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PURPOSE AND SCOPE OF THE PERSONAL DATA PROTECTION LAW NO 6698



PURPOSE

The right to request the protection of personal data is guaranteed as a constitutional right, after the amendment made to Article 20 of the Constitution with the Law No. 5982 in 2010. Within this context, the Article determines what rights and powers individuals have over personal data concerning them and in which cases personal data can be processed, while it also ensures that principles and procedures related to protection of personal data will be regulated by law.

The purpose of the Law is explicitly explained in Article 1 of the Law. According to this Article, the purpose is “to protect fundamental rights and freedoms of persons, particularly the right to privacy, with respect to processing of personal data and to set forth obligations, principles and procedures which shall be binding upon natural or legal persons who process personal data.”

As explained in the justification of the Article, the Law aims at imposing a discipline regarding

the processing of personal data and protecting the fundamental rights and freedoms stipulated in the Constitution, particularly the right to privacy. This also includes protecting privacy of the individual and ensuring data security, as well as laying down obligations, principles and procedures which will be binding upon natural or legal persons who process personal data.

The objective of the Law is to prevent violation of personal rights caused by the unlimited and random collection of personal data, unauthorized access to, disclosure of, or misuse of personal data.

With the aim of controlling the principles and conditions on which the personal data processing will rely, the Law has introduced control mechanisms for the data processing to prevent the unlawful processing of data. The Law also lays down obligations, principles and procedures which will be binding upon natural or legal persons who process personal data.

Accordingly, the purpose of the Law can be

listed as:

• Protecting fundamental rights and freedoms while processing personal data,

• Setting forth obligations, principles and procedures which will be binding upon natural or legal persons who process personal data,

• Protecting privacy of the individuals (right to privacy),

• Ensuring data security.



SCOPE

1. Scope of the Law

Article 2 of the Law determines the scope of the Law. This Article rules that “The provisions of this Law shall apply to natural persons whose personal data are processed and to natural or legal persons processing such data wholly or partially by automated means or by non-automated means which provided that form part of a data filing system.”

According to the Law, there is no distinction between public institutions and private organizations. As a rule, the principles and procedures laid down by the Law apply to all institutions and organizations. Therefore, the provisions in the Law apply to public institutions as well for the processing activities they carry out.

Only the personal data relating to natural persons is subject to protection under the Law; that is, the Law does not apply to data concerning legal persons. However, in case

the personal data relating to a legal person comprises the identity of one or more than one natural person, such data may also be protected under the Law. In this case, the Law actually protects the personal data relating to the natural person rather than the legal person itself.

The Law does not foresee any difference in terms of processing personal data partially or wholly, by automated means or by non-automated means which provided that form part of a data filing system. In this respect, any system structured according to a certain criterion facilitating access to personal data will be evaluated within the scope of the Law.

In our age, personal data is processed mostly by automated means. The data previously processed by non-automated means is seen to be rapidly transferred to electronic media in many places. In parallel with this, the data processed “wholly or partially by automated means” and “by non-automated means which provided that form part of a data filing system” are protected under

the Law No 6698. Therefore, the Law does not exclude the data processed by non-automated means. The important point here is whether the data processed by non-automated means is part of a data filing system. For instance, the Law does not apply to the situation where name and surnames of individuals are recorded on a paper randomly based on no criteria; however, when those names and surnames are recorded based on a specific criterion, the Law will apply. In this context:

- The phrase “processing wholly or partially by automated means” is not explicitly defined in the Law. Pursuant to CoE Convention No 108, “automatic processing” includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination.
- Personal data processed by non-automated means provided that they form

a part of data filing system falls under the protection provide by the Law. Article 3 of the Law defines 'the data filing system' as "the system where personal data are processed by being structured according to specific criteria." Therefore, if data manually processed is included in a data filing system structured based on any specific criteria, the Law will also apply to such data.

- Personal data processed by non-automated means will not be treated within the scope of the Law unless they form part of a data filing system. However, since this situation will not affect the fact that these are still personal data, unlawful actions regarding the data will still be crime under the Turkish Criminal Code No 5237.

2. Situations Not Covered by the Law

The Law only applies to natural persons and does not cover the processing of personal data concerning legal persons, on account of the provision of “natural persons whose personal data are processed.” defined in Article 2 of the Law.

Furthermore, provisions of the Law regarding the processing of personal data cannot be applied to personal data that are recorded physically and not part of a data filing system. Indeed, Article 2 of the Law states that “processing such data wholly or partially by automated means or by non-automated means which provided that form part of a data filing system.”

On the other hand, Article 28 of the Law lists the situations not covered, wholly or in part, under this Law. Accordingly, the first paragraph of the Article 28 grants full exemptions which

rules that the provisions of the Law will not be applied in any way, and the second paragraph grants partial exemptions regulating that only some provisions of the Law will not be applied.



a. Situations Fully Excluded from the Scope of the Law

Article 28(1) of the Law lists the situations that lie outside of the scope of the Law as follows:

• Personal data are processed by natural persons within the scope of purely personal activities of the data subject or of family members living together with him/her in the same dwelling provided that it is not to be disclosed to third parties and the obligations about data security is to be complied with,

• Personal data are processed for official statistics and provided that they are being anonymized for the purposes for such as research, planning and statistics,

• Personal data are processed with artistic, historical, literary or scientific purposes, or within the scope of freedom of expression provided that national defence, national security, public security, public order, economic security, right to privacy or personal rights are not violated or

the process doesn't constitute a crime,

• Personal data are processed within the scope of preventive, protective and intelligence activities carried out by public institutions and organizations duly authorised and assigned by law to maintain national defence, national security, public security, public order or economic security,

• Personal data are processed by judicial authorities or execution authorities with regard to investigation, prosecution, judicial or execution proceedings.

Processing personal data within the scope of activities of the data subject or of family members living together with him/her in the same dwelling

Provisions of the Law do not apply in cases where the personal data are processed by natural persons within the scope of purely personal activities of the data subject or of family members living together with him/her in the same dwelling provided that it will not be

disclosed to third parties and the obligations about data security is to be complied with.

Within the scope of this paragraph; there is an exemption to the processing of data relating to the family members living in the same residence. For example, photographs taken within the family on special occasions such as birthdays do not fall under the scope of this Law. However, if this data is shared with third parties or made public, for instance, if the photos taken on the birthday are shared publicly on social media, there will be no exemption.

Processing personal data for official statistics and provided that they are being anonymized for the purposes for such as research, planning and statistics

Provisions of the Law do not apply in cases where personal data is processed for official statistics and provided that the data is being anonymized for the purposes such as research, planning and statistics. Thus, the Law does not apply if personal data is processed for official statistics.

Furthermore, the Law grants exemption if personal data is being anonymized after the collection for the purposes such as research, planning and statistics. For example, anonymization of personal data later, which is included in a survey by a public opinion research center.

The phrase “such as” in the provision “for the purposes such as research, planning and statistics” indicates that these are listed to set an example. Therefore, we can conclude that there can be other methods subject to these exemptions. The bottom line here is that the personal data undergoes anonymization process.

Anonymization, in this regard, means rendering personal data impossible to link with an identified or identifiable natural person, even through matching them with other data.

Processing personal data with artistic, historical, literary or scientific purposes, or within the scope of freedom of expression

Provisions of the Law do not apply in cases where personal data is processed with artistic, historical, literary or scientific purposes, or within the scope of freedom of expression provided that national defence, national security, public security, public order, economic security, right to privacy or personal rights are not violated or the processing activity does not constitute a crime. For example, writing biography of a public figure for literary purposes does not fall within the scope of the Law, provided that it is limited to this field of activity.

Processing personal data within the scope of preventive, protective and intelligence activities carried out by public institutions and organizations duly authorised and assigned by law to maintain national defence, national security, public security, public order or economic security

Provisions of the Law do not apply in cases where personal data is processed within the scope of preventive, protective and intelligence activities carried out by public institutions

and organizations duly authorised and assigned by law to maintain national defence, national security, public security, public order or economic security. In this sense, data processed by intelligence units within the scope of activities to ensure national defence, national security, public security, public order or economic security is exempted from the Law. Similarly, data processed by authorized units within the scope of activities carried out for the purposes of laundering proceeds of crime, preventing financing of terrorism and investigating financial crimes is also within the scope of this exemption.

Processing of personal data by judicial authorities or execution authorities

Provisions of this Law do not apply in cases where personal data is processed by judicial authorities or execution authorities with regard to investigation, prosecution, judicial or execution proceedings.

b. Situations Partially Excluded from the Scope of the Law

Article 28(2) of the Law regulates the cases that do not fall within the scope of some articles, only under specific circumstances and conditions. Pursuant to this article; “Provided that it is in compliance with and proportionate to the purpose and fundamental principles of this Law, Article 10 regarding the data controller’s obligation to inform, Article 11 regarding the rights of the data subject, excluding the right to claim compensation, and Article 16 regarding the obligation to register with the Data Controllers’ Registry shall not be applied in the following cases where personal data processing”:

- is necessary for the prevention of committing a crime or for crime investigation,
- is carried out on the data which are made public by the data subject himself/herself,

- is necessary for performance of supervision or regulatory duties and disciplinary investigation and prosecution to be carried out by the assigned and authorised public institutions and organizations and by public professional organizations, in accordance with the power conferred on them by the law,

- is necessary for protection economic and financial interests of State related to budget, tax and financial matters.

As ruled by the Law, one of the cases specified in the article must occur in order for Articles 10., 11. And 16 not to be applied. However, it should be noted that data processing must, in any case, comply with the purpose and basic principles of the Law and be proportionate.



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