

# **Tallinn University**

Institute of Informatics

## **Protection Of The Personal Data**

**Protection Of The Personal Data In Turkey**

LEGAL ISSUES RELATED TO IT DEVELOPMENT

Onur Karaduman

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**Supervisor:** Eero Johannes

## **Abstract**

Recently, information and communication technology , especially Internet have started to be used increasingly in life and as a natural result; lots of processes have come to be done in electronic media. Using of this technologies increasingly, cause that personal data is transferred to electronic media and processed more than previous.

Although storage and processing of personal data in the electronic medium enables provision of innovative services customized for user needs, this also triggers abuse of personal data and increase in cyber crimes and sets the ground for an underground economy related to trade of personal data. In this reagard, many countries in the world is making legal regulations to prevent processing and storage of personal data without their consent.

This work is including personal data and right to privacy, relation of personal data with cyber crimes, protection of personal data in Turkish Law.

*“Communities who dont value the privacy and act to personal data like a cheap goods, act their citizens in same kind sooner or later.”*

*John Grace, 1982  
(Canada's first Privacy Commissioner)*

Electronic information networks provide exceptional capacity, speed and cost advantages to people, governments and companies today. Immeasurably large amount of data can be reached in a very easy way and they can be processed and stored. These data can be about health, credit, marriage, education, and job status information, even subscribed to magazines or newspapers, e-mail or phone messages, and web sites we have visited in World Wide Web.

Besides these advantages the Internet provides, some privacy issues arise. The reason why the protection of personal data is so important is the possible harm the persons may get if this kind of data is revealed. Therefore, to arrange related with information about the people is placed and processed to IT, introduction of criminal sanctions on those who fail in their and protection of personality rights and legal safeguards are mandatory.

Due to the work function of the Internet, some of the user's personal information, may be collected without the user's knowledge and consent. When users access the internet, they leave trace unwillingly such as internet protocol address (IP). IP addresses are special serial number which ISPs offer their subscribers. ISP can follow the movement of the subscriber with IP address is given by own. Besides these, the determined IP address defines a computer for each function or department on internet. In the latter case, determined IP addresses are often considered personal data such as phone numbers, including license plate numbers of vehicles.

Another way of collection of personal data is to use cookies. Cookies, is created by the Web server and they are created on the user's computer for using later. Cookies make easier to exchange data between web server and users. Thanks to cookies, it is possible to get information about web sites is used by users. Thus, the web's personal tendencies profiles may occur. Cookies may be technically blocked.

Besides these, personal data collect by taking advantage their giving their information with consent. When user signs up or doing process on e-commercial web site, e-mail address, name, address, occupation, and even credit card information and hobbies is required to be registered. Some free newspaper or magazine subscription websites that offer free service sites on various topics, just personal information in order to create a database of personal information to be entered are mandatory necessary.

In addition to these, web sites related to human resources can obtain from users a with consent information such as marital status, criminal record, whether to have children, foreign language, nationality, etc.

Recently, computer formed fraud, setting up fake websites can reach information of internet users. They do harm to internet users by using this illegal gained information. Phishing deriving from Password harvesting fishing is used for this kind of actions.

As the last one, the other way is to make use of the system or software vulnerabilities (hacking). Concept of hacking is common way to obtain personal data by taking advantage from electronic systems or software vulnerabilities. As Unauthorized and unlawful, other way to steal personal data is cracking. These methods that use systems on free can promote to commit to more dangerous crime such as fraud in computers, as well as to obtain the personal data .

A case of cyber crime, bounding a domain in the use of computer technologies. In this regard, a lot of people, avoid to make process in electronic media in apprehension of the theft of personal data.

Cyber crime and struggling with the cost of data breaches impact is quite high. According to survey that was made by American Research Center of Identity Theft, the year 2008 has been the summit year about theft personal data. Research which can explain information that is stolen personal data of 35 million people in 2007, is pointing to complexity about protection of personal data. Ponemon Institute's annual report about data violations in 2010 , damage of U.S. businesses and institutions ,the average cost per case for the year 2009 is 6.75 million dollars, it highlights to be 204 dollars per each record . Considering the data from previous years, these figures, it is thought to be increased if the required measures are not taken, due to increasing use of electronic media.

Data Theft, can be possible such as laptop theft, private activities, is leaked data by employee of company , not to be heeded security of physical and information technology. In order to increase awareness about cyber crime and data theft in the last years is being taken prevention, deterrence and protecting some precautions. The success of the preventive nature of these measures is not possible only by increasing the information technology literacy. People has to aware of impacts to privacy in their behaviour in different media and intuit

this troubles is quite important. For this reason, people has to be made aware of about what they should do , before being grievances.

For increasing the protection of personal data, privacy enhancing technologies can be used. The main pupose , help to be implemented privacy laws or principles and decrease to process on personal data. These technologies provide facility of control to users about their data against to risk of disclosing, diffusing and using. This control, is came true with making anonymous personal data in browser or email on specific case, filtering cookies or other monitoring systems, determining condition of spreading data and encryption data.

The right of the protection of personal data, are among the fundamental human rights and freedoms, the protection of the human personality, has importance in terms of the rule of law policy and democracy to gain vital depth. Including personal data, main purpose of privacy life is protected by the constitutional guarantee, allows development of the human personality freely, provides an autonomous area where can be alone with himself and the relatives of the person which cannot be disturbed by others or the State.

The privacy of our personal life exist in international documents related human and democratic constitutions.

In the European Convention on human rights, according to the fifth item which entitled the protection of the private Life and family life; "Everyone has rights to be respected to private and family life, his home and his correspondence. A public authority can make intervention when ational security, public safety, economic well-being of the country, there is peace and order, protection, crime prevention, health are wanted to protect. "

Also many countries in national area, effort sincerely about protection of personal data . Personal data in some countries is only in the constitutional level, some other countries are protected by both legal and constitutional level. However, all of developed countries are actively implementing regulations in this regard, the countries of Latin America, such as developing its own system to communities is in the same way on this issue, after heavy charges in past about rights and freedoms, they heed data protection.

In Turkey, accessing and users of internet is growing rapidly. Data and information transferred to the electronic media and being spontaneous traces are increasing incredible, while you are surfing internet.

It is claimed to be the Information that is had by company and institution has changed place, even it is said that they are bought and sold. Therefore Turkey in EU scale is called unsafety country.

The protection of personal data in our country still does not have a law enacted . Draft Law on Protection of Personal Data, opened for signature at the Council of Ministers took place in the written press with the news . In an era where the speed of light with the advent of technology , this law related to protection of personal data haven't still came into force is engrossing

As a state we face too often in our daily life; almost every day, we recieve e-mails and get phone calls and text messages from irrelevant shops, dry cleaners and herbal medicine vendors that we have never heard, and this clearly shows that the issue of personal data protection in our country is dramatically underestimated.

At this point, firstly you need to make the definition of personal data , personal data, according to the ECHR and the ECtHR decision "identity can be determined with a person specified or all relevant information is defined as". For example, gender, age , birthplace, date of birth, marital status, political or religious beliefs , medical data , police records, personal expenses and so on. information such as personal data form imaginable . Of course, these examples can be multiplied .

In our country, there are lots of institution holding credentials of citizens such as population office, registry offices, tax offices, social security, criminal association. If this data which is kept as electronic data is gotten by third person, it could unethically be used for commercial purposes and to commit many more different crimes such as fraud in elections' results or population records.

Most important records which is kept by the state about people are credentials and address information and private institutions that are considered to be the most important records of the credit card information and phone records.

Credit card purchases made with the consumption habits of the people, lifestyle, living, places where, although it may be determined that a legal way to monitor the investigation without the consent of the individual are considered as infringement of individual rights.

About the protection of personal information in our country, perhaps the most controversial issue is the phone numbers of people. Phone records also contain important information, especially in continuous interaction with the system is connected via the mobile phone that places of people can be identified.

Although there is no private law in the field of personal data protection in Turkey, it can be seen from the Turkish law in general and the constitutional law that there are some legislations aimed to protect personal data. As a result of the referendum in 2010 some additions, that briefly says: everybody has the right to demand personal data protection and they have also the right to have control over the personal data about them, protecting personal data were added to the 1981 constitution law.

Additionally, according to the 23rd and 24th articles of the Turkish Civil Code personal data is under protection. According to articles 135 and 136 of the Turkish Penal Code law numbered 5237, it is also regulated as crime to get and spillover personal data.

It is crystal clear that personal data being protected by the constitutional law and the acts mentioned before being regulated as crime according to Turkish Penal Code is not an accurate nor a proper protection as to apply the articles such as 135th of The Turkish Penal Code in practical matters a private law for personal data protection is needed because the regulations in Turkish Law are inadequate and cause some problems in practice.

Turkey signed the agreement related to Automatic Processing of Personal Data Protection in 1981, but it has still not been approved. No doubt, the Law of Protection of Personal Data should come into force soon for being approved that agreement. Draft law about protection of personal data had been approved by court of ministers and sent to Speaker of Great National Assembly of Turkey. Yet, according to information got from the written media this draft law has been waiting for voting to pass.

To just mention draft articles precisely, it can be said that with this draft law it has been aimed to protect the privacy of individuals while personal data is processed, and it can also be seen that it has been derived from 17th article of the constitutional law and it is a regulation parallel to 95/46/EC European Union Directive of Data Protection. According to draft, personal data can merely be processed under the authority of the owner individual and it can solely be given to a 3rd person and be sent to foreign countries under strictly restricted legal circumstances.



As Turkey has started to act in the way of protection of personal data by having signed the European Council Contract in 1981, it is highly expected for the draft law about protection of personal data to be passed soon.

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