



3.6. PROTECTION OF PERSONAL DATA



CONTENT

Current position of Turkey with respect to:

- 1. International conventions and other instruments referred to in the EU acquis**
- 2. EU acquis**



1-Current position of Turkey with respect to the international conventions and other instruments referred to in the EU acquis

1.1- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR): Article 8

1.2- Convention 108/81 for the Protection of Individuals with regard to Automatic Processing of Personal Data *Turkey signed on 28/1/1981*

1.3- Additional Protocol to the Convention regarding supervisory authorities and transborder data flows *Turkey signed on 08/11/2001*



2. Position of Turkey in terms of EU acquis

2.1. Principal legislation in force

2.2. Preliminary Draft legislation

2.1- Principal legislation in force

- 2.1.1. Constitution
- 2.1.2. Turkish Criminal Code (5237)
- 2.1.3. Code on Criminal Procedure (5271)
- 2.1.4. Law on Right of Access to Information (4982)
- 2.1.5. Law on Criminal Records (5352)
- 2.1.6. Law on Tax Procedure (213)
- 2.1.7. Banking Law (5411)
- 2.1.8. By-law on medical examination of body, genetic examinations and designation of physical identities
- 2.1.9. By-law on processing of personal data and the protection of confidentiality in telecommunication sector.
- 2.1.10. Law on Administrative Trial Procedure (2577)
- 2.1.11. Turkish Civil Code (4721)



2.2. Preliminary Draft legislation

2.2.1. Preliminary draft law on processing of personal data



2.1- Principal legislation in force

2.1.1. Turkish Constitution

Guarantees

IV. Privacy and Protection of Private Life

ARTICLE 20. Privacy of Individual Life

Everyone has the right to demand respect for his or her private and family life. Privacy of an individual or family life cannot be violated.

ARTICLE 22. Freedom of Communication

Everyone has the right to freedom of communication.
Secrecy of communication is fundamental.



2.1- Principal legislation in force (CONT'D)

2.1.1. Constitution (CONT'D)

Exceptions (common for Art.20-22)

Unless there exists

Decision duly passed by a judge on the grounds of

National security

Public order

Prevention of crime

Protection of public health and public morals

Protection of the rights and freedoms of others



2.1- Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (TCC)

Acts criminalized with a view to protection of personal data

- Unlawful Recording of personal data
- Unlawful delivery or acquisition of data
- Qualified forms of the offense
- Failure to destroy the data within a prescribed period
- Sanctions applicable to legal persons



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

ARTICLE 135(1) : Unlawful recording

- Any person
- Unlawfully records the personal data
- Sentenced to imprisonment from six months to three years



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

ARTICLE 135(2) : Non-processible data

- Any person who records
 - Political
 - Philosophical
 - Religious concepts of individuals
 - Racial origins
 - Ethical tendencies
 - Health conditions or connections with trade unions

Sentenced under the provisions of the above paragraph



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

ARTICLE 136(1) : Unlawful delivery or acquisition

- Any person
- Unlawfully delivers data to another person
- Publishes or acquires the same through illegal means
sentenced to imprisonment from one year to four years



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

Qualified forms of offense **ARTICLE 137(1)**

- Commission of the offenses defined above
 - By a public officer or due influence based on public office
 - By exploiting the advantages of a performed profession and art
- sentence is increased by one half.



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

Failure to destroy the data within a prescribed period ARTICLE 138(1)

- Within a defined system
- Despite expiry of legally prescribed period
- Persons responsible for keeping the data
- Sentenced to imprisonment from six months to one year.



2.1. Principal legislation in force (CONT'D)

2.1.2. Turkish Criminal Code (CONT'D)

Imposition of security measures on legal entities

ARTICLE 140- (1) Security measures specific to legal entities are imposed in case of commission of offenses defined in the above articles by legal entities.



2.1. Principal legislation in force (CONT'D)

2.1.3. Criminal Procedure Code (CPC)

- **Judicial control in examination process**
- **Confidentiality of genetic examination results**



2.1. Principal legislation in force (CONT'D)

2.1.3. Criminal Procedure Code (CONT'D)

Judicial control in examination process

ARTICLE 79(1) - Judicial control procedure

- Only the authorized judge is entitled to decide on conducting molecular genetic examination
- The expert assigned shall also be mentioned in the decision



2.1. Principal legislation in force (CONT'D)

2.1.3. Criminal Procedure Code (CONT'D)

ARTICLE 79(2) - Responsibilities

Experts are not allowed to be appointed if they function within

- Authority undertaking the investigation or prosecution These individuals are responsible for;
- preventing unauthorized third persons to get information and
- preventing forbidden genetic examination through technically and organizationally suitable measures. Findings to be examined shall be delivered to the expert without the name, surname, address and date of birth



2.1. Principal legislation in force (CONT'D)

2.1.3. Criminal Procedure Code (CONT'D)

Confidentiality of genetic examination results

ARTICLE 80(1)

The results of the examination of the samples acquired according to the previous provisions are

- Qualified as personal data
- Cannot be used for other purposes
- Cannot be given to someone else
- By the individuals authorized to learn the content of the file.



2.1. Principal legislation in force (CONT'D)

2.1.3. Criminal Procedure Code (CONT'D)

ARTICLE 80(2) of CPC

Such information shall be immediately destroyed in the presence of the public prosecutor in case of;

- Termination of the period of objection to the decision to non-prosecution
- Refusal of objection
- Final decision on no penalty or acquittal destruction process

Shall be recorded to be kept in the file



2.1. Principal legislation in force (CONT'D)

2.1.4. Law on the Right of Access to Information

Restrictions of the right to access

Information concerning the state security and defense, economic well-being of the country, administrative or judicial investigation or trial, privacy of private life or communication and commercial secrets.

Confidentiality

Information accessed in the scope of this Law can be neither reproduced nor used for commercial purposes.

2.1. Principal legislation in force (CONT'D)

2.1.5. Law on criminal records

Article 2 Authorized body

- Criminal records shall only be kept by the Directorate General for Criminal Records and Statistics of the Ministry of Justice

Article 10 Natural and legal persons entitled to be informed

- Record owner, his/her representative
- Relevant public institutions
- Records are delivered to another country in case of reciprocity

Article 11 Confidentiality

Criminal records are confidential and cannot be revealed by recipient persons or institutions



2.1. Principal legislation in force (CONT'D)

2.1.6. Law on Tax Procedure

Article 5 stipulates that tax officers shall keep the data of taxpayers confidential and criminalizes contradictory acts.

2.1.7. Banking Law

Article 22. paragraph 8,9,10 criminalizes the disclosure of the commercial secrets of clients.

2.1. Principal legislation in force (CONT'D)

2.1.8. By-law on medical examination of body, genetic examinations and designation of physical identities

Detailed approach to the guarantees concerning the data protection laid down in Article 79, 80, 81 of criminal procedure code

2.1.9. By-law on processing of personal data and the protection of confidentiality in telecommunication sector

Issued and adopted to provide harmonization to Directive 2002/58/ EC

2.1. The principal legislation in force (CONT'D)

2.1.10 Law on Procedure of Administrative Justice

Second section of the Law lays down the rules of procedure to be followed to cease the illegal administrative transactions the compensate the damages of the persons interests of whom violated through the transaction

2.1.11 Turkish Civil Code

The Civil Code in Article 24 and 25 that a person whose individual rights are violated is entitled to cease the infringement and to receive compensation.



2.2. Draft legislations

2.2.1. Preliminary Draft law on processing of personal data

Purpose

To ensure the privacy of persons providing with a high level protection system

Scope

All real and legal persons who process the data or whose data are being processed.

Technical studies are going on.