

REPUBLIC OF TURKEY
ESKİŞEHİR
CRIMINAL COURT OF FIRST INSTANCE NO 6

CONVICTION-IMPRISONMENT/DEFERMENT

CASE NO : 2021/1482
DECISION NO : 2022/33
PROSECUTION FILE NO : 2021/10846

JUSTIFIED VERDICT
ON BEHALF OF THE TURKISH NATION

JUGDE : CEREN HEKİM DEMİRCİ 119174
PUBLIC PROSECUTOR : MEHMET AKİF AKBAŞ 189493
CLERK : EMİNE GÜLHAN 126356

PLAINTIFF : PUBLIC LAW
PARTICIPANT : **DEVAKUMARAN JASWANT KUMAR**, son of xxx and
xxx,

born in 1960 in the USA., registered in the USA, residing at 2738
PARKPLACE LANE APT 48 JANESVILLE WISCONSIN WI
53545 USA

ATTORNEY : **Att. SERDAR DURDAĞI**, Levent Mah. Ballı Sk. No:3
Beşiktaş/İstanbul 1. Levent Beşiktaş/İstanbul

ACCUSED : **DAVOOD KESHAVARZ**, son of Ezzat Allah and Farangis,
born on 18/11/1985 in Borujen, registered in Iran, residing at
Bahçelievler Mah. Balkan Cad. No:18 İç Kapı No:1
Tepebaşı/Eskişehir. T.R. Identity No: 99710341824

DEFENSE COUNSEL : **Att. AYBERK GÜNTAY ÖZTÜRK**, Pınarbaşı Mah. 704. Sk.
Palmiye Sit. B Blok No: 6/5 Konyaaltı/Antalya

CRIME : **Successive Blackmail**
DATE OF CRIME : 03/23/2021
PLACE OF CRIME : Eskişehir/Central District
DATE OF THE VERDICT : 01/13/2022

Following the public hearing before our Court about the accused whose information is
written above:

VERDICT:

ACCUSATION:

By the accusation dated 10/14/2021 and numbered 2021/10846 of the Chief Public
Prosecutor's Office, a criminal case has been filed against the accused before our Court to
punish him for the crime of successive blackmail under Articles 107/1, 43/1, and 53 of the
Turkish Penal Code.

IN THE CONSIDERATION ON THE MERITS, THE PUBLIC PROSECUTOR said: “We do not request the extension of inquiry. When the event and the entire file are evaluated together, it is understood that the accused committed the crime of successive blackmail against the participant. We consider and request on behalf of the public that the accused be punished under the provisions of Article 107/1, 43/1 and 53 of the Turkish Penal Code No. 5237., which are in compliance with his crime.”

DEFENCE:

In the defense taken with an interpreter-expert, the accused said “I do not know Turkish. I will do my defense with the translator. I am a graphic designer, and I design. I am a freelancer. I met the complaint on the internet because of my work. I created designs through the application called SLACK. The complainant was able to enter this application with his own password, and both of us could see the designs that I created through this system. There is no system in which the projects of the complainant are stored. I have been resident in Turkey for 6 years. it is the website named GITHUB that is mentioned in the indictment. This is an application used in the U.S.A. I am registered with this program. Coders are registered there, their codes are also visible to all other users. The correspondence stated in the indictment is not mine. I did not write these messages to the complainant. I do not accept the accusation.”. As it is deemed necessary to ask some questions by means of the interpreter, the accused said “The complainant added me to the site named GITHUB. He was the administrator there, and I was able to act as much as the complainant allowed. I was able to act under the control and supervision of the complainant.”. He continued his defense by saying “The Court has the authority to accept the request to participate. My e-mail address on Slack is “davood.keshavarz@outlook.com”. He continued his defense by saying “I do not accept the evidence and documents submitted by the complainant. I did not write these messages. Also, there is no evidence about that. I repeat my previous defenses exactly. I do not accept the consideration. I want to be acquitted. The complainant does not live in Turkey. If I get acquitted in this case, how can I complain about him?”

The defense counsel said in the defense: “We totally agree with the accused’s defense. We do not accept the statements of the complainant’s attorney. The Court has the authority to accept the request to participate. Firstly, we request the court to exempt our client from hearings. My client did not write the messages on Skype in the file. The authenticity of these messages has not been approved. For this reason, we request the Court to deliver the case to IT experts in order to make research about which IP addresses, Skype ID, internet networks were used for these messages. Again, we request detailed research about what actions were carried out in the program named GITHUB. When this research is done, it will be revealed that my client is innocent. The reason for complaining about my client based on false documents is an agreement of \$50,000 between my client and the complainant. This price has not been paid by the complainant. My client doubts the identity of the complainant. The business relationship was terminated by our client because of the loss of confidence. The complainant produced fake correspondences and complained about our client based on these fake correspondences. we request the collection of evidence stated by us. Considering the receipts submitted by the complainant’s attorney and us, it has been proved that a higher price was paid to my clients. This is proof that my client did not commit the alleged crime. We request that our client be acquitted of the alleged crime.” He continued the defense by saying “We repeat our previous written and oral defenses. We request that the file be delivered to the IT specialist, as we have just stated the details. However, the Court did not accept it. Again, we have a hard disk in which our client stored all the related data. We can submit this to the Court. The hard disk has a passcode. If it is deemed necessary, we can submit the password with a petition. We do not accept the consideration. We request that our client be acquitted.”

EVALUATION OF EVIDENCE AND JUSTIFICATION:

The participant's attorney said in her declaration: "We do not accept the defense of the accused. The complainant and accused corresponded on Skype. We have submitted these correspondences to the file. The receipts about the relation between the accused and complainant are in the case. The accused may flee abroad. We request the Court to impose an international travel ban on the accused. We complain about the accused. We request to participate in the case."

After assessing the indictment, the complaint petition of the participant's attorney and screenshots about the correspondences in its annexes, the accused's defense, and all the file together, it is understood that the accused and participant met online; the accused is a graphic designer and computer programmer; the accused worked with the participant for a while; on the date of crime the accused accessed the data storage system where the projects being done by him were stored, transferred the whole data in the system to his computer, and then deleted all of them from the system; then the accused called the participant and requested him to pay 2000 USD; the accused threatened to delete and sell this data to third parties in case the money was not paid; then they corresponded on Skype, and during the conversation on 03/23/2021 the accused blackmailed the participant by saying: "I removed all source codes from github just there is in my computer. In next 3 days I will delete it or upload in on your google drive. Send me 2k in next 3 days and I will upload this folder to your google drive or I will delete them all. And this 2k for lose time. Its for cover my mentally losing time till I get a new job. 3 days, then will delete any thing. Any way its up to you. 27th March I will delete every thing and will block you from everywhere"; the participant sent 1000 USD to the accused; the accused kept threatening the participant; the accused kept blackmailing the participant on 04/13/2021 by texting "You send me 1000\$ and I will send the link and a promise to be loyal to you and dont use any of these apps orcodes. you ignore me and I didnt get the respond i want so I just will block you, forgot you, dont answer to any pm or email from you or any body that name you in future and also I will use all this data toe my will. Maybe I sell them maybe I publish them maybe destroy them any thing I decide in future. I think its better for you to give me the money, take your codes apps designs etc and we forgot each other in peace. And I will promise dont even use 1 single image or line of code of your apps for myself. What will happen to 1 k? I will just give it all to a charity here that take care of animals. And will send you receipt and evidence. Dont send me angry messages or any thing. it couse I decide to do even some thing 2x worse. After end of this month I will block u, and then I decide what I want to do with data I have. Sell, or delete them any thing. I don't tread any one. I will sell (maybe) the data I created, or code I wroted. But 99% I will delete them all. See don't play here"; and he thus committed the alleged crime of successive blackmail.

Although the accused did not accept the accusation and declared that he did not correspond with the participant and that he communicated with the participant via the application called Slack, it is understood that the accused's information submitted to the file by the participant includes the accused's phone number, email address and account numbers in Ziraat Bank; this information is same with the information by the accused; the dispute between the accused and the participant relates to the information in GITHUB; the correspondence in question is of the similar subject; there is no reason for that the participant accuse the accused without motive; the correspondence confirms the claim of the participant. Since it is established that the accused's defense is abstract and for escaping punishment, the defendant's defense was not taken into consideration.

Since it is understood and established that the accused sent multiple blackmail messages to the participant at different times for committing the same crime, it is established that the accused committed the crime of successive blackmail. Under the provisions of the successive crime, the Court applied Article 43 of the Turkish Penal Code No. 5237 about the accused.

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Although the defense counsel requested that the file be delivered and examined by an IT expert, it is understood that the correspondence in question is on the participant's Skype address; it is not possible to conduct research using this address by IT experts; and the alleged crime was proved by the documents submitted by the participant. Therefore, it is decided to reject the request of the defense counsel and adjudge as follows:

VERDICT: Considering the above-mentioned justifications, it is decreed on behalf of the Turkish nation, in the presence of the accused, defense counsel, participant's attorney, and public prosecutor and the absence of the participant, in accordance with the consideration of the public prosecutor:

(1) TO SENTENCE THE ACCUSED TO 1 YEAR'S IMPRISONMENT AND IMPOSE A PUNITIVE FINE OF 5 DAYS ON HIM under Articles 61 and 107/1 of the Turkish Penal Code no. 5237 considering the intensity of the accused's intention and how the crime was committed because it is understood that the accused, **Davood Keshavarz**, committed the crime of successive **blackmail** against the participant, **Devakumaran Jaswant Kumar**,

(2) To increase the punishment by 1/4 under Article 52/4 of the Turkish Penal Code no. 5237, SENTENCE THE ACCUSED TO 1 YEAR AND 3 MONTHS' IMPRISONMENT AND

IMPOSE A PUNITIVE FINE OF 6 DAYS ON HIM considering that the accused the crime in a successive way,

(3) To decrease the punishment by 1/6 under Article 62/1-2 of the Turkish Penal Code no. 5237, **SENTENCE THE ACCUSED TO 1 YEAR AND 15 DAYS' IMPRISONMENT AND IMPOSE A PUNITIVE FINE OF 5 DAYS ON HIM** considering the possible negative effects of the sentencing on the future of the accused,

(4) **TO DETERMINE** the punitive fine as TRY 20.00 for one day and as TRY 100.00 for 5 days considering the economic and social status of the accused under Article 52/1-2-3 of the Turkish Penal Code no. 5237,

(5) **NOT TO APPLY** Article 52/4 of the Turkish Penal Code no. 5237 to the accused considering the economic and social status of the accused and warn the accused about the application of Article 106/3 of the Law no. 5275, amended by Article 81 of the Law no. 6545 on 06/28/2014, in case of non-payment of a criminal fine (the accused was warned by means of the interpreter),

(6) **APPLY** the paragraphs 1, 2, and 3/1 of the Turkish Penal Code no.5237 to the accused, considering the annulment decision dated 10/08/2015 of the Constitutional Court and the amendment by Article 10 of the Law no 7242 entered into force 04/15/2020,

(7) **NOT TO DEFER** the announcement of the verdict under Article 231 of the Code of Criminal Procedure no. 5271 because the conditions are not met and the announcement of the verdict about the accused has been deferred in the criminal case with case no 2020/238 and decision no 2021/172 of the Criminal Court of First Instance no 2 of Eskişehir,

(8) **SUSPEND** the sentence of imprisonment imposed on the accused under Article 51 of the Turkish Penal Code no.5237 because the Court is convinced that the accused would not commit such a crime again in the future due to his regret in the hearings and the fact that the accused had not been convicted and sentenced to imprisonment for more than 3 months of an intentional crime, and his regret in the hearings,

IMPOSE A PROBATION PERIOD OF 1 YEAR AND 2 MONTHS for the accused under Article 51/3 of the Turkish Penal Code no.5237,

NOT TO IMPOSE any obligation or **ASSIGN** an expert for the probation period considering the personality and social status of the accused under Article 51/6 of the Turkish Penal Code no. 5237,

(9) **INFORM** the Criminal Court of First Instance no 2 of Eskişehir when the verdict is finalized because it is understood that the announcement of the verdict about the accused has

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been deferred in the criminal case with case no 2020/238 and decision no 2021/172 and the accused committed a crime during his probation period according to the criminal record of the accused,

(10) COLLECT the attorney's fee of TRY 5,100.00 calculated under the Attorney's Fee Minimum Tariff of 2022, which is in force at the date of the verdict, from the accused and **GIVE** this amount to the participant because the latter is represented by an attorney,

(11) STORE 1 wd my passport ultra hard disk and a connection cable, which are registered in the file numbered 2022/239 of the Property and Evidence Unit of the Chief Public Prosecutor Office of Eskişehir, **AS EVIDENCE IN THE FILE**,

(12) COLLECT TRY 31.50 FROM THE ACCUSED, which is for the expense of 2 notifications paid by the State, and **REGISTER** it as revenue, without including the fee of the interpreter assigned for the accused who does not speak Turkish under Article 324/5 of the Code of Criminal Procedure no. 5271,

(13) SEND to the relevant judicial law unit the defender-defendant decision tracking form filled after the finalization of the verdict together with a copy of the finalized verdict.

The verdict was clearly read and duly explained. The accused and participant may **APPEAL** against the verdict before the Our court or through a petition or a declaration written by a clerk, approved a judge, and submitted to the Criminal Court of First Instance of his place of residence within 7 days from the pronouncement of the verdict. **01/13/2022**

Clerk 126356
e-signed

Judge 119174
e-signed