

JULY 2019

LAW UPDATES

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The Constitutional Court's Decision on the Improper Service of Notification

In its decision dated March 21, 2019 and numbered 2016/2595, the Constitutional Court decided that the appeal court's decision against the defendant, claiming the refusal of the case for not being properly notified, for the claimant's application after the verdict had become definite and final, caused a violation of the right to access to the court.

According to the Constitutional Court's foregoing decision, the First-instance Court decided to serve the notification by an announcement because the Defendant's registered address was in the U.S.A and the relevant entities could not make the proper notification despite the correspondences made thereof. The Defendant claimed that there had been a violation of his right to a fair trial guaranteed by Article 36 of the Constitution by explaining that the notification was not made properly, despite the fact that his domestic and foreign addresses were included in the file, therefore his attendance was prevented by making the notification by announcement. He further claimed that he became aware of the trials the appeal phase, and his petition was rejected by the appeal court on the grounds that the court had given its verdict.

As a result, the Constitutional Court concluded that right to access to the court was violated and the interference was disproportionate because the sufficient efforts and researches for serving the notification to the addressee's right addresses were not made, therefore ruling against the Appellant is not legal.



The Decree on Information and Communication Security Measures



The Presidency of Turkey – The Decree on Information and Communication Security Measures no. 2019/12 was published in the Official Gazette dated 06.07.2019 and numbered 30823 (“Decree”). The Decree provides for taking the required measures in order to ensure the safety of critical data in Turkey. According to the Decree, the public data shall not be stored in the cloud, the foreign based applications shall not be preferred, the domestic and national encryption systems shall be encouraged, the settings of public e-mail systems shall be configured to be secure and corporate e-mails shall not be used for personal purposes (private communication, private social media account, etc.). In addition to the foregoing, it is important for the authorized operators working in the communications sector obliged to establish Internet Exchange Point in Turkey (= IXP) because it is aimed to restructure the network traffic to be domestic. Apart from the data localization, the Decree imposes restrictions on the cloud computing, introduces additional security measures, mandates back-door investigation, regulates advanced data security rules for the public data use and the transmission.

Amendments to the Regulation on Pharmacists and Pharmacies

The Regulation on the Amendment of the Regulation on Pharmacists and Pharmacies (“Regulation”) was published in the Official Gazette dated 29.06.2019 and 30816. In accordance with Article 20(8) of the Regulation, it has been stated that pharmacies can be opened at the buildings where there is dentist polyclinics.

Another amendment is made to Article 25(2) and 25(3) of the Regulation titled “pharmacy name, panel, and showcase”. The previous regulation required the pharmacies to place the lighted or non-lighted panels showing pharmacies’ name. With this amendment, the Regulation makes an exception for the pharmacies operating in cultural and natural places and the pharmacies at international airports, and the requirement to place panels for these pharmacies have been eliminated. With the amendment in Article 25(3), the “E” logo panels to be placed outside the pharmacies are required to be within the parcel boundaries where the pharmacies are located.



Process of Registration to Data Controllers Registry

Article 16(2) of the Law on the Protection of Personal Data no. 6698 (“Law”) states that natural and legal persons who process personal data are required to register with the Data Controllers Registry before they process data. The Personal Data Protection Board dated 19.07.2018 and numbered 2018/88 on the “Starting Dates of Registration Obligation” has decided as follows:

- For the real and legal person data controllers, whose annual number of employees is more than 50 or whose total annual financial balance is more than 25 million TL, the starting date of the obligation to register to the Registry shall be 01.10.2018 and the deadline for registration shall be 30.09.2019.
- For the real and legal person data controllers, who reside abroad, the starting date of the obligation to register to the Registry shall be 01.10.2018 and the deadline shall be 30.09.2019 for the registration with the Registry.
- For the real and legal person data controllers, whose main activity is processing special categories of personal data although the annual number of employees is less than 50 and the total annual financial balance is less than 25 million TL, the starting date of obligation to register with the Data Controllers Registry shall be 01.01.2019 and the deadline shall be 31.03.2019 for the registration.
- For the data controllers of public institutions and organizations, the starting date of the obligation to register with the Registry shall be 01.04.2019 and the deadline shall be 30.06.2020.

In the registry application to the Registry, identity and address information of the data controller and representative thereof, if any, the purposes for which personal data will be processed, the group or groups of persons subject to the data and explanations regarding data categories belonging to these persons, recipient or groups of recipients to whom personal data may be transferred, personal data which is envisaged to be transferred abroad, measures taken for the security of personal data, the maximum period of time required by the purposes for which personal data are processed shall be included.

In accordance with the Law, to the ones who do not fulfill the obligation to register with the Registry and to make a notification as provided under Article 16 of the Law, an administrative fine of 20.000 Turkish Liras to 1.000.000 Turkish Liras shall be imposed.

Kocaeli 1st Tax Court's Application to the Constitutional Court Regarding a Regulation that will Affect the Corporate Tax Base

Article 76 of the Law No. 6728 on the Amendment of Certain Laws for the Improvement of the Investment Environment (Law No: 6728) sets the date of the exemption for the sale and leaseback transactions carried out under the Leasing, Factoring and Financing Companies Law numbered 6361 ("Law No: 6361") from corporate tax and attempts to create a harmony between the previous and the new regulations thereof. The foregoing tax exemption, which was previously regulated under Law no. 5520, has been widened by Law no. 6728. For instance, the transactions made with participation banks and development and investment banks were not included, however they have been added into the scope of the exemption in the new regulation. The new regulation is applied to the transactions made since August 2, 2013, which is the date on which the repealed regulation was entered into force.

In the application made by the Kocaeli 1st Tax Court to the Constitutional Court ("Application") , the cancellation of the regulation was requested, claiming that since the relevant provision will be enforced and applied to the transactions made as of August 2, 2013, this application will be executed retroactively, and thus will cause for the payment of more taxes, and this situation constitutes a violation of legal security. However, in its decision examining the application , the Constitutional Court stated that even though the regulation affects a prior date, it will be applied to the legal aspects, matters and events which had not yet been concluded, therefore cannot be regarded as a retroactivity of law.

Four Years of Data Violation by Marriott International Inc. and the Imposed Fine Thereof

The Personal Data Protection Authority (“the Authority”) imposed an administrative fine of TL 1,450,000 on its investigation of a breach of security in the US-based hotel chain Marriott International, Inc. (“Company”). As stated in the announcement published on the website of the Authority, the letters sent by the Company to the Authority dated 04.12.2018 and 28.03.2019 were reviewed and the following information was gathered:

- On 8 September 2018, they received a warning from the internal security department regarding the attempt to access the Starwood guest reservation database,
- There has been an unauthorized access to Starwood network since 2014,
- The accessing unauthorized party has been copying and encrypting the information,
- On November 19, 2018, the Company decrypted the information and the content was received from the Starwood guest booking database,
- The database had the information of approximately 500 million guests who booked at a Starwood facility on or before 20 September 2018,
- The information of approximately 327 million of these guests contained the names, postal addresses, telephone numbers, e-mail addresses, passport numbers, Starwood Preferred Guest (SPG) account information, dates of birth, genders, arrival and departure information, booking dates and various combinations of communication preferences,
- In the database, there was the information on the numbers of the cards that are encrypted with the Advanced Encryption Standard together with the expiration dates of such cards, however, the Company is not sure whether these passwords have been decoded.

While the aforementioned cases indicate that these very critical datas such as credit card information have been shared, it can also be clearly seen that such situation to last 4 years constitutes a big security gap. Therefore, as a result of all these serious violations, the Company, who did not take the necessary technical and administrative measures, which are regulated under Article 12 (1) of the Personal Data Protection Law (“Law”) on ensuring data security, was fined 1.100.000 Turkish Liras in accordance with Article 18(1) of the Law; and 350.000 Turkish Liras in accordance with Article 12 (5) for not notifying the Authority “as soon as possible” upon becoming aware of such violations.

Insurance of Building Completion in Terms of Urban Transformation Process

As a result of the regulations brought by the Law of Transformation of Areas Under Disaster Risks No. 6306, which was published and came into force in 2012, and is known as Urban Transformation Law, a lot of building had been demolished and/or renovated until today. In this process controversies between contractors and owners of the properties have arisen due to the projects remained incomplete. In order to prevent the disputes between the parties and protect the property owners' rights in case of incomplete projects, building completion insurance concept has seem to become a solution for the continuity of urban transformation process.

According to Article 25 of the Law No. 7153 Amending the Environmental Law and Some Laws, the contractor must insure the building for the completion of the building prior to getting a construction permit license. The scope, conditions and codes of practice for such insurance of completion of the building are determined by the Ministry of Treasury and Finance. The Regulation Amending the Implementation Regulation of the Law No. 6306 ("the Regulation"), which was published in the Official Gazette dated 21.06.2019 and numbered 30808, refers to the new regulations regarding the urban transformation process and brings up the issue of building completion insurance again. According to the Regulation, it is mandatory to provide guarantee in case the constructions are conducted on the areas and parcels with hazardous constructions. However, in the event of the existence of a building completion insurance, such guarantee is not required. With the said measures, the problem of projects is endeavored to be overcome.

In the contract of building completion insurance, the insurer undertakes to pay the guarantee to the beneficiary in case the contractor is unable to complete the building. The insurer sets the guarantee limit, the maximum amount of which shall be the relevant house's price, by issuing an insurance policy for the relevant project and provides surety bonds for each beneficiary. Such guarantees cannot be subject to any bankruptcy estate and they cannot be a subject to attachment and interim injunctions as well. Insurance contract is terminated after the project is completed and transferred. It is also necessary to inform the insurer that the building is completed and delivered to the owner.

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