



Newsletter

Vol 2, Issue 7, June 2011

MODAP 2011 Conference Special Issue

In this issue: MODAP Conference "Privacy: Beginning or the End?" - Patient Privacy
Privacy Laws in: Germany, Greece, Italy, Netherlands, Switzerland, Turkey
The On-going Revision of the EU Directive on Data Protection

www.modap.org

Privacy Laws in Turkey

Derya BAKSI, Attorney-at-Law (Istanbul Bar Association), TARLAN & BAKSI Law Office

Throughout the history, when a new technology emerges into our daily lives and become a widely accepted mean of handling information, there have always been related legal concerns which consequently lead to a need for regulations. To put it differently, we are safe to state that, the use of technology in our daily lives and legal applications are constantly in a battle, where on one hand, technology is trying to make life easier and on the other hand, laws and regulations try to protect individual's "rights for privacy" and "protection of personal life" to the utmost.

Although from a legal perspective there are various definitions for "privacy"; the main concern is to draw the line on how far the society can intervene with a person's life.

In the case of mobility data mining and the legal consequences that may arise because of its use, the legal regulations are limited in Turkey and need to be improved.

In Turkey, the major regulations about privacy are governed mainly by the Constitution. Section IV of the Turkish Constitution regulates the privacy and the protection of personal life. The Article 20 of the Constitution states that "everyone has the right to demand respect for his/her private and family life. Privacy of individual and family life cannot be violated". Furthermore, the Article 8 of the Human Rights Conventions, to which Turkey is a party, regulates "the right to respect for private and family life". Also, in Article 24 of the Turkish Civil Code it is regulated that a person whose personal rights are unjustly violated can raise a claim before the Court.

The sanctions for violations of privacy are stated in two main codes. The Article 134 of the Turkish Criminal Code regulates imprisonment and/or fines in case personal privacy of a person is violated. From the Civil Law point of view, Article 49 of the Turkish Code of Obligations grants to the person whose privacy is violated, the right to claim for compensation from the violating party.

Additionally, the issue should also be handled from the perspective of Intellectual Property law, whereby a person has the right on his/her own physical appearance. As an example, there are ongoing discussions about the use of surveillance cameras. It is commonly said that if, the public safety and public order necessitate, the State may have more powers over a person's private life. Nevertheless, even if the State's authority is in question; the balance between Public Safety and Personal Privacy and the borders among them should be delicately defined. Since the limits of the State's powers are also subject to discussion in this case, another important question comes along: Whether or not private entities can closely intervene with personal lives by using data mining technology on mobility data. We also need to question if and how much public benefit there is related to such intervention.

As a consequence, there is a lot to be discussed and a long path to walk. It seems that the legislation is not ready for the applications of mobility data mining and related amendments or even a special code should be introduced in Turkey. In these new regulations, the balance between the personal privacy and the benefit of the public should be set and the allowed level of intervention of the private entities should be clearly drawn.

Amendment of the Turkish Republic Constitution and Its Impacts over Privacy

Derya BAKSI, Attorney-at-Law (Istanbul Bar Association), TARLAN & BAKSI Law Office

In Turkey one of the recent hot topics is the referendum, the reason of which is the 'Amendment of the Turkish Constitution'. As a result of the referendum held in Turkey on September 12th, 2010; the amendments of the Turkish Constitution have been accepted by the public. With these amendments; most articles of the Constitution, including the article 20 regarding the Privacy of Personal Life, have been changed. As per the amendment made to the article 20 of the Constitution, which is effective as a consequence of the referendum, a new paragraph has been added to this article.

According to this additional paragraph; everybody has a right to request the protection of personal data. This right covers the possibility to reach and to get information about personal data, to request the amendment or deletion of this data. Everybody would learn for which purposes these data are being used and regarding this article, personal data can only be used in cases prescribed by laws or with the owner's explicit consent.

There are a lot of discussions about this additional paragraph whereby some people are for this amendment but some people are against it. According to the ones who are for this change, protection and privacy of personal data is a crucial matter and must absolutely take part in the Constitution. To get information, to reach all kinds of personal data is really one of the most important requirements of the democratic system. For citizens, it is a great privilege to learn for which purposes these data are being used or will be used.

On the contrary, others who are against this change claim that in the current Turkish Penal Code, there are provisions about the protection of personal data thus no special provision is required in the Constitution. Furthermore, for almost four years, 'The Draft Law for Protection of Personal Data' has been waiting to be enacted at the sub-committee of The Grand National Assembly of Turkey. With the perspective of legal systematic, this additional paragraph should be regulated in the Codes, but not in the Constitution. It is also pointed out that this additional regulation is not enough, not clear and has many vague sides. For example, there is not an independent institution to supervise the protection of personal data. It is not clear which institution will give the data and which institution will keep the data and who will supervise these institutions. Those are some topics that should be set forth in detail in a special code.

Most of the European countries have their own regulations about protection and privacy of personal data since 1970s. Therefore when it comes to Turkey, it is an important step to have such a regulation about the protection and privacy of personal data in the Constitution. Nevertheless, what has to be done is to clarify the details, regulate the vague parts in a special code and to implement these rules in the daily life. These rights must not only stay as a regulation in the Constitution but also should be assisted with an effective legal system in practice. With the help of a uniform legal approach, the vague sides of this regulation should be clarified in favor of the benefits of the Turkish citizens.