

OPEN CONSENT

After the law comes into force, personal data and entering our lives with the processing of this data. One of the concepts is the concept of “explicit consent” . of the law express consent in article 3; “On a particular subject, informed and freely expressed defined as “consent” .

In addition, in paragraph 3 of Article 20 of the Constitution, personal data only in cases stipulated by law or It is stipulated that it can be processed with his express consent. Open Consent includes both special categories of personal data and to the law in terms of non-private personal data It is one of the reasons for eligibility.

- According to the Law, respectively;
- In paragraph 1 of Article 5, “Personal data cannot be processed without his express consent”,
  - In paragraph 2 of Article 6, “Special quality personal processing of data without the explicit consent of the person concerned it is forbidden”,
  - In paragraph 1 of article 8, “Personal data is cannot be transferred without express consent”,

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- In paragraph 1 of article 9, “Personal data is It cannot be transferred abroad without its express consent.”

regulations are included.

Explicit consent has also found its place in international texts. is an important concept. European Union 95/46/EC consent according to the directive; data about the person concerned freely, with sufficient knowledge of the subject in a clear and unambiguous manner, It is a declaration of consent limited to that transaction. in the directive open for processing only special (sensitive) data While consent is sought, as a rule in the Law and GDPR express consent is required for the processing of any personal data. is heard.

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Explicit consent within the framework of the law, data processing, voluntarily or from the other party. It means to give approval upon the incoming request. Another importance of the explicit consent statement is to the data processor. to guide him in the action to be taken. The person is actually the data controller with the express consent statement. notified its decision on its legal value. is happening. Statement of explicit consent , the processing of the person concerned the limits, scope and realization of the data it allows. will also determine its format.

In this sense, express consent means “positive will” of the person giving consent. statement should be included. in other legislation without prejudice to the regulations, express consent in writing no need to be taken. electronic media of express consent and call center etc. ways are also possible. Here, the burden of proof lies with the data controller.

The definition of explicit consent in Article 3 of the Law Within the scope of this, there are 3 elements of express consent:

- Relating to a specific subject
- Consent is based on information
- Disclosure of free will

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A) Related to a Specific Subject to be

Validity of the express consent given for data processing express consent for a particular subject and must be limited. Open by data controller on which subject the declaration of consent is requested must be clearly stated. Accordingly, the relevant with a general statement of will of the person, open-ended and indefinite consent alone “Explicit consent” in the context of the Law as unacceptable.

If the processing of data for more than one category If a declaration of explicit consent will be made regarding such as which data will be processed and for what purposes, should also be given in terms of different points.

After the data controller uses the data for secondary operations (for example, such as data transfer abroad) also obtaining express consent will be required. The same is true for the purposes of processing the data. It also applies if it changes.

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B) Based on Information

Explicit consent is a declaration of will and In order to give consent, he must also know what he consented to, must know. not only on the subject, but also full knowledge of the consequences of his consent as well. must own.

Information is open and clear on all matters related to data processing. should be carried out in an understandable way. of the information must be done before processing the data. The nature of the data to be processed, as well as the information will determine the level. Informing the person concerned is the same one's right to self-determination constitutes the reflection.

Personal data to be obtained while informing the purposes for which it will be used must be clearly stated, terms the person may not understand or written information small enough to make it difficult to read Points should not be used.

C) Disclosure of Free Will

Consent, which is the declaration of will of the person, is the behavior of the person. validity if conscious and self-determined will win. Any form of injuring a person's will

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The act also includes the express consent given for the processing of personal data. it will hurt. such as algebra, threat, error, and deception. free decision of the person in injurious situations It is not possible. Therefore, in such cases There can be no talk of a free will statement. But, every reason here should be evaluated in itself, The degree of influence on consent should be determined.

in which the parties are not equal or one of the parties free consent where it has an effect on the other careful consideration of whether it was given voluntarily must. Particularly in the employee-employer relationship, the employee's consent the possibility of not showing or a possible non-consent to the worker. In cases where it will cause negativity, your consent is free. cannot be accepted as voluntary.

On the other hand, expressing express consent with free will obtaining the express consent of the person concerned, a product or the provision of the service or the product or service. should not be considered as a prerequisite for its use.

For example, using a service is a condition of membership. where it is connected, the finger of the person who wants to become a member. obtaining and processing the consent of the membership agreement envisaged as a necessity for the establishment of will be inconsistent. Because express consent thus obtained is free. to the principle of giving explicit consent at will and to the principle of proportionality. will be inconsistent.

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