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COMPENSATION LIABILITY OF THE THIRD PERSON IN AFFAIR WITH THE CHEATING SPOUSE



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According to Turkish Law, marriage is the life partnership of two people who are not of the same gender, which is established for the purpose of continuity and in accordance with law and order. Aforesaid partnership is built on the basis of trust and reliability. Therefore, one of the most important reasons damaging the marriage bond is that the spouses do not fulfill the obligation of loyalty to each other. In our legal system, certain misconducts contrary to the loyalty obligation have been considered as absolute reasons of divorce. Cheating, in other words adultery, is one of these reasons.

Adultery is an absolute, special and fault-based reason of divorce and regulated in article 161 of the Turkish Civil Code. Since adultery is an absolute reason of divorce, if the adultery is proved, the judge must rule the divorce. However, the cheated spouse may also claim compensation through the divorce case or any other lawsuit to be filed.

Although there is no doubt that the claim for compensation might be asserted against the spouse who commits adultery, there have been various ongoing discussions on whether the claim may be asserted to the third parties who are aware of the marriage of the cheating spouse but intentionally commit adultery.

From one side, since there is no regulation provided by law, it is not possible to rule compensation against the third party. The loyalty obligation is an obligation that only exists among the spouses. Therefore, it is not possible to say that the third person who has relationship with the cheating spouse has violated any absolute right of the deceived spouse.

On the other hand, it is possible for the deceived spouse to claim a compensation from the third party that his/her spouse has sexual relations. Even though the third party does not have a responsibility against the deceived spouse, since such conduct damages the emotional existence, which is included in the personal rights of any individual; it is deemed as a violation of absolute rights. It is possible to attribute this opinion to one of the provision of the Turkish Code of Obligations; which is “Even if there is no law prohibiting the damaging action, a person who willfully causes damage to another in an immoral manner is likewise obliged to provide compensation.” Such deduction considers that the action of “being together with a married person” constitutes a tort.

As a result of the different decisions of Court of Appeal adopting different opinions on the same subject, holding a meeting by the Joint Chambers of the Court of Appeal become compulsory. The Joint Chambers had the last word with the Joint Chambers Decision dated 06 July 2018 regarding whether the deceived spouse might claim immaterial compensation from the third party who is aware of the marriage of the cheating spouse but intentionally commit adultery.

In accordance with the Joint Chambers Decision, it is not possible for the deceived spouse to claim an immaterial compensation from the third party who is aware of the marriage of the cheating spouse but intentionally commit adultery, while the marriage is ongoing. The basis of the foregoing decision is that the loyalty obligation is only among the spouses. Since legislative body knowingly and willingly prefers to not introduce any provision stipulating the joint responsibility of the third person in the Family Law book of the Turkish Civil Code, it is not considered right and proper to hold the third party responsible for compensation, according to the foregoing decision of the Joint Chambers of the Court of Appeal. This decision, which is binding on all courts in Turkey, has abolished an important dilemma on the divorce lawsuits arising out adultery.

Answers. Not theories.

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