Court of Appeals conducted an analysis of this matter and concluded that the issue was not about deleting the data from the criminal records but from the law books which included the full name of the victim and the details of the assault.

Although the analysis does not go further than this, considering the fact that the Court of Appeals has stated that the right to be forgotten should be applied to the content "easily" accessible by public, we can conclude that the Court of Appeals has not considered the decisions of the criminal court as "easily" accessible by public. As a result, according to the Court of Appeals, although decisions of the criminal courts are publicly available, their level of accessibility is not high enough to require the application of right to be forgotten and their accessibility by the public does not make it right to publish the same content in a more accessible medium.

Final Analysis

The verdict of the General Assembly of the Civil Chambers of the Court of Appeals is the most thoroughly analysed decision by one of the highest level judiciary authorities on the right to be forgotten that we have seen so far. It is not mandatory for the local courts or the individual chambers of the Court of Appeals to comply with the standards set forth by this verdict but it is not likely that the local courts or individual chambers of the Court of Appeals would dissent from those standards at least for the mid-term. Considering

that the verdict applied the right to be forgotten to non-digital content such as academic material, it would be a fair conclusion to say that not only digital medium but also non-digital medium such as the newspapers and the magazines will be subject to the analysis of the right to be forgotten. This verdict is important for Turkish law practice as it gives the required value and weight to personal data and data privacy, both of which are issues that do not often get the chance to be subject to this high level analysis. It is also important that the lack of a specific provision under the legislation regarding the right to be forgotten did not prevent the Court of Appeals from rendering a verdict protecting this right; the Court of Appeals referred to the general provisions of the Turkish Constitution, Turkish Civil Code and to the precedents of the European Court of Human Rights and European Court of Justice, which altogether created the legislative backbone of the Court

Biographies

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