

## A Glance at the Turkish Data Protection Board's decisions dated March 02<sup>th</sup>, 2021

### Turkish Data Protection Board ("Board") decisions

#### What is the subject?

The Board examined whether sharing personal data of company shareholders and representatives, that are not publicly announced in the Turkey Trade Registry Gazette, *such as personal ID number and personal address*, with public authorities and institutions upon the request of such authorities, is compliant with the DPL or not.

#### What was the Board's approach?

In its decision the Board made below evaluations:

- In the trade registry, there are merchants' or company shareholders' name, identity, address and similar information and the activities carried out by registry offices on such information is considered as data processing activity.
- Although the information listed under the trade registry is public usage of such data is not exempted from the DPL, processing and transfer of such data must be compliant with the DPL.
- There are several limitations related to the information published in the trade registry, to avoid any misuse of such data by third parties, since these data are easily accessible by anyone. For instance, in the Trade Registry Gazette's announcements, the ID numbers of real person are masked and only district and province information of such persons are shared instead of sharing their full address.
- Trade registry offices must comply with the DPL when transferring these data to public authorities and institutions. They also must process such public data in compliance with the purposes of which these data are made public in the first place.
- The public authorities and institutions should have requested the disclosure of such data from the institutions that are authorised as per the Law on the Civil Registration Services which is the special regulation on this matter.
- Data controllers should carry out any personal data processing activity in compliance with the proportionality principle set forth under Article 4 of the DPL and they should take administrative and technical measures for data security.

#### What is the subject?

The Board evaluates the compliance of the processing activity with the DPL that is carried out via the usage of security cameras that also allows to record voices.

**What was the Board's approach?**

The Board stated that, for a processing activity to be compliant with the DPL, such processing activity via usage security cameras with voice recordings must comply with the general principles stated under the Constitution for the limitation of fundamental rights and freedoms. In cases where the aimed purpose of security camera usage can also be achieved by using only visual records without having voice records, the usage of voice records will be considered as violation of the proportionality principle since it disrupts the balance between the aimed purpose and the processing activity. Similarly, the Board denoted that, such processing activity will be deemed as intrusive and the individuals will be under the impression of that, they are monitored continuously. As per the Board, if it is generally accepted that usage of security cameras with voice recordings is required for the security purposes, then that acceptance might lead that in every similar case such usage is permissible due to same reason, and eventually this acceptance will create a broad exception to the protection of personal data.

**Data subject complaints****What are the facts?**

The airline employee authorized to access passengers' flight information shared a passenger information with another employee.

**What was the complaint?**

The passenger whose information was shared has filed a complaint before the Board stating that the airline employee threatened her/him via Whatsapp and phone calls and the responses provided by the airline company were inadequate.

**What was the Board's approach?**

The employee alleged that WhatsApp correspondences and phone calls did not belong to him, and the Board concluded that there was no definitive information about parties to the calls and correspondences. However, upon the acknowledgment of the airline company in relation to the inadequacy of the measures taken for data security, the Board concluded that the airline company failed to take necessary administrative and technical measures to ensure data security and imposed an administrative fine of TRY 100,000 on the airline company.

**What are the facts?**

In the reinstatement lawsuit filed by a former employee, the data controller (employer) submitted the employee's medical report to the court.

**What was the complaint?**

The former employee filed a complaint to the Board stating that submission of medical reports to the court is a violation of his/her personal rights.

**What was the Board's approach?**

In the reinstatement case, the court requested the personnel file from the employer, which included the employee's medical reports. The Board considered the employer's execution of this request as "the processing of personal data by judicial authorities or execution authorities in relation to investigation, prosecution, judicial or execution proceedings" and stated that there was no violation of the DPL.

<b>What are the facts?</b>	A correction warning including data subjects' personal identification number and information, parent's names and address details sent to an online news platform pursuant to a former publication was published on the said news site for 10 days.
<b>What was the complaint?</b>	Data subjects filed a complaint before the Board stating that news site intentionally published the warning containing personal data which threatened the safety of the data subjects.
<b>What was the Board's approach?</b>	The Board determined that publication of the correction warning constitutes a data processing activity. Although the Turkish Press Law No. 5187 sets forth a legal obligation to publish correction notices and reply letters as is, the Board emphasized that data controllers must take into account data processing principles while fulfilling such legal obligations. Accordingly, the Board rendered that publishing the warning in a manner that infringes the personal rights of the data subjects is disproportionate to the processing purpose and should not benefit from the exemption set forth under the DPL. Moreover, the Board evaluated that the case at hand indicated that the data controller failed to perform its duty to take necessary administrative and technical measures to ensure data security. As a result, the online news site received an administrative fine of TRY 55,000.
<b>What are the facts?</b>	A car-rental company tried to collect payments through a credit card number different from the one provided and consented by the data subject.
<b>What was the complaint?</b>	The complaint filed before the Board states the car rental company tried to collect payments from a different credit card than the one that was provided by the data subject and the application filed to the company remained unanswered.
<b>What was the Board's approach?</b>	The Board dismissed the arguments of the car rental company that "the said credit card number was provided by the data subject in a prior transaction" and "the agreement signed between the parties allowed for collection through the disputed credit card number". The Board stated that said provision constitutes an unfair term and the company's retention of personal data contradicts with the principles of "lawfulness and fairness" and "being relevant, limited and proportionate to the processing purpose". Considering that the retention of said data may harm the fundamental rights and freedoms of the data subject the Board decided that legitimate interest may not be applied in this case and imposed a fine of TRY 75,000 to the data controller.
<b>What are the facts?</b>	The data subject was contacted from his/her mobile number for the advertisement of a private hospital.
<b>What was the complaint?</b>	The data subject sent an e-mail to the private hospital and filed a complaint before the Board stating that the response received from the hospital was not adequate.

What was the Board's approach?	Upon review, the Board concluded that the call in dispute was not made the by the hospital, but rather by a third party providing services to the hospital through a contractual relationship. Accordingly, the Board reviewed the contract signed between parties. Per the provisions under the contract, the service provider was deemed as a <b>data processor</b> for marketing activities aimed at the hospital's existing <u>customers</u> whereas it was deemed as a <b>data controller</b> for marketing activities aimed at new <u>customers</u> . Considering that the data processing activity in question was not based on the explicit consent or any other processing conditions, the Board imposed an administrative fine of TRY 50,000 to the service provider on the grounds of unlawful data processing.
What are the facts?	A person that lives in the same building with the data subject, placed several security cameras to record inside and outside of the building and carried out monitoring activity with these cameras.
What was the complaint?	Data subject applied to the Board and mentioned that, that person committed the crimes of disturbing individuals' peace and harmony, illegal recording of the personal data and violation of privacy and they made a complaint before the public prosecutor as well. Data subject requested from the Board to take necessary actions and the return of said video recordings.
What was the Board's approach?	The Board stated that, data subject's application does not meet the requirements of the Law of Exercise of the Right to Petition numbered 3071 and collecting such video recordings might be considered as crime under the Turkish Criminal Code. Accordingly, the Board denoted that data subject's application cannot be evaluated as per the DPL.
What are the facts?	Personal data of a public officer, who is employed in governorship were and disclosed to the governorship and then the public officer has faced disciplinary actions. Data subject applied to the Ministry of the Interior for annulment of the disciplinary actions and erasure of the data, because such data are collected contrary to the DPL. Ministry conveyed the request to the data controller governorship. However, the governorship did not take any action.
What was the complaint?	The data subject filed a complaint before the Board, claiming that the governorship's response regarding the request conveyed by the Ministry of the Interior is insufficient.
What was the Board's approach?	<p>The Board determined that the application of the data subject does not meet the requirements set out under the Law on the Use of Right to Petition numbered 3071 and therefore, it shall not be taken under review. However, the Board also indicated that alleged actions should be assessed within a perspective from Turkish Criminal Code.</p> <p>The Board resolved that no further actions are required, since the governorship acted as an assigned and authorized public institution for the performance of disciplinary investigation, in accordance with the Article 28(2)(c) of the DPL.</p>

	Data subject's request on erasure of the data is assessed by the Board and it is determined that the minimum retention period set out by the relevant legislation has not ceased yet.
What are the facts?	A parent claimed that its children's special categories of personal data are processed within the scope of the school consultancy and guidance tests conducted at the school, however, their explicit consent was not obtained and they were not informed about the processing activities.
What was the complaint?	<p>The parent claimed that the data controller did not obtain explicit consent with regards to the processing activity and did not fulfil its obligation to inform. Accordingly, the parent filed a complaint before the Board and requested erasure, destruction or anonymization of the processed personal data and impose of a fine on the data controller, due to violation of obligation to inform and data security obligations.</p> <p>In its defence, educational institution stated that such data are processed limited with the purpose of conducting guidance activities in compliance with legislation and the complainant were informed about processing activities and approved such. The institution also claimed that personal data were not processed within the scope of the tests.</p>
What was the Board's approach?	<p>The Board reviewed the matter and determined that special categories of personal data are processed within the test. The Board further stated that explicit consent must be obtained, since the data processing purposes does not meet the limited purposes set out under Article 6 (3) of the DPL.</p> <p>The Board determined that the documents and information submitted by the data controller are not sufficient to prove that the explicit consent was obtained and information provided to the parents do not meet the principles and procedures set out under the Communiqué on Principles and Procedures to be Followed in Fulfilment of the Obligation to Inform.</p> <p>Consequently, the Board resolved to impose an administrative fine of TRY 50,000 based on the violation of obligations on data security, since explicit consent was not obtained. The Board further resolved to instruct the data controller to ensure compliance of the processing activities with the DPL, to fulfil the obligation to inform and erasure of the personal data, since the data processing activity deemed to be non-compliant.</p>

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