



Protection of Personality

Types of Rights

A) Property rights: heritable

B) Personal rights: inheritable

- the right of publicity, or to keep one's image and likeness from being commercially exploited without permission or contractual compensation,
- the right to privacy, or the right to be left alone and not have one's personality represented publicly without permission.

Personality Rights

IV. Özel hayatın gizliliği ve korunması

A. Özel hayatın gizliliği

Anayasa MADDE 20- Herkes, özel hayatına ve aile hayatına saygı gösterilmesini isteme hakkına sahiptir. Özel hayatın ve aile hayatının gizliliğine dokunulamaz. (Mülga cümle: 3/10/2001-4709/5 md.)

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(Ek fıkra: 12/9/2010-5982/2 md.) Herkes, kendisiyle ilgili kişisel verilerin korunmasını isteme hakkına sahiptir. Bu hak; kişinin kendisiyle ilgili kişisel veriler hakkında bilgilendirilme, bu verilere erişme, bunların düzeltilmesini veya silinmesini talep etme ve amaçları doğrultusunda kullanılıp kullanılmadığını öğrenmeyi de kapsar. Kişisel veriler, ancak kanunda öngörülen hallerde veya kişinin açık rızasıyla işlenebilir. Kişisel verilerin korunmasına ilişkin esas ve usuller kanunla düzenlenir.

Personality Rights

Privacy and protection of private life

A. Privacy of private life

Turk. Constitution ARTICLE 20- Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated. (Sentence repealed on May 3, 2001; Act No. 4709) (As amended on October 3, 2001; Act No. 4709)

(Paragraph added on September 12, 2010; Act No. 5982) Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person's explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.

Protection of Personality Rights

Art. 24 TCC

Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.

An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law.

☐ **CONSENT makes the unlawful act lawful. Like in tort law !!!!!**

Saldırıya karşı

TMK Madde 24- Hukuka aykırı olarak kişilik hakkına saldırılan kimse, hâkimden, saldırıda bulunanlara karşı korunmasını isteyebilir.

Kişilik hakkı zedelenen kimsenin rızası, daha üstün nitelikte özel veya kamusal yarar ya da kanunun verdiği yetkinin kullanılması sebeplerinden biriyle haklı kılınmadıkça, kişilik haklarına yapılan her saldırı hukuka aykırıdır.

Protection of Personality Rights

Art. 25 TCC The applicant may ask the court:

1. to prohibit a threatened infringement;
2. to order that an existing infringement cease;
3. to make a declaration that an infringement is unlawful if it continues to have an offensive effect.

In particular the applicant may request that the rectification or the judgment be notified to third parties or published.

Claims for damages and satisfaction and for handing over profits in accordance with the provisions governing agency without authority are reserved.

TMK m. 25 Davacı, hâkimden saldırı tehlikesinin önlenmesini, sürmekte olan saldırıya son verilmesini, sona ermiş olsa bile etkileri devam eden saldırının hukuka aykırılığının tespitini isteyebilir.

Davacı bunlarla birlikte, düzeltmenin veya kararın üçüncü kişilere bildirilmesi ya da yayımlanması isteminde de bulunabilir.

Davacının, maddî ve manevî tazminat istemleri ile hukuka aykırı saldırı dolayısıyla elde edilmiş olan kazancın vekâletsiz iş görme hükümlerine göre kendisine verilmesine ilişkin istemde bulunma hakkı saklıdır

Types of Personality Rights

- ✓ Dignity and honour/reputation
- ✓ Privacy
- ✓ The right to one's image
- ✓ Name
- ✓ Reputation

— C'n
— grüßlich
— fotografieren
— ism

Protection of Personality Rights

Courts have built a system of different "spheres" of the "general right of personality":

- The **"core" private sphere (secret sphere)** catches all aspects of an individual's intimate private life. If content affects the "core" private sphere, law does not balance the interest against other factors (such as freedom of expression). Instead, it finds an infringement because the "core" area of private life is subject to absolute protection.
- The **"private" sphere** covers all other aspects of an individual's private life (e.g. family life). If content affects the private sphere, court will have to balance all interests involved.
- The **"social" sphere** includes social and business life; this sphere is also protected but to a lesser degree.

Stärkerer Schutz

Core
Private
balance all interests involved

Protection of Personality Rights

❑ In case of an infringement of personality rights (eg. Through social media) the two conflicting interest are:

Privacy of the individuals/ right to respect the personal life
VERSUS

the right to freedom of expression/right to publicity/ right to artistic freedom

begin
X
end

Protection of Personality Rights

❑ Courts consider the following factors when **balancing the right to freedom of expression against the right to respect for private life:**

- (i) Contribution to a debate of general interest;
- (ii) How well known the person is (celebrity or ordinary citizen?)
- (iii) the subject matter of the report;
- (iv) Prior conduct of the person concerned;
- (v) Content, form and consequences of the publication;
- (vi) Circumstances in which photographs are taken.

Foto 1



Foto 2



Foto 3



Foto 4



Foto 5



CASE 1

S took a snapshot of a person X on a market place without asking this person's permission. Is there any claim of X against S? Does it make a difference, if

a) X is famous / is not;

b) X is at work / is attending to his private affairs;

c) the picture is published / it is not.

- This case raises the question of whether and to what extent individuals have the right to refuse to be photographed in a public place, and to take action against the use in particular the publication of those pictures. If a picture is published, the privacy and personality interests of the person portrayed (individual's right regarding the protection of image) come into conflict with freedom of expression and freedom of press. These interests are to be balanced against each other. The result of this balancing may lead to different results according to the notoriety of the person portrayed or the circumstance that he/she was photographed while attending a professional or a private activity.

CASE 1 Discussion

- ✓ RULE: The right to one's image constitutes a personality right protected under TCC.
- ✓ As such an image cannot be reproduced by drawing, painting, photography, or any comparable process without the consent of the individual

+

- ✓ Such reproduction cannot be distributed without this person's consent
- Protection depends on the sphere the individual finds himself:
 - Secret/intimate sphere
 - Private sphere
 - Public sphere
- ✓ If X's consent is presumed, the picture is not unlawful unless X expresses his refusal. (Like in foto 2, 3 and 4)

The taking of a picture specifically focusing on a person without his/her consent is considered a violation of his/her subjective right to image or general personality right. This makes S's act unlawful, unless a specific justification applies. Such justification may be based on the person's notoriety (like in foto 4) or the public or professional nature of the activity attended by the person photographed (like in foto 1, 2, and 3). Where these circumstances allow the unconsented publication of photographs, they also allow the taking of the photographs.

CASE 1 Discussion & Answers

Question a)

- ✓ If X is a well known figure, there will be a legal justification for S as long as the picture was taken in the context of X's public activity.

If we talk about public figures: Broader protection of freedom of expression!

If we talk about ordinary people: Broader protection of personality rights!

- Secret/intimate sphere: Absolute protection also for celebrities.
- Private sphere: Protection for celebrities, when there is no public interest for the ordinary people in being informed about public figures.
- Public sphere: No protection for celebrities.

CASE 1 Discussion & Answers

Question b)

- ✓ Photographing a person in his/her working place invades his private sphere, not public sphere! Therefore right to privacy is protected.
- ✓ The criteria is not the place the person is in! The photos can be taken in public places, but if they are related solely to the private life of a person, they are considered as private sphere! Here there is a need to protect the private life, despite the fact that the photos are taken in public.

→ is yende şahısların
private sphere
→ konur.

↓
Kriter kişinin
huludatı yer değil.
Kamusal alanda şahısların
bir fotoğraf basılır
özel hayatını ilgilendirir olanda
↓ private sphere.

CASE 1 Discussion & Answers

Question c)

- ✓ Agreeing to have ones picture taken does not mean agreeing to the publication of the picture. Unauthorized publication is unlawful.
- ✓ If the photo is used for different purpose / commercial use?
UNLAWFUL use.

A person who poses for a photo in leaflet, does not thereby authorize the use of photo in web.

↓
broşur.

↓
broşur pot
reklam için
satış için
dijital ortamda
yayınlanabilir.

↓
fotoğraf
alınması
için izin
olması
yayınlanabilir
anlamına gelmez.

↓
fotoğraf
kullanılabilir
amaç için
kullanılabilir
örneğin
reklam için
anlamına
gelmez.

