



Should a lawyer follow the judge's misdirection?

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Judges have been described as both masters and slaves of the law. Bound by the rule of law, they represent the state and exercise their judicial power on behalf of the nation. A lawyer, on the other hand, protects the rights and interests of their client. A recent district court decision has led many legal professionals to question whether it is acceptable for a lawyer to follow a judge's incorrect guidance.

In the case at hand, the defendant – against whom a preliminary injunction was issued in his absence – filed an appeal against this decision within the scope of the patent infringement action.

This was heard by the first-instance court for the removal of the preliminary injunction.

However, pursuant to Article 394 of the Code of Civil Procedure, if the party against whom a preliminary injunction is granted is not present during the issuance of this injunction, an objection can be made before the court that issued the decision regarding its conditions (as well as the jurisdiction of the court and the security deposit) within one week of being notified of the implementation of the injunction. Therefore, the defendant's request for appeal against the preliminary injunction decision given in the absence of the defendant was procedurally wrong. In addition, in accordance with Article 341/1, an appeal can be made against the judgment handed down on an objection to the preliminary injunction decisions made in the absence of the other party.

However, the defendant based the reason for its appeal on the court's interim decision, which partially accepted the request for preliminary injunction, stating that the decision that granted the preliminary injunction could be appealed before the district court, despite all these clear procedural provisions. It argued that the request for appeal was procedurally faulty and it was not possible to apply directly to the district court against the preliminary injunction decision given *in absentia*.

The district court rejected the appeal application without examining it, stating that it was necessary to object to the interim decision before the first-instance court in due process. Further, it stated that the decisions made on this objection would be appealed and then sent the appeal petition to the first-instance court to be considered as an objection petition.

Many believe that this decision was correct, because it is necessary to make a distinction between following the case by the principal and following the case via the lawyer to ensure that the rule of law is upheld.

In Turkey, there is no obligation to hire a lawyer in order to file or follow a lawsuit. The function of hiring a lawyer is to provide effective legal protection and justice. In this respect, the lawyer, as a professional who has undergone the same legal training as a judge, should be a pioneer in the proper application of the law.

Therefore, although it is acceptable for a judge's misdirection to be followed by a principal, it cannot be followed by a lawyer.

Hypothetically, after the decision of preliminary injunction was issued, it would have been unfair for the party – in favour of which the preliminary injunction was granted and who took the related commercial moves relying on the fact that no objection was made to the relevant authorities in due time – to face an objection months later due to a judge's unlawful mistake and the lawyer's use of this error. Indeed, it is a requirement of the principle of trust in the law that the party in favour of which a preliminary injunction decision is made should make its commercial plans accordingly, based on the fact that the relevant authorities were not applied on time. Accepting otherwise would mean that this party would endure unlawful and unfair results.

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