

26 May 2006

## PRIVACY LAW IN TURKEY

*By Mehtap Yıldırım Öztürk\* and Çağdaş Evrim Ergün<sup>e</sup>*

### I. INTRODUCTION

The development of new information technologies and in particular the Internet over the past few decades has led to concerns about security of personal data, as the storage and transfer of personal data had never been easier than today. Such increase in exchanges of personal data within and across national borders necessitates an effective protection of the right to privacy at both national and international levels.

Despite such gradually increasing sensitivity on protection of personal data, there is not yet a specific law governing the privacy of personal data in Turkey, though a number of other legislation, which are analyzed below, deal with the protection of personal data. There is also a draft Law Concerning Protection of Personal Data (the “Draft Law”), which was prepared and developed by the Turkish Ministry of Justice for several years without success.

### II. THE DRAFT LAW

Under the National Program for the Harmonization of Turkish Legislation with European Union Law<sup>1</sup>, the Turkish Government has committed to harmonize its legislation. Accordingly, the Draft Law to mainly follow the Draft Law mainly follows the European Union Data Protection Directive No. 95/46/EC and the Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries.

Alignment with the EU *acquis* on personal data protection was one of the short term priorities of the Turkish Government under the 2003 Accession Partnership Document published by the European Commission. The Draft Law was aimed to be enacted by December 2004 under the National Program of 2003, and the Personal Data Protection Authority was aimed to be established in 2005. However, neither the Draft Law has been enacted, nor the Personal Data Protection Authority has been established.

The Draft Law is envisaged to govern issues such as the protection of personal data and fundamental rights and freedoms; recording and use of data within certain clear purposes in line with the rule of law; reliability and accuracy of data, its renewal and erasure when necessary; security of confidential personal data such as race, political opinion, religion, health, sexual life, and the right of persons regarding provision of information related to themselves.

---

\* Member of Ankara and New York Bars. Partner at Çakmak Law Office. LL.M. at Harvard Law School. E-mail: m.yildirim@cakmak.av.tr

<sup>e</sup> Member of Ankara Bar; Associate at Çakmak Law Office. LL.M at Exeter Law School. Ph.D. Candidate at the University of Ankara. E-mail: c.ergun@cakmak.av.tr

<sup>1</sup> Published in the Official Gazette Dated 24 July 2003 No. 25178 bis.

26 May 2006

### **III. OTHER LAWS CONCERNING DATA PRIVACY**

#### **A. Data Privacy Provisions In The Constitution**

Article 20 of the Turkish Constitution regulates the right to respect for private life as follows: *“Everyone has the right to demand respect for his private and family life. Privacy of individual and family life cannot be violated.”* Article 20 also prohibits the search or seizure of any individual, his private papers, or his belongings unless there exists a decision duly passed by a judge on the grounds such as national security or public order, and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial.

Article 22 of the Constitution as amended in October 2001 preserves the secrecy of communication and provides that *“Communication shall not be impeded nor its secrecy be violated, unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial.”*

#### **B. The Civil Code**

The Turkish Civil Code sets forth a number of provisions to protect the privacy of personal information. Pursuant to Article 24 of the Civil Code, in particular, an individual whose personal rights are unjustly violated may bring a civil action against such violation to prevent such violation and/or the compensation of damages arising from such violation.

#### **C. The New Employment Law**

The new Turkish Employment Law, which entered into force on 10 July 2003 and replaced the old Employment Law No. 1475, provides that the employer is obliged to use the personal data of its employees in accordance with the laws and the principle of good faith, and not to disclose any such personal data if the relevant employee has a reasonable benefit in the confidential treatment of such data. We are not aware of any court precedent regarding the implementation of this specific provision of the new Employment Law, which was not provided in the old Employment Law.

In the Turkish employment law literature, it is commented that the “management authority” of an employer includes reasonable intervention in private life of the employees to the extent that it is necessary for a sound operation of the business.<sup>2</sup> The necessity and reasonableness tests require case-by-case analysis in each specific case.

#### **D. The New Criminal Code**

The new Criminal Code, which entered into force on 1 June 2005 (the “New Criminal Code”), also sets forth a number of provisions specifically dealing with the protection of personal data. The New Criminal Code provides that unlawful storage of personal data is subject to a penalty of imprisonment from six months to three years. In the case of unlawful transmission or reception of personal data, the penalty is increased to imprisonment from one year to four years. In the case that such crime is committed by government officials or to

<sup>2</sup> e.g., Suzek, S., *Labor Law*, Istanbul 2002, s. 289 et seq.

26 May 2006

facilitate performance of a profession, the punishment shall be increased by half. Furthermore, those who do not delete or destroy personal data in spite of the expiry of the time period stipulated in the relevant laws for the maintenance of such data shall be punished by imprisonment from 6 months to 1 year. The New Criminal Code or any other law does not define the unlawful storage or transmission of personal information. However, the term unlawful in this context may be interpreted as storage or transmission of personal data without consent of the relevant individuals.

#### **E. The New Banking Law**

The new Banking Law No. 5411, which entered into force on 1 November 2005, also provides a number of provisions dealing with the protection of personal data concerning the customers of banks.

Article 73 requires the directors, managers and other personnel of banks to keep personal information about their customers confidential. Under Article 159 of the Banking Law, violation of such requirement is subject to an imprisonment from 1 to 3 years as well as an administrative fine. In the case that such violation is made for the purposes of obtaining a benefit, the penalty shall be increased by one sixth.

#### **F. The New Bank Cards and Credit Cards Law**

The new Bank Cards and Credit Cards Law No. 5464, which entered into force on 1 March 2006, also includes certain provision aimed to protect the personal data of the bank cards and credits cards holders.

Pursuant to Article 23 of the Bank Cards and Credit Cards Law, member merchants/shops cannot use, store or copy the personal data regarding their customers, which they obtain during the utilization of credit cards or bank cards in their shop/work place, without written consent of the relevant customer. Card issuing institutions are also required to keep such information confidential other than the purposes of marketing their services. Article 39 of the Bank Cards and Credit Cards Law provides that violation of such requirements is subject to imprisonment from 1 to 3 years as well as an administrative fine.

#### **G. Council Of Europe's Convention On Data Privacy**

Turkey is a member of the Council of Europe and has signed the Council's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108) in 1981.<sup>3</sup> Turkey has not, however, ratified that Convention yet.

### **III. CONCLUSION**

Data protection in Turkish law is governed by the Constitution and a number of laws such as the Civil Code, Criminal Code, Employment Law, Banking Law and the Bank Cards and Credit Cards Law. There is not yet a specific law governing the privacy of personal data in

---

<sup>3</sup> Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108), available at "<http://conventions.coe.int>"

---

26 May 2006

Turkey, though there is a Draft Law on Data Privacy, which was prepared and developed by the Turkish Ministry of Justice for several years without fruition.

The Draft Law, which was prepared as a part of Turkey's commitments toward the European Union under the National Program for Accession to the European Union, mainly follows the European Union Data Protection Directive No. 95/46/EC and the Commission Decision 2001/497/EC of 15 June 2001 on standard contractual clauses for the transfer of personal data to third countries.