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LAW UPDATES

Amendments Made to the Law on Attorneyship



Law on Amendments made to the Law on Attorneyship and Certain Laws numbered 7249 has been published in the Official Gazette dated July 15, 2020 (“Law”) and entered into force on the publication date. With the Law, the structuring of the bar associations, the provisions relating to the legal profession in Attorneyship Law numbered 1136 , the general assembly structure of Union of Turkish Bar Associations (“Union”), the president and delegate selection systems of the bar and the Union and other certain provisions have been amended.

I. Establishment and Liquidation of Bar Associations

Within the scope of the amendment made with Article 15 of the Law, a bar association may be established with at least two thousand (2,000) lawyers in the provinces with more than five thousand (5,000) registered lawyers. In this context, considering the minimum number, the provinces of Istanbul, Ankara and Izmir shall be subject to this provision. While determining the minimum numbers, it is regulated that the lawyers working in public institutions and organizations or public economic enterprises shall be included in this number as well as the lawyers registered with the bar plate.

The newly established bar association shall not be represented in the Union until it holds its first elective ordinary general assembly. In addition, in the event that a new bar association to be established in the same province, the Union shall number the bar associations by the name of the province, by taking the basis of the legal personality acquisition date.

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II. Duties of Bar Associations in Legal Aid Boards and Commissions

In accordance with the amendment introduced by Article 20 of the Law, legal aid offices will be established in provinces with more than one (1) bar association on the basis of equal representation of the bar associations. Likewise, within the scope of article 21 of the Law, assignment of protection board representatives, assignment of commission members and assignment of provincial and district consumer arbitration committee members will be made on the basis of equal and alternate representation of the bars.

III. Formal Appearance

According to Article 7 of the Law, lawyers are obliged to go to the courts with the robes determined by the Union, and any obligation regarding the formal appearance cannot be imposed on the lawyers within the scope of the work and operations of the bar and the Union and the performance of the profession, including the internship period.

IV. General Assembly Members of Turkey Bar Association and Extraordinary Meeting and Elections

While the General Assembly was being established with two (2) delegates chosen by the bars by secret voting among the members of the bar associations, who have at least ten (10) years of seniority in law; after the amendment, it has been decided that the General Assembly shall be established with three (3) delegates. In addition, the General Assembly of the Bar will elect one (1) delegate for every five thousand (5,000) members, and the Board of Directors of the Union may call the General Assembly for an extraordinary meeting directly or upon the written request of the boards of at least twenty five (25) bar associations.

According to the provision added to the Law on Attorneyship with the Article 22 of the Law, bar association presidentship, membership of management, discipline and supervisory board and Turkey Bar Association elections of delegates will take place on the first week of October 2020 and elections of Union Presidency and management, discipline and supervisory board memberships will be held in December 2020 regardless of the period of office.

The Constitutional Court Resolves that the Provision of the Law on Intellectual Property Rights is against the Constitution

Constitutional Court (“Court”) has repealed the 13th paragraph of Article 81 of the Law on Intellectual Property Rights (“Law”) by determining that it violates Article 2 of the Constitution of the Republic of Turkey (“Constitution”) with its decision dated June 12, 2020 and numbered 2019/74 Basis and 2020/29 Decision (“Decision”).

The objection was submitted to the Court by Izmir 1st Criminal Court of Intellectual and Industrial Rights, which heard the criminal case with the allegation that the defendant was selling books that reproduced the same without permission and banderol, and followingly come to the conclusion that relevant provision is unconstitutional.

The provision to be repealed is the 13th paragraph of Article 81 of the Law titled “Prevention of infringement of rights” (“Provision”) and is as follows: “In case the violation of the obligation of the banderol is committed together with the crime defined in the subparagraph (1) of the first paragraph of the Article 71 regarding the same work, the penalty shall be imposed on the perpetrator only according to Article 71. However, the penalty to be imposed is increased by one third.”

In the Court’s Decision, it has been resolved that “the rule that does not create a fair balance between crime and punishment is contrary to the principle of proportionality in terms of its effect and results”. Since the Provision has been repealed on the basis of Article 2 of the Constitution with majority of the votes, the allegation of contradiction in terms of Article 10, 13 and 38 proposed in the application has not been examined.

Amendments Regarding The Association Regulation

The Regulation on the Amendment of the Association Regulation has been published in the Official Gazette dated July 9,2020 and numbered 31180 (“Regulation”). With this Regulation, various articles of the Association Regulation amended and such amendments came into force as of the publication of the Regulation in the Official Gazette.

I. Amendments regarding Foreign Associations and Foundations

According to Articles 11, 12 and 13 of Regulation, foreign associations, foreign foundations and non-profit -organizations, whose activity permits are granted, can receive in-kind and cash payment from persons, institutions and organizations abroad provided that they notify the administrative authority.

In addition, it has been regulated that the payment received from the headquarters of branches and representative offices of foreign associations, foreign foundations and non-profit organizations will be notified in the same manner.



Amendments Regarding The Association Regulation

II. Amendments regarding DERBİS

Within the scope of Article 48, in order to make the first general assemblies of the associations that are obliged to sign in to the Associations Information System (“DERBİS”), DERBİS user code and password will be given to the temporary management of the association.

According to Article 41 of the Regulation, the books enumerated in the Regulation of the Association which are journal, ledger and stock book can be kept electronically by using software created or permitted by the Ministry of Internal Affairs of the Republic of Turkey. The General Directorate of Civil Relations shall take all kinds of technical measures to ensure the security of the electronic environment for electronic transactions.

III. Other Related Amendments

In Article 31 of the Regulation, it is stipulated that the persons, who are authorized to collect income on behalf of the association, shall deposit the money they collected in the bank account of the association within two (2) working days at the latest, in case of collecting more than five thousand (5,000) Turkish Liras.

Finally, in accordance with Article 33 of the Regulation, the transactions that exceed two hundred thousand (200,000) Turkish Liras in the recent year shall be made in accordance with the competition conditions to be counted from the associations working for the public interest.

Law on the Establishment of Digital Media Commission and Amendments Made to Some Laws Has Been Published

Law on the Establishment of Digital Media Commission and Amendments Made to Some Laws (“Omnibus Bill”) has been published in the Official Gazette dated July 28, 2020 and entered into force. With the Omnibus Bill, many regulations have been presented in various fields, as the major ones are explained below.

I. Regulations on Digital Media

Within the scope of Article 1 of the Omnibus Bill titled “Digital Media Commission” the Digital Media Commission, established within the Grand National Assembly (“General Assembly”) of Turkey (“Commission”), has been regulated and the matters regarding formation, duties and powers of the Commission, meeting and decision-making procedures and other working procedures are explained therein. Accordingly, the Commission is established to carry out works to prevent the use of internet in violation of the law, individual rights of persons, privacy and other fundamental rights and freedoms and to prevent the use of internet in the ways harming children’s physical and psychological development.

The number of members of the Commission has been determined to be seventeen (17) and the distribution of members is decided to be based on the percentage of political party groups in the total number of party groups. The Commission will convene with at least one third of the total number of members and a decision will be made by the absolute majority of those attending the meeting.

The duties of the Commission are; (i) discussing the primary or secondary matters referred to them and presenting opinions by examining the law proposals submitted to the General Assembly and Presidential decrees issued during the state of emergency, in terms of their duty, (ii) providing opinions and suggestions on the prevention of violation of rights and freedoms or the harmfulness of children’s physical and psychological development, (iii) offering opinions and suggestions on effectively fighting against crimes committed through the use of internet, (iv) monitoring internationally accepted developments on the mentioned issues, making inquiries abroad on these issues when necessary and providing opinions and suggestions on these developments and (v) making activities and projects informing the public about the lawful use of the internet.

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In addition to the foregoing, the Commission will be able to request information and documents from public institutions and organizations, content providers, access providers, hosting providers and other local and foreign real and legal persons operating within the scope of the Law on the Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publications and call experts to the Commission to get their opinions when necessary.

The Commission will also be able to work outside of Ankara and the work of the Commission will be covered from the budget of the Parliament. Finally, the General Assembly Internal Regulations will be applied for matters not covered by the Omnibus Bill on the working principles of the Commission.

II. Regulations on Labour Law Legislation

1. Short-Term Working Allowance Application Date and/or Duration Can Be Extended As a Whole or For Certain Sectors

Along with Article 3 of the Omnibus Bill, 3th paragraph of the Provisional Article 23 of Unemployment Insurance Law , which regulates the short-term working allowance, has been amended. With the amendment, the President has been authorized to extend the application date for the short-term working allowance and/or the duration of it until 31 December 2020, regarding certain sectors or as a whole. This amendment has become effective as of July 28, 2020.

The above-mentioned time periods, which were extended for one (1) month from 1 July 2020 with the President's Decree No. 2706 were extended for another month with the President's Decree No. 2810 dated July 30, 2020 . The one (1) month extension period will start after end of the first one (1) month period determined by the Decision No. 2706.

2. Social Security Insurance Premium Support Has Been Re-Regulated for the Employers, who Ceased the Short-Time Working Period

With Article 4 of the Omnibus Bill, Provisional Article 26 of Unemployment Insurance Law has been regulated. Pursuant to the relevant Article, social security insurance premium support will be provided for a three (3) months period starting from the month following the end of short-term employment, not exceeding the date of 31 December 2020, every month, in the amount of all of the insured employee's and employer's share premiums calculated over the lower earnings subject to premium determined in accordance with Article 82 of the Social Insurance and General Health Insurance Law .

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It has been regulated that premium support will be provided to the employer by deducting from all the premiums that these employers will pay to the Social Security Institution and the support amount will be covered by the unemployment fund. The President has been authorized to extend the said three-month period up to six (6) months separately or as a whole, in case:

- i. Private sector workplaces, which had applied for short-term working before 1 July 2020 and where employees, who benefit the short-term working allowance work, cease the short-term working and return to their regular weekly working hours; and
- ii. Employees, for whom the employer had applied for cash fee support before 1 July 2020 and, who have been benefiting from such support, return to their regular weekly working hours.

The President has been authorized to extend the three (3) months period to six (6) months as a whole or regarding certain sectors.

In this respect, for a period of three (3) months, and in any case until 31 December 2020, respective employers will be provided with social security insurance premium support from the Unemployment Insurance Fund. Accordingly, the employer and employee's social security premium share, calculated based on the minimum statutory salary amount, will be deducted from the monthly social security premium payments to be made by employers to the Social Security Institution

In addition to the foregoing, if the insured, who applied for the support before July 1, 2020, returns to the normal weekly working period, he/she will be able to benefit from the support regarding the periods and conditions described above. The support period to be provided to the employers for each month will not exceed the average number of days in which the insured receives short-time work allowance per month for those who receive short-time work allowance, and the average number of days on which they receive cash wage support per month for those benefiting from the support.

The support regulated under the Provisional Article 26 will not be applied for:

- i. Workplaces belonging to institutions and organizations that fall within the scope of the 2nd Paragraph of Article 30 of the Law on Amending Some Laws and Decree Laws ;

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- ii. Purchasing and construction works carried out in accordance with the State Procurement Law , Public Procurement Law and international treaty provisions;
- iii. Workplaces related to procurement and construction works and employees subject to social security support premium, exempted from the Public Procurement Law;
- iv. Insurance holders working at home services and insurance holders working abroad within the scope of Additional Article 9 of Social Insurance and General Health Insurance Law.

If it is identified that the employer benefited from the short-term working allowance without any justified grounds, or if the outcome of the compliance review for the short-term working application is negative, or if it is identified that the employer benefited from the cash fee support without any justified grounds, the workplace will not be able to benefit the support provided from the Unemployment Insurance Fund or will be deemed to have benefited from it without any justified grounds. If it is found out that the employer benefited the support without any justified grounds, the amount of the support provided to the employer will be collected from the employer, along with penalties for delay and increases for delay in scope of Paragraph 2 of Article 89 of the Law.

Employers benefiting the support regulated in Provisional Article 26 will not be able to benefit the other insurance premium discounts, incentives and supports for the same individuals and for the month in which they have benefited such support.

The employer cannot be requested to pay the employee the amount of the support it receives from the Unemployment Insurance Fund, which corresponds to the employee's share of the social security premiums. Amounts covered by the unemployment fund within the scope of this Article will not be considered as income, expense or cost element in income and corporate tax applications.

This regulation has entered into force as of August 1, 2020.

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3. Prohibition on the Termination of Employment Contracts Can Be Extended Until June 30, 2021

With Article 5 of the Omnibus Bill, amendments have been made on 1st Paragraph of Provisional Article 10 of Labour Law which regulates prohibition of employee contracts' termination. With the amendment, additions were made to the exception of the prohibition of termination, which recently was available for the acts of the employees", which violate the rules of ethics and goodwill. In this context, termination of an employment contract has become possible for the employer in case of:

- i. Presence of a wrongful behaviour falling under the scope of Paragraph 2 of Article 25 titled "Rules of Ethics and Goodwill" of Labour Law and similar reasons against the rules of ethics and goodwill,
- ii. Expiration of the time period of the fixed terms' employment agreement or service agreement,
- iii. Closure of workplace or termination of activity regarding any reasons, and
- iv. Expiration of the work in all kinds of service purchases and construction works in accordance with the related regulations.

Furthermore, the Presidents' authorization to extend the prohibition has been extended until June 30, 2021 for a maximum of three (3) months extension for each time. The regulation entered into force as of July 28, 2020.

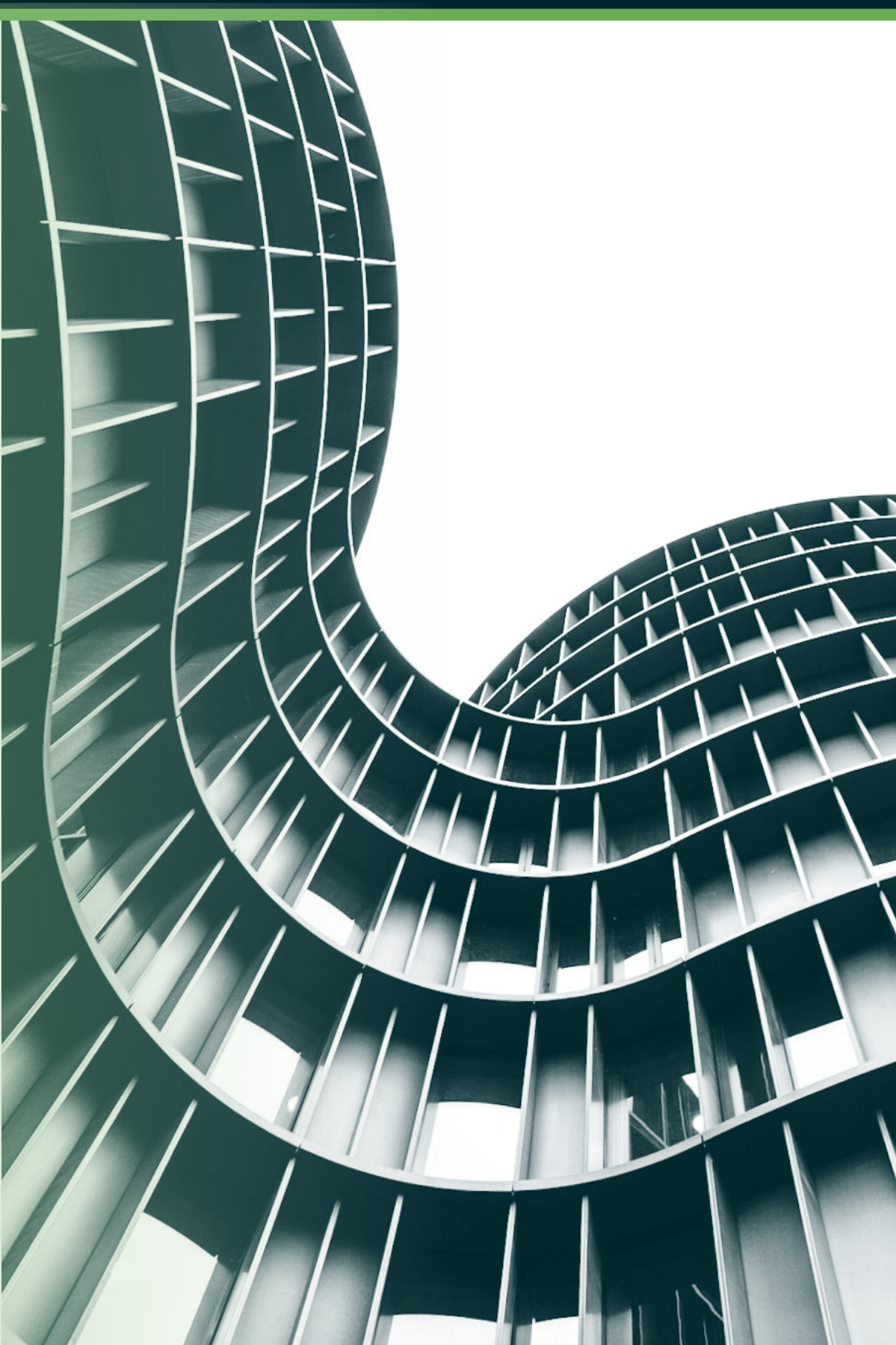
Prohibition of termination period has been extended until September 17, 2020 with the Presidential Decree No. 2811.

4. Employees May Be Forced to Unpaid Leave Without Their Consent Until June 30, 2021

Within the scope of the amendment made on Provisional Article 10 of Labour Law with Article 5 of the Omnibus Bill, the unpaid leave regulation, which is primarily regulated for three (3) months and followingly extended for six (6) months and become enforceable until October 17, 2020, has become possible to be extended for a maximum of three (3) months period by each extension by the President until 30 June 2021. This provision has become effective as of 28 July 2020.

Unpaid leave permission period has been extended until September 17, 2020 with the Presidential Decree No. 2811.

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5. Obligation Regarding Occupational Health and Safety Has Been Postponed

With Article 10 of the Omnibus Bill, the effective date of the Occupational Health and Safety Law's provision regulating obligation to assign occupational safety specialists and workplace physicians in workplaces that are in the less dangerous class with less than fifty (50) employees and the public workplaces has been postponed to the date of December 31, 2023 by the amendment of existent date in Article 38 of Occupational Health and Safety Law from "01.07.2020" to "31.12.2023".

This regulation has entered into force as of July 28, 2020, to be effective as of 1 July 2020.

Amendment Made to the Communiqué on the Signing of the Articles of Association of Companies at the Trade Registry Directorates

The Communiqué on the Amendment Made to the Communiqué on the Signing of the Articles of Association of Companies at the Trade Registry Directorates (“Amendment Communiqué”) has been published in the Official Gazette dated July 22, 2020 and numbered 3119, and entered into force on the publication date. With the Amendment Communiqué, 6th Subclause of Article 13 of the Communiqué on the Signing of the Articles of Association of Companies at the Trade Registry Directorates as published in the Official Gazette dated December 6, 2016 and numbered 29910 has been revised, and in addition to authorisation of the Turkish Consulates, it has also become possible for the signature declaration of the authorised signatory individuals to be issued by authorised institutions of the foreign country in accordance with the legislation of the relevant country. Signature declarations issued by foreign authorities must be certified, in accordance with the provisions of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents and submitted to the Trade Registry Directorate with a notarized Turkish translation.



Decision of European Court of Justice Regarding the Schrems II Case (Case C-311/18)

Maximillian Schrems, who is an Austrian citizen and Facebook user living in Austria, has complained to Ireland Data Protection Authority (Data Protection Commission, "Authority") in 2011, claiming that his data which is transferred to Facebook INC.'s servers located within the borders of the United States ("US") is not processed securely and US laws and practices do not provide adequate protection to access the data transferred to the country. However, the complaint has been dismissed by the Authority stating that US provides adequate protection. (Safe Harbor Decision)

Later on, in another decision of October 6, 2015, European Court of Justice ("Court") discussed the invalidity of the previous decision as part of the questions posed by the Irish Supreme Court. (Schrems I decision).

Following the relevant decisions, the Authority asked Schrems to rearrange his application in the light of the current developments. In his rearranged complaint, Schrems requested that the transfers from the EU to the US be suspended or banned in the future, claiming that US does not adequately protect the transferred data. However, the European Commission has resolved that protection provided by the Privacy Shield between the EU and the USA is sufficient in the Decision No. 2016/1250 ("Privacy Shield Decision").

In the decision dated July 16, 2020, the Court evaluated the validity of Decision 2016/1250 within the framework of the requirements arising from the GDPR and in the light of the European Union Charter of Fundamental Rights ("Charter"). The Court stated that the US surveillance programs evaluated by the Commission in its Privacy Shield decision were not necessary and proportionate as required by EU law and that individuals were not entitled to an effective remedy in the US pursuant to Article 47 of the Charter. In this context, the Court has resolved the Privacy Shield decision numbered 2016/1250 which has stated that the data transfer between the EU and the USA is safe and legal, to be invalid.

Decisions of Turkish Data Protection Authority and Belgian Data Protection Authority on the "Right to be Forgotten"

In the Turkish Data Protection Authority ("Authority") decision dated June 23, 2020 and numbered 2020/481, the Authority stated that in the applications submitted to the Authority the relevant persons demanded the removal of their names and surnames in the news on the various websites of the media institutions and thus the Authority decided that the relevant demands should be evaluated as a whole within the scope of the right to be forgotten.

According to the decision, the relevant persons will first apply to the search engines, which have the title of data controller, regarding the requests for removal of the search results from the index. If search engines refuse these requests or do not respond to the relevant persons, the relevant persons may make complaint to the Turkish Data Protection Board (the "Board"). In addition, the relevant persons will also be able to apply to the judiciary, while applying to the Board.

While evaluating the applications, the Board will primarily consider the balance between the fundamental rights and freedoms of the relevant person and the benefits that the public will provide from acquiring the information of relevant person. The Board has also announced the criteria to be taken into consideration during the evaluation in the Board website.

On 14 July 2020, a penalty of 600,000 Euros has been imposed to Google Belgium by the Belgian Data Protection Authority for the violation of the right to be forgotten. In the case, the relevant person has made a request for the dereferencing of name with a claim of loss of reputation due to presence of its name in old articles, but the request has been rejected by Google Belgium.

The Belgian Data Protection Authority stated that certain articles pertaining to the individual's relation to certain political parties, given their public role, were of public interest and could remain online. However, the articles concerning unfounded harassment complaints could have serious damage the reputations of the relevant person and Google Belgium was therefore negligent in refusing this request. Finally, the penalty has the feature of being the highest penalty ever imposed by the Belgian Data Protection Authority.

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