

CONSTITUTIONAL RIGHTS IN “THE AGE OF PRIVACY”:
A Comparative assessment on Turkish Constitutional Court Decisions

The most notable legal provision on data protection in Turkey is stated in the Article 20 of the Turkish Constitution, which is subtitled as “Secrecy of private life”. The provision amended to the Article 20 of the Constitution stating data protection as a constitutional right and also warranting some basic principles of it.

Although the right of data protection taking part in the Constitution clearly can be considered as a positive improvement, it should be mentioned that there is some deficiencies in this provision. Moreover, it must be stated that the Turkish Constitutional Court has controversial decisions regarding data protection. Until the 2000s, Constitutional Court ruled three significant decisions regarding the subject. Two of these are about having a “religion” section in the identity cards. In both decisions carried out, the Constitutional Court concluded that obligation to have “religion” section in family registries and identity cards were not unconstitutional. One other significant decision of the Constitutional Court is about a provision added to Law no. 1774 (Identity Statement Law). According to the related provision, it imposed the obligation of collecting the personal data of the people staying in accommodation places-such as hotels, motels, dormitories, hostels etc.- in the computer systems of law enforcement agencies. However, there is no limitation for the law enforcement agencies according to these regulations. In this decision, Constitutional Court has argued right of privacy and data protection, but unfortunately, has refused of the plea of unconstitutionality.

In addition to this, a judgment made by the Court in 2008 clearly indicates that the protection of personal data is considered within the frame of protection of privacy of personal life and freedom of thought. In this decision, the Constitutional Court found two provisions of Law no.5429 (Statistics Law of Turkey) which requires statistic units (namely real and legal persons) to submit to the Turkish Statistics Institute all information or data completely, accurately and free of charge in the form, period and standards specified by the Presidency and statistic units who refuse to fulfill these obligations will be imposed a fine as unconstitutional. After the annulment of the Constitutional Court, the legislature has constructed new provisions to fulfill this legal loophole. The only difference between old and new provisions is that, the new one has the expression “within the fundamental rights and duties determined in the Constitution”. However, obviously to act within the limits of Constitutional principles is already an obligation for everyone. Hence, the new provision added was far from making a change in the practice. That’s why the new provisions have been subject of a plea under Constitutional Court again. Moreover, this time personal data protection was explicitly a constitutional right. Unfortunately, the Constitutional Court did not accept the plea of unconstitutionality in its decision announced in December 2011. The reason why the Court changed its judicial opinion was not clear in the justification of its second decision and this point was also criticized in dissenting opinions. It must be noted that, the subject of this two decisions are similar to the famous Census Decision given by Germany Constitutional Court in 1983. Unfortunately, the conclusions of two constitutional courts are antipodal.

It is quite obvious that there is a necessity of a framework law regarding protection of personal data in Turkey. Under the explicit regulation in the Article 20 of the Constitution, it has become an essential requirement. In this potential regulation and its prospective implementation, basic principles of data protection will provide a guideline. Besides that, Turkish Constitutional Court decisions should be analyze in the light of European Court of Human Rights case-law and also other state's related constitutional court decisions. It must not be forgotten that one of the most powerful weapons we have, are legal regulations and court decisions concerning protection of personal data in an era in which as some authors call "the end of privacy".