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LAW UPDATES

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ISSUE

Changes in the Regulations Regarding the Protection of Personal Data

With the Official Gazette No. 30758 dated April 28, 2019, some amendments were made to the legislation regarding the protection of personal data. These regulations are as follows:

1- Regulation on Data Controllers Registration

2- Regulation on the Deletion, Destruction or Anonymization of Personal Data

3- Communiqué on Principles and Procedures for Fulfillment of Lighting Liability

With the amendments made on the Regulation on Data Controllers Registration, some of the definitions in Article 4 of the Regulation have been expanded and as a result;

- The contact person is no longer an intermediary just for legal entities. The contact person who is responsible for data of real and legal persons resident in Turkey is the data controller. As for the real and legal persons who are not resident in Turkey, the person notified by the data representative at the time of registration to the Registry is defined as the contact person.
- In the Personal Data Inventory, in addition to the precautionary measures related to data security, the legal purpose and the maximum time required for the purposes for which personal data is processed has been added. In fact, although the legal reason is a matter contained in the personal data inventories, it did not have a legal basis since it was not regulated in the Regulation on the Registry of Data Officers. Inclusion of these measures in the wording of the article has provided a compatibility between the application and the legislation.
- The preparation of the Personal Data Processing Inventory by the data controllers who are responsible for registration to the Registry has become a legal obligation.

With the amendment to the Regulation on the Deletion, Destruction or Absorption of Personal Data, the definition of personal data processing inventory has been changed as mentioned above and thus paralleled with the Regulation on Data Controllers Registration.

With the amendments made in the Communiqué on Principles and Procedures for Fulfillment of Lighting Obligation, the 5/1 c clause of the Communiqué has been abolished and the controversial issues related to the data liable lighting liability have been clarified. By abolishing this article, it has been clarified that only the data controller legal entity has an obligation to illuminate. In addition, the definition of data record system has been changed as “registration system where personal data is configured and processed according to certain criteria” and it has become a wider definition than the old one.

Accreditation of Personal Data Protection Authority to European Data Protection and Privacy Conference

Personal Data Protection Authority, established under Law No. 6698 on the Protection of Personal Data, acts as a regulatory and supervisory authority in Turkey since 2016 in order to sustain protection of personal data. An accreditation application was made by the Authority to European Data Protection and Privacy Conference (Spring Conference) on 04.01.2018. It is highly important to align personal data protection implementations with the EU General Data Protection Regulation (GDPR) since the subject becomes more significant from day to day. The Data Protection Directive, which entered into force in 1995 on the purpose of protecting privacy rights of European Union citizens, took its final form with modernized principles and updated revisions regarding the right of privacy, after approved by European Parliament on 14.04.2016. The harmonization of Turkey with this Regulation is substantial for approaching current applications and making precedent decisions. Hence, the accreditation application was approved after voted in 29th European Data Protection and Privacy Conference. From now on, Turkey will stand as an “accredited country” on the international platform.

Personal Data Breaches Occurred in Facebook and Microsoft

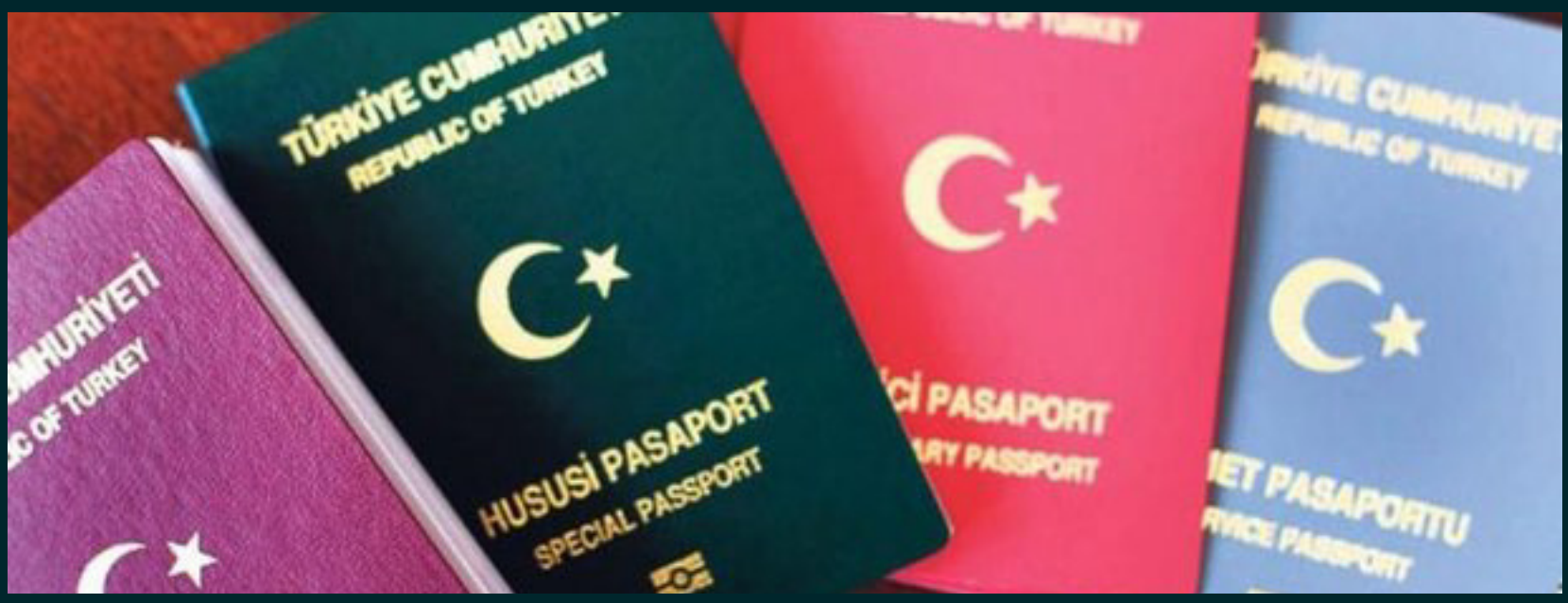
Once again, the importance of data security for all sizes of institutions becomes apparent after the decisions were given last week by Personal Data Protection Authority concerning industry leading companies Facebook and Microsoft.

To sum up;

It was detected that Facebook has ultra vires access to photos of its users and 300.000 users in Turkey were affected by the situation. For this reason, the Authority decided that Facebook does not take measures under Article 12/1 of the Personal Data Protection Law and commits violation in data security. The Authority imposed administrative fine of 1.100.000 Turkish Liras pursuant to Article 18/1(b) of the Law. The Authority also referred to the importance of notice of breach by unanimously imposing administrative fine of 550.000 Turkish Liras under Article 12/5 because Facebook did not report the breach even though it was noticed.

With the notice of data breach made by Microsoft Corporation to the Personal Data Protection Authority on 08.05.2019; it was reported that an unauthorized access between dates of 01.01.2019 and 28.03.2019 to names, subject lines and appendix of some e-mails was detected. Inspections relating to the infringement still continue.

Regulation on the Taking of Visa Intermediary Service

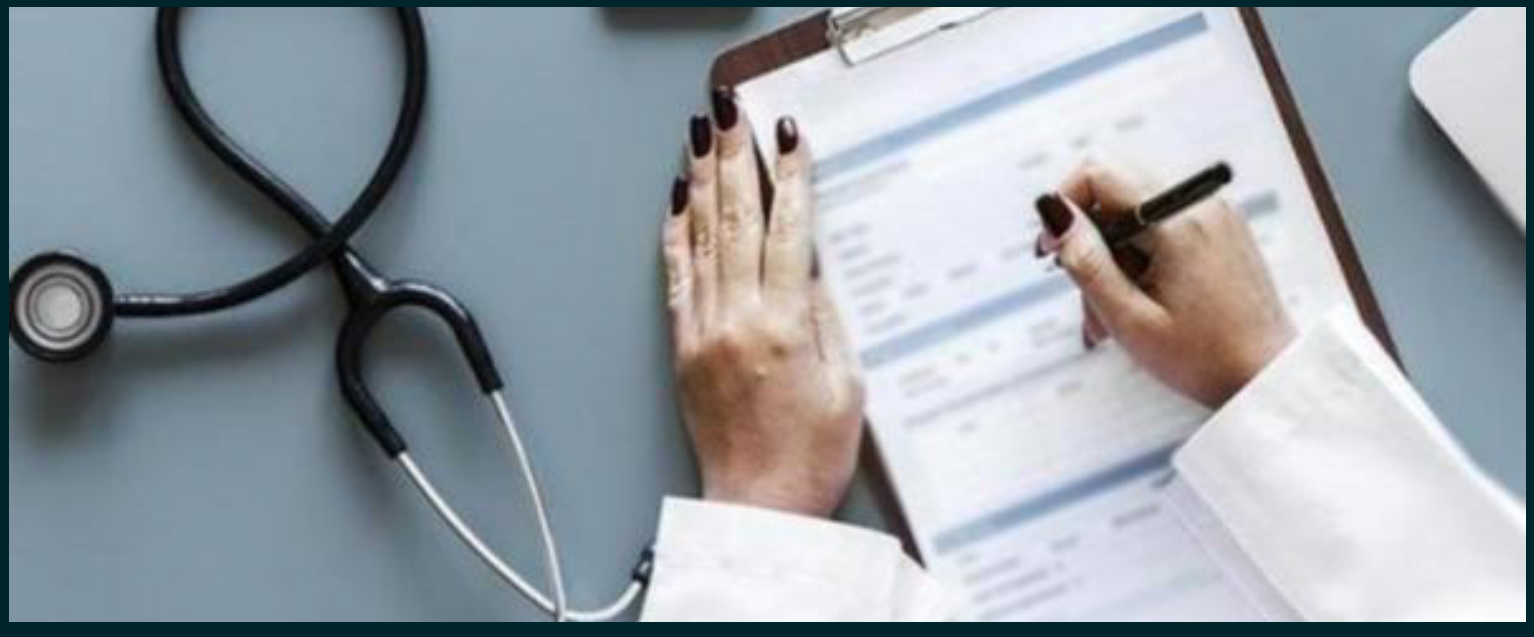


In the Official Gazette dated 30 April 2019 and numbered 30760, the Regulation on the Taking of Visa Intermediary Service was published. A few of the codifications highlighted in this related regulation are as follows: Agencies / firms that will provide intermediary services to the Ministry of Foreign Affairs were determined in order to apply for visa applications abroad, and intermediary service fees were determined according to the countries. Again, determination of issues related to the contracts to be made with the agencies / firms that will provide services, depositing the service fee for the visa application collected by the relevant intermediary agency / firm to the consular revenue account, the procedures and principles regarding the use of the share in the ministerial services and the recording of the income-allowance are also the subjects discussed in the Regulation. The fee for the intermediary service shall be determined by the Minister or the person designated by him / her by taking into consideration the criteria set forth in Article 6 of the Regulation. Moreover, Article 7 of the Regulation regulates how an evaluation process is envisaged for visa applicants. In determining the approval of the visa, the applicants may also be invited to the interview in cases where the foreign representative office deemed it necessary. This service fee is deposited to the consular account.

Termination of Labour Contract Due to Whatsapp Chats

It is highly common for employees in the same working place to create group chats via “Whatsapp” application and talk about work and employer. Whether it is possible for employer to terminate the labour contract with valid reason based on chats captured was debatable. The way of access to these chats was ambiguous and it was usually seen that all the chats are revealed after debit of the phone. Court of Cassation explained how to approach this matter by its last decision. With the decision of 9th Chamber of the Supreme Court, dated 10.01.2019, principal and decision number 2018/10718 – 2019/559, it was decided that Whatsapp chats are private personal data and cannot be used as reason for termination. The court of first instance had decided that even if the plaintiff did not use profane language against employer; s/he violated the contract by sharing confidential information regarding payments and bonus with other employees in Whatsapp group chat and s/he cannot gain right to severance and notice pay. The plaintiff appealed against the decision and the Supreme Court reversed the judgment. The reason was that Whatsapp system is secured and closed to 3rd persons even if the communication occurs via internet. Therefore, to be in communication in a group chat is not forbidden as long as it does not affect business performance and workflow. The communication must be protected as personal data. Whatsapp chats are personal private data and to terminate the contract due to these chats are wrongful. Rejection of claim for severance and notice pay is a misjudgment.

Decision of Joint Chambers Regarding the Defense of the Employee Is Not Needed in Termination Due to Health of the Employee Under Article 25/1-B of the Labour Law



In immediate terminations due to medical releases of employee pursuant to Article 25/1(b) of the Labour Law No. 4857, there are different verdicts in jurisdiction in the matter of the necessity of employee's defense. In order to disambiguate, Court of Cassation gave decision on the unification of conflicting judgments. The decision of joint chambers dated 09.05.2019 no. 30769 states that;

Under the Labour Law No. 4857, if employee's absenteeism due to continuous medical certificates exceeds the 6-week period that is added on notice period, immediate termination with a valid reason would be possible for the employer. The absenteeism that exceeds the 6-week period which is added on notice period is a rightful reason in mentioned termination and no other condition is stipulated. The lapse of time is an actual state and when there is an absenteeism due to medical certificates that exceeds waiting period, a defense from the employee before termination would have importance neither for employee nor employer.

The abolishment of defense period which is a crucial step in termination by employer seem to produce new results in practice.

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