



**YZV 403 E Legal Issues in AI**  
**1. Week**  
**General Legal Concepts**

**GENERAL CONCEPTS OF LAW:**  
**CONCEPT OF SANCTION**  
**TYPES OF SANCTIONS**

**What is law?**

- System of rules and lays down standards to which we ought to conform
- Law is never static it is always changing.



**Rules of social conduct (*Sosyal düzen kuralları*)**

- Moral order *ahlak kuralları*
- Religious order *din kuralları*
- Legal order *hukuk kuralları*



Sanctions supported by **superior public power (state)**!

*Yaptırımlı devlet eliyle uygulanması, hukuk kurallarını diğer sosyal düzen kurallarından ayıran unsurdur.*

- The law lays down binding, general, objective, abstract and continuous rules.

**Rule of Law (*Hukuk Devleti*)**

- All persons, institutions and entities, public and private, including the State itself, are accountable to laws.
- No person or politician is above the law, and the very foundations of democratic society rely upon this basic rule.

**Rule of Law (*Hukuk Devleti*)**

One of Germany's greatest rulers, Friedrich the Great, was building the Sanssouci Palace in Potsdam. However, there was a mill within the land. For this reason, the construction stopped, because the owner of the mill, a village woman, rejected all offers of money. Finally the king came to talk to the woman.

King: We are going to give you whatever money you want. Why are you still resisting?

Miller: I don't want to sell it. It has been handed down to me from my ancestors.

King: You see the construction of the palace. It will be built. If you don't sell it, we will take it from you by force.

Miller: You are the ruler; you may be able to take it, but **there are still judges in Berlin**.



## Sanctions in public and private law

**Sanction:** Response to behaviours contrary to commands and prohibitions set up by any legal rule. There are **three types** of sanctions:

### I) Criminal sanctions (*Cezai Yaptırımlar*)

#### A) Punishment (*Cezalar*)

- There are two kinds of punishments: a) Imprisonment (incarceration) *hapis cezası* and b) judicial fines *adli para cezası*.
- Imprisonment (Prison sentences) are aggravated life imprisonment, life sentence, periodical prison sentence *ağırlaştırılmış müebbet hapis, müebbet hapis ve süreli hapis*
  - Judicial Fines *adli para cezaları*

#### B) Security measures *güvenlik tedbirleri*

#### II) Civil sanctions (*Hukuki Yaptırımlar*)

#### A) Compensation *tazminat*

#### B) Invalidity *geçersizlik*

#### III) Administrative sanctions *idari yaptırımlar* (eg. revocation of licence)

## CASE STUDY

### The Son of A Turkish Famous Director Had An Accident and A Police Died

Famous director Selçuk Çetin's son, Rüzgar Çetin had an accident at midnight in Beşiktaş, he crushed a police car. A police passed away and a police got injured in the accident.

The court arrested Rüzgar Çetin on the grounds of causing the death of someone and causing injury with deliberate negligence.

Rüzgar Çetin went through medical examination after the arrestment. He was taken to Metris Penitentiary afterwards.

The police could breathalyze Rüzgar Çetin 1h 20 min after the accident. Çetin had 0.90 promile alcohol. According to his lawyer's defense, the police who had died in the accident was not wearing a seat belt. Çetin's lawyer argued if the police had been wearing a seat belt, he would not have passed away.

QUESTION: What are the legal consequences for Rüzgar Çetin?



## Sanctions in public and private law

• Sanctions in public and private law serve different purposes in the same case but they can be applied **cumulatively**.

Eg. If driver D drives when drunk and causes an accident in which a pedestrian is injured.

- 1) **Criminal consequences (sanctions):** under criminal law the state will punish the driver: he may have to go to prison. The primary objectives of the driver's imprisonment are punishment and prevention (specific prevention of the driver: while he is in prison he cannot commit the same crime again and his imprisonment make him think twice if he wants to drink before driving in the future. General protection of the society: others may learn from the example of the driver and may think twice before drinking and driving.

IMPORTANT NOTICE: object of criminal law is to punish the wrongdoer; to give him and others a strong inducement not to commit same or similar crimes, to reform him if possible and perhaps to satisfy the public sense that wrongdoing ought to meet with retribution.

(Lecture notes on the introduction to private/civil law, Gabor Peter Palasti, 2011)

## Sanctions in public and private law

2) **Administrative consequences (sanctions):** Another public law sanction may be that in administrative law his driving license may be temporarily withdrawn. This sanction serves the same purposes as above.

3) **Civil consequences (sanctions):** The situation of the injured party is little affected by these remedies. At best he may feel emotionally relieved that the driver had to go to the prison, but it doesn't mend his personal position. He may still have to pay for the medical treatment, he may suffer physical and emotional stress, he may have to cancel commitments he had made earlier, etc. All these interests will be protected by and the loss compensated by private/civil law remedies. Damages will be paid to the injured pedestrian and not to the state and he will have the chance to add all the loss and negative consequences suffered as a result of the accident when calculating his damages claim.

IMPORTANT NOTICE: object of civil law is to repair the wrongs by compelling compensation or restitution! The wrongdoer is not punished; he only suffers so much harm as is necessary to make good the wrong he has done. The person who has suffered gets a definite benefit from the law, or at least he avoids a loss. (Lecture notes on the introduction to private/civil law, Gabor Peter Palasti, 2011)

## Crime versus Tort (*Suç vs. Haksız Fiil*)

✓ A **crime** is a violation of the **penal/criminal code**. Crimes are wrongs for which the government prescribes a legal punishment (Eg. Murder, robbery, burglary, assault etc) A crime is an offence against the public, although it might affect only one person.

✓ A **tort** is a violation of the **civil law**, not criminal law! In case of a tort, the tortfeasor (the one who gives damage to another) has to pay compensation.

	Crimes (Criminal Sanction)	Torts (Civil Sanction)
immediate purpose	punishment of criminal	compensation of victim
balance of defendant's wrong and victim's injury	emphasis on defendant's moral wrong, not victim's injury (public interest!)	emphasis on victim's injury, not defendant's moral wrong (private interest!)
theory of offense	offense to all society; public interest	only victim injured; private interest only
initiating party	the state, "the people", represented by prosecutor	the victim, who is damaged
burden of proof	standart of proof is higher: beyond a reasonable doubt	standart of proof is lower: preponderance of the evidence

## Burden of Proof in Criminal and Civil Sanction

- The standard of proof used in criminal trials to find a defendant guilty of a crime. When a criminal defendant is prosecuted, the prosecutor must prove the defendant's guilt "beyond a reasonable doubt." A reasonable doubt exists when a juror cannot say with moral certainty that a person is guilty. This is the burden of proof in a Criminal Trial.  
[https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt)
  - Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. This is the burden of proof in a civil trial.
- Eg. OJ Simpson Case [https://en.wikipedia.org/wiki/O.\\_J.\\_Simpson\\_murder\\_case](https://en.wikipedia.org/wiki/O._J._Simpson_murder_case)  
OJ Simpson was not found guilty in criminal trial but paid compensation in civil trial.

## The distinction between public and private law

### Public Law (**Kamu Hukuku**)

- Relationship between the states and its citizens
- ✓ Constitutional law (**Anayasa Hukuku**)
- ✓ Administrative law (**İdare Hukuku**)
- ✓ Criminal law (**Ceza Hukuku**)
- ✓ Fiscal Law/Tax law (**Vergi Hukuku**)

### Private Law (**Özel Hukuk**)

- Rights and duties of individuals towards each other
- ✓ Civil Law (**Medeni Hukuk**)
  - ✓ Law of Obligations (**Borçlar Hukuku**)
  - ✓ Law of Persons (**Kişiler Hukuku**)
  - ✓ Property law (**Eşya Hukuku**)
  - ✓ Family law (**Aile Hukuku**)
  - ✓ Inheritance law (**Miras Hukuku**)
- ✓ Trade (commercial) law (**Ticaret Hukuku**)

## Public Law

- Sets the duties of **government to its citizens**
- There is **no equality between parties** (state and the individuals). Public law creates a relationship between superior (state) and subordinate (citizen). In public law state compel the individual to enter into a legal relationship with it and dictate the terms. For example, when A has to pay taxes to the tax authority, he can not say "no, I don't want to pay taxes, i.e. I do not want to enter into a tax paying relationship with you".
- Public interest**
- Areas of law that involves matters related to the state:
  - Constitutional law:** e.g. role and power of the institutions within the state
  - Administrative law:** e.g. regulates public authorities, accountability of public authorities
  - Criminal law:** is the law which relates to crime and prosecutionExamples from public law area:
  - Government decision on the expansion of a motorway.
  - Local authority planning permission powers
  - Council of ministers powers
  - Expropriation

## Private law

- Private law regulates **relationships (rights, duties and liabilities) between individuals**
- Private Law affects matters between individuals (whether people, groups of people or companies)
- Private interest not public !**
- In private law, the parties act freely in the legal relationship. They act in their own private interests as private individuals. They are free to enter into the relationship or not.  
Eg. contract law where equals are making deals between themselves; family law, where private individuals get together for the purposes of establishing a family through marriage, having children and taking care of and raising their children; copyright law, where one individual creates a piece in the literary, artistic or scientific domain for the use and enjoyment of all others in society, etc.

## State as an Actor in Private Law vs Public Law

- In some cases the state may become a part of a private law relationship through its organs.
- CASE: the ministry of education may purchase software and makes a contract with the company X. In this case the state and the Company X are in a private law relationship as there is no superior/subordinate bond between the parties. In this case the state acts in a capacity not different from that of any private individual (real person, private company)
- Only the fact that the state is a part of a legal relationship is not enough to define the relationship under public law !

## Private law

- Civil law:** In Turkey Turkish Civil Code (TCC) and Turkish Code of Obligations (TCO) are applicable.
  - ✓ Law of Obligations (**Borçlar Hukuku**) (TCC applicable)
  - ✓ Law of Persons (**Kişiler Hukuku**) (TCC applicable)
  - ✓ Property law (**Eşya Hukuku**) (TCC applicable)
  - ✓ Family law (**Aile Hukuku**) (TCC applicable)
  - ✓ Succession or Inheritance law (**Miras Hukuku**) (TCC applicable)
- Commercial (trade) law: Turkish Commercial Code is applicable. (**Ticaret Hukuku**)
- The **law of persons** focuses on the general recognition of persons. Persons are divided into two: Real (natural) persons (human beings) (**gerçek kişiler**) and legal persons (**tüzel kişiler**)  
Legal persons are artificial creations by real persons for the purpose of pursuing specific activity, such as different company forms for pursuing profitable relationships, foundations and societies.  
Personal law also covers those rights of a private/civil law nature that stem from simply existing as a human being (without additional qualifying factors): these are called personal rights.

## Private law

- ❑ **Family law** deals with questions relating to the private law dimension of family. In particular, specific issues of marriage (marriage conditions, rights and obligations within marriage, marital property rights, maintenance, termination of marriage (divorce) are considered).
- ❑ **Inheritance law or the law of succession** deals with the question of passing of property and other related rights due to the death of the original owner.
- ❑ **Property law** is the area of law that regulates issues in connection with ownership of things. It includes such issues as the categorization of "things" as objects in law (e.g. Movable/immovable, tangible or intangible, etc.)

Please remember the difference between property law and IP (intellectual property) law!!!

## Substantive or Procedural Law

### Procedural Law ([Usul hukuku](#))

- Substantive Law ([Maddi Hukuk](#))
    - Defines the rights and responsibilities of the people
    - It deals with 'who has the right?' Eg. Turkish Code of Obligations, Turkish Civil Code, Turkish Criminal Code
  - Establishes processes for setting disputes
  - It deals with 'how to protect your right?
  - Procedural law prescribes formal steps to be taken in enforcing legal rights.
- Eg. Code of Civil Procedure ([Hukuk Muhakemeleri Kanunu](#)), Code of Criminal Procedure ([Ceza Muhakemeleri Kanunu](#))

## Separation of Powers

Separate and independent powers and areas of responsibility in the state:

- Legislation / [Yasama](#)
- Execution / [Yürütme](#)
- Jurisdiction / [Yargı](#)

Three branches of the state are kept separate to prevent the abuse of power.



A and B, who both live in İstanbul would like to get divorced. They go to the court in Antalya. The court in Antalya rejects the suiting of the file as the competent court shall be the one in İstanbul, but not in Antalya. Is this an issue regarding substantial law or procedural law, why?

### Procedural law

## Legislation

**Legislation:** Making laws and abrogating the old ones

✓ Grand National Assembly has sole authority to enact laws.

✓ 'Ignorance of law is no excuse.' [Hukuku bilmemek mazeret sayılmaz.](#)



## Legislation

*Duties and powers of the Grand National Assembly of Turkey*

### A. General

*Turkish Constitution ARTICLE 87- The duties and powers of the Grand National Assembly of Turkey are to enact, amend, and repeal laws; to debate and adopt the proposed budget bills and final accounts bills; to decide to issue currency and declare war; to approve the ratification of international treaties, to decide with the majority of three-fifths of the Grand National Assembly of Turkey to proclaim amnesty and pardon; and to exercise the powers and carry out the duties envisaged in the other articles of the Constitution.*

*Türkçe Büyük Millet Meclisinin görev ve yetkileri*

### A. Genel olarak

*Anayasa MADDE 87- Türkiye Büyük Millet Meclisinin görev ve yetkileri, kanun koymak, değiştirmek ve kaldırmak; bütçe ve kesinhesap kanun tekliblerini görüşmek ve kabul etmek; para basılmasına sevap ilâîâna karar vermek; milletlerarası anlaşmaların onaylanması uygun bulmak, Türkiye Büyük Millet Meclisi üye tam sayısının beşte üç çoğulüğünün kararı ile genel ve özel af ilâîâna karar vermek ve Anayasanın diğer maddelerinde öngörülen yetkileri kullanmak ve görevleri yerine getirmek.*

## Execution

**Executive Body:** President

**Executive power and function**

**Turk. Constitution ARTICLE 8-** Executive power and function shall be exercised and carried out by the President of the Republic in conformity with the Constitution and laws.

**Yürütme yetkisi ve görevi**

**Anayasa MADDE 8-** Yürütme yetkisi ve görevi, Cumhurbaşkanı tarafından, Anayasaya ve kanunlara uygun olarak kullanılır ve yerine getirilir.

## Judiciary

**Judicial power**

**Turk. Constitution ARTICLE 9-** Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.

**Yargı yetkisi**

**Anayasa MADDE 9-** Yargı yetkisi, Türk Milleti adına bağımsız ve tarafsız mahkemelerce kullanılır.

**Higher Courts (Yüksek Mahkemeler)**

- ✓ Constitutional Court (Anayasa Mahkemesi)
- ✓ High Court of Appeals (Yargıtay)
- ✓ Council of State (Dânişstây)
- ✓ Court of Jurisdictional Disputes (Uyuşmazlık Mahkemesi)
- ✓ Court of Accounts (Sayıştay)

- Please write down which law (public or private law) is applicable for the following legal relationship and why?
  - 1) Tax payer P and the tax office, if he is obliged to pay a tax penalty? **Public law**
  - 2) Person P is a member of ITU Alumni Association. Unfortunately he does not pay the membership fee for years. The association asks for execution. **Private law**
  - 3) Person P asks for loan from the public Bank Ziraat Bankası. The legal relationship between the bank and P? **Private law**
  - 4) P is arrested for using drugs during the trial. **Public law (criminal law)**
  - 5) In order to build the third bridge on Bosphorus, the ministry decides to expropriate (kamulastırma/istismak) premises for the public use. **Public law**
  - 6) X company makes a service contract with the lawyer L as service procurement. (**contract/private law**)
  - 7) Istanbul municipality sets an open bidding procedure (*iha*) to buy clothes for the gardeners. **Public law/ contract private law**
- Private law applies to relationships between individuals. Public law applies to the relationship between an individual and the government.
- In the field of public law, the relationships are asymmetric and unequal.
- Public law protects society as a whole and public law is mainly concerned with the public interest. Private law concerns interactions between individuals or groups. Public law is typically determined and enforced by government agencies, whereas the government typically removes itself from the enforcement of private law.

## True or False?

Judicial fines are types of civil sanctions as they refer to an amount of money paid by the one who gives damage to another. **False**  
**(Compensation)**

Criminal and civil sanctions in law can be applied cumulatively. **True**

Criminal law is a sub-area of public law. **True**

Fiscal law is a relationship between individual and the state. **True**

- The area of law which regulates the ownership of moveables and immovables is .....**property law**.....
- If citizens do not comply with the rules, which are enforced by the state, there are some consequences. These consequences are called .....**sanctions**.....
- If A kills B, here exist two kinds of legal consequences of his behaviour: He goes to prison and he has to pay an amount of money to the wife and children of B. These two consequences are called ...**public**..... and .....**private law sanctions**.....
- .....**Compensation**..... is the amount of money, which a person has to pay to another injured person to cover his damage.

**Q: Which criteria differs the 'legal norm' from other social rules?**  
**What are the characteristics of a legal norm?**

- **Moral order ahlak kuralları**
- **Religious order din kuralları**
- **Legal order hukuk kuralları**
  - **Sanctions supported by superior public power (state)!** (Yaptırımlı devlet eliyle uygulanması, hukuk kurallarını diğer sosyal düzen kurallarından ayıran unsurdur.)



## 2. and 3. Week

# Introduction to Data Protection: Types of Legal Rights/ Personal Data as Personality Right

A) Property rights: heritable

B) Personal rights: inheritable

- the right of publicity, or to keep one's image and likeness from being commercially exploited without permission or contractual compensation,
- the right to privacy, or the right to be left alone and not have one's personality represented publicly without permission.

### **Types of Personality Rights**

✓ Dignity and honour/reputation

✓ **PRIVACY**

✓ The right to ones image

✓ Name

✓ Reputation ....

## The Right to Privacy

A complex and multifaceted human right. This right, sometimes also called the "right to be left alone" guarantees:

- respect for the individual existence of the human being, i.e. his or her particular characteristics, appearance, honour and reputation;
- protection for individual autonomy, entitling persons to withdraw from public life into their own private spheres in order to shape their lives according to their personal wishes and expectations. Certain institutional guarantees, such as protection of home, family, marriage and the secrecy of correspondence, support this aspect of the right to privacy;
- the right to be different and to manifest one's difference in public by behaviour that runs counter to accepted morals in a given society and environment. Government authorities and international human rights bodies, therefore, face a delicate and difficult task of striking a balance between the right to privacy and legitimate public interests, such as the protection of public order, health, morals and the rights and freedoms of others.

The following paragraphs touch upon a selection of issues that arise in connection with the right to privacy. In view of the controversial nature of most of the issues involved, it is often impossible to provide generalized answers, as conclusions are usually reached only by carefully weighing countervailing interests on a case-by-case basis, taking into account the special circumstances prevailing in a given society.

Source: <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf>

## Major Aspects of the Right to Privacy

### **Preservation of individual identity and intimacy**

### **Protection of individual autonomy**

The concept of individual autonomy is also part of the right to privacy. Individual autonomy – i.e. the area of private life in which an individual is free to make choices about his or her life – is central to the liberal concept of privacy. In principle, autonomy gives rise to a right to one's own body, including in relation to sexuality and sexual conduct. International human rights bodies have affirmed that adult consensual sexual conduct is covered by the concept of privacy (See Toonen case, paragraph 8.2, Human Rights Committee). They have also found a violation of the right to privacy when a woman's right to make decisions about her own body, including to legally terminate her pregnancy is interfered with (see KL v. Peru, VDA v. Argentina, Human Rights Committee). Central to the concept of privacy is the ability of individuals to make decisions about the most intimate spheres of their lives, including whether, with whom and when to have sex, whether, how many children to have and when, and how often to have children; and how to express one's gender or sexuality.

Protection of individual autonomy also comprises a right to act in a manner injurious to one's health, including taking one's own life. Nevertheless, some societies have deemed such behaviour to be harmful, and have often prohibited its manifestations (for instance, suicide, passive euthanasia and drug, alcohol and nicotine consumption).

## General Principles of Protection of Personality Rights

Courts have built a system of different "spheres" of the "general right of personality":

- The **"core" private sphere (secret sphere)** catches all aspects of an individual's intimate private life. If content affects the "core" private sphere, law does not balance the interest against other factors (such as freedom of expression). Instead, it finds an infringement because the "core" area of private life is subject to absolute protection.
- The **"private" sphere** covers all other aspects of an individual's private life (e.g. family life). If content affects the private sphere, court will have to balance all interests involved.
- The **"social" sphere** includes social and business life; this sphere is also protected but to a lesser degree.

## CASE 1

*S took a snapshot of a person X on a market place without asking this person's permission. Is there any claim of X against S? Does it make a difference, if*

*a) X is famous / is not;*

*b) X is at work / is attending to his private affairs;*

*c) the picture is published / it is not.*

- This case raises the question of whether and to what extent individuals have the right to refuse to be photographed in a public place, and to take action against the use in particular the publication of those pictures. If a picture is published, the privacy and personality interests of the person portrayed (individual's right regarding the protection of image) come into conflict with freedom of expression and freedom of press. These interests are to be balanced against each other. The result of this balancing may lead to different results according to the notoriety of the person portrayed or the circumstance that he/she was photographed while attending a professional or a private activity.

## CASE 1 Discussion

- ✓ RULE: The right to ones image constitutes a personality right protected under Turkish Civil Code.
- ✓ As such an image cannot be reproduced by drawing, painting, photography, or any comparable process without the consent of the individual
  - + Such reproduction cannot be distributed without this person's consent
- Protection depends on the sphere the individual finds himself:
  - Secret/intimate sphere
  - Private sphere
  - Public sphere
- ✓ If X's consent is presumed, the picture is not unlawful unless X expresses his refusal. (Like in foto 2, 3 and 4)
- The taking of a picture specifically focusing on a person without his/her consent is considered a violation of his/her subjective right to image or general personality right. This makes S's act unlawful, unless a specific justification applies. Such justification may be based on the person's notoriety (like in foto 4) or the public or professional nature of the activity attended by the person photographed (like in foto 1,2, and 3). Where these circumstances allow the unconsented publication of photographs, they also allow the taking of the photographs.

## CASE 1 Discussion & Answers

### Question a)

- ✓ If X's a well known figure, there will be a legal justification for S as long as the picture was taken in the context of X's public activity.
- If we talk about public figures: Broader protection of freedom of expression!
- If we talk about ordinary people: Broader protection of personality rights!
- Secret/intimate sphere: Absolute protection also for celebrities.
- Private sphere: Protection for celebrities, when there is no public interest for the ordinary people in being informed about public figures.
- Public sphere: No protection for celebrities.

## CASE 1 Discussion & Answers

### Question b)

- ✓ Photographing a person in his/her working place invades his private sphere, not public sphere! Therefore right to privacy is protected.
- ✓ The criteria is not the place the person is in! The photos can be taken in public places, but if they are related solely to the private life of a person, they are considered as private sphere! Here there is a need to protect the private life, despite the fact that the photos are taken in public.

## CASE 1 Discussion & Answers

### Question c)

- ✓ Agreeing to have one's picture taken does not mean agreeing to the publication of the picture. Unauthorized publication is unlawful.
- ✓ If the photo is used for different purpose / commercial use?  
UNLAWFUL use.
- A person who poses for a photo in a leaflet, does not thereby authorize the use of photo in web.

## General Principles of Protection of Personality Rights

□ In case of an infringement of personality rights (e.g. through social media) the two conflicting interests are:

**Privacy of the individuals/ right to respect the personal life VERSUS**

**the right to freedom of expression/right to publicity/ right to artistic freedom**

## Case 2: Princess Caroline of Monaco Privacy/ the right to freedom of expression/ right to publicity

*Paparazzi - photos taken of the Princess Caroline of Hanover (formerly Caroline of Monaco) published in German magazines showing scenes from her daily life, although in public, such as riding, leaving a restaurant or on holiday.*

*Princess Caroline sought an injunction against the further publication of photographs that had appeared in the German magazine Frau im Spiegel. The first photograph showed Princess Caroline and her husband out for a walk during their skiing holiday in St Moritz and was accompanied by an article about the illness of her father, Prince Rainier III. The second and third photographs similarly depicted Princess Caroline and her husband during their skiing holiday but the corresponding captions made no reference to Prince Rainier's health.*



## Case 2: Princess Caroline of Monaco

What was this case about?

A holiday picture, which was published in March 2002 in the German magazine, showing Caroline and her husband at their holiday address.

According to Caroline, the publication of this picture was an unacceptable violation of her right to a private life. Besides the picture also published a number of pictures of the Von Hannover's' holiday villa on a Kenyan island. The headline to the article said: "Sleeping in Princess Caroline's bed? It is a dream out of reach. Caroline and Ernst August rent out their dream villa."

## Case 2: Princess Caroline of Monaco

### Privacy vs Freedom of expression

In 2004 Princess Caroline sought an injunction against the further publication of photographs that had appeared in the German magazine *Frau im Spiegel*.

The first photograph showed **Princess Caroline and her husband out for a walk during their skiing holiday in St Moritz and was accompanied by an article about the illness of her father, Prince Rainier III.**

The second and third photographs similarly depicted **Princess Caroline and her husband during their skiing holiday but the corresponding captions made no reference to Prince Rainier's health.**

The court decided that the publication of the first photograph was justified because the accompanying article discussed the ill health of the reigning Prince of Monaco, and so contributed to a **debate of general interest**. As such, the press were entitled to report on how the prince's children reconciled family solidarity with the legitimate needs of their private life. Princess Caroline and her husband subsequently applied to the ECHR, arguing that the refusal by the German courts to uphold that the injunction infringed their right to privacy.

## Case 2: Protection of Personality Rights

Courts consider the following factors when **balancing the right to freedom of expression against the right to respect for private life:**

- (i) Contribution to a debate of general interest;
- (ii) How well known the person is (celebrity or ordinary citizen?)
- (iii) the subject matter of the report;
- (iv) Prior conduct of the person concerned;
- (v) Content, form and consequences of the publication;
- (vi) Circumstances in which photographs are taken.

## Case 2: Princess Caroline of Monaco

### Privacy/ the right to freedom of expression/ right to publicity

#### Evaluation Criteria

- 1) **Contribution to a debate of general interest?** The publication of the first photograph was justified because the accompanying article discussed the ill health of the reigning Prince of Monaco, and so contributed to a **debate of general interest**.
- 2) **How well known the person is (celebrity or ordinary citizen?)** given the political position of the individuals concerned, they were undoubtedly public figures. Public figures cannot claim the same protection for their private life as ordinary individuals.
- 3) **The subject matter of the report?** Is the subject matter fiction or not is another criteria.
- 4) **Prior conduct of the person concerned?** If they had cooperated with the press in the past? But this mere fact is not sufficient to demonstrate consent to publication of the photographs in question.
- 5) **Circumstances and consequences of the publication?** The way in which the photograph or article is published, the manner in which the person concerned is represented therein and the nature and scope of dissemination may be important factors. Although the photos considered a public official, the content of the articles did not concern the content of the photographs. Thus, while the content of the articles contributed to a matter of public interest, the content of two of the three photographs in the article did not,
- 6) **Circumstances in which photographs are taken?** Whether the person photographed gave their consent to the taking of the photographs and subsequent publication or whether this was done without their knowledge or by subterfuge will be relevant considerations. The nature or seriousness of the intrusion and the consequences for the persons concerned must be considered.

## DATA PROTECTION LAW Legislation

### CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

#### Art. 8 Protection of personal data

1. **Everyone has the right to the protection of personal data concerning him or her.**
2. **Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law.** Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. **Compliance with these rules shall be subject to control by an independent authority.**

## DATA PROTECTION LAW Legislation

### Turkish Constitution

Art. 20 (Privacy of Private Life) **Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated.**

(Paragraph added on September 12, 2010; Act No. 5982) **Everyone has the right to request the protection of his/her personal data.** This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person's explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.

*Anayasa Madde 20 – (Özel hayatın gizliliği) Herkes, özel hayatına ve aile hayatına saygı gösterilmesini isteme hakkına sahiptir. Özel hayatın ve aile hayatının gizliliğine dokunulamaz.*

(*Ek fikra: 7/5/2010 5982/2 md.*) Herkes, kendisyle ilgili kişisel verilerin korunmasını isteme hakkına sahiptir. Bu hak, kişinin kendisyle ilgili kişisel veriler hakkında bilgilendirilme, bu verilere erişme, bunların düzeltilmesini veya silinmesini talep etme ve amaçları doğrultusunda kullanılıp kullanılmadığını öğrenmeyi de kapsar. **Kişisel veriler, ancak kanunda öngörülen hallerde veya kişinin açık rızasıyla işlenebilir.** **Kişisel verilerin korunmasına ilişkin esas ve usuller kanuna düzenlenir.**

## DATA PROTECTION LAW Legislation

Turkish Constitution

Art. 22 (Freedom of Communication)

*Everyone has the freedom of communication. Privacy of communication is fundamental.*

(As amended on October 3, 2001; Act No. 4709) *Everyone has the freedom of communication. Privacy of communication is fundamental. Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law incase where delay is prejudicial, again on the above-mentioned grounds, the right to privacy shall not be violated. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall be automatically lifted.*

Haberleşme hürriyeti Madde 22 (Dejistik: 3/10/2001 4709/7 md.)

*Herkes, haberleşme hürriyetine sahiptir. Haberleşmenin gizliliği esastır.*

Mili güvenlik, kamu düzeni, suç işlenmesinin önlenmesi, genel sağlık ve genel ahlâkin korunması veya başkalarının hak ve özgürlüklerinin korunması sebeplerinden biri veya birkaçına bağlı olarak usulüne göre verilmiş hâkim kararı olmadıkça; yine bu sebeplere bağlı olarak gecikmesinde sakinca bulunan hallerde de kanunla yetkilî kılınmış merciin yazılı emri bulunmadıkça; haberleşme engellenmemez ve gizliliğinde dokunulamaz. Yetkilî merciin kararı yirmidört saat içinde görevli hâkimin onayına sunulur. Hâkim, kararını kırkseksiz saat içinde açıklar; aksi halde, karar kendiliğinden kalkar.

## Introduction to Data Protection: Types of Legal Rights/ Personal Data as Personality Right

Recital 1 GDPR

Data Protection as a Fundamental Right

Recital 2 GDPR Respect of the Fundamental Rights and Freedoms

The principles of, and rules on the protection of natural persons with regard to the processing of their personal data should, whatever their nationality or residence, respect their fundamental rights and freedoms, in particular their right to the protection of personal data. This Regulation is intended to contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, to the strengthening and the convergence of the economies within the internal market, and to the well-being of natural persons.

## Recital 4 GDPR Data Protection in Balance with Other Fundamental Rights

*The processing of personal data should be designed to serve mankind.<sup>2</sup> The right to the protection of personal data is not an absolute right\*, it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.*

*This Regulation respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.*

\*An absolute right is a right that cannot be limited or infringed under any circumstances, not even during a state of emergency. Absolute rights that cannot be limited for any reason. Some human rights, such as the prohibition of torture and slavery, are absolute. However, most human rights are not absolute and are therefore subject to certain restrictions.

## Recital 6 GDPR Ensuring a High Level of Data Protection Despite the Increased Exchange of Data

Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of the collection and sharing of personal data has increased significantly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Natural persons increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of personal data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.

## GDPR Recital 4 Data Protection in Balance with Other Fundamental Rights

- ❑ The right to the protection of personal data is **not an absolute right**; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality.
- ❑ GDPR respects all fundamental rights and observes the freedoms and principles recognised in the Charter as enshrined in the Treaties, in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.

## Data Protection Law / GDPR (General Data Protection Regulation)

As of May 2018, with the entry into application of the General Data Protection Regulation, there is one set of data protection rules for all companies operating in the EU, wherever they are based.

Stronger rules on data protection mean

- people have more control over their personal data
- businesses benefit from a level playing field



[https://commission.europa.eu/law/law-topic/data-protection/eu-data-protection-rules\\_en](https://commission.europa.eu/law/law-topic/data-protection/eu-data-protection-rules_en)

## Data Protection Law / KVKK (Turkish Data Protection Act)

Enacted on 24/3/2016 | Published in the Official Gazette dated 7/4/2016 no. 29677

### Purpose

**ARTICLE 1 – (1)** The purpose of this Law is to protect the fundamental rights and freedoms of persons, privacy of personal life in particular, while personal data are processed, and to set forth obligations of natural and legal persons who process personal data and procedures and principles to comply with for the same.



## CONCEPT OF PERSONAL DATA (Kişisel Veri Kavramı)

### Concept of Personal Data I

#### Do the data protection rules apply to data about a company?

No, the rules only apply to personal data about individuals, they don't govern data about companies or any other legal entities. However, information in relation to one-person companies may constitute personal data where it allows the identification of a natural person. The rules also apply to all personal data relating to natural persons in the course of a professional activity, such as the employees of a company/organisation, business email addresses like '[firstname.surname@company.eu](mailto:firstname.surname@company.eu)' or employees' business telephone numbers.

[https://commission.europa.eu/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company\\_en](https://commission.europa.eu/law/law-topic/data-protection/reform/rules-business-and-organisations/application-regulation/do-data-protection-rules-apply-data-about-company_en)

### Concept of Personal Data I

- GDPR NOT applicable to legal persons (like companies)!
- The protection afforded by this Regulation should apply to natural persons (human beings) !
- GDPR does NOT cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.
- For the protection of legal persons data (like trade secrets), there is another mechanism. These data is protected by Turkish Commercial Code's rules in Turkey.

### Concept of Personal Data I

- The law protects personal data regardless of the technology used for processing that data – it's technology neutral and applies to both automated and manual processing, provided the data is organised in accordance with pre-defined criteria (for example alphabetical order).
- It also doesn't matter how the data is stored – in an IT system, through video surveillance, or on paper; in all cases, personal data is subject to the protection requirements set out in the GDPR.

## Concept of Personal Data I

- Personal data is any information that relates to an **identified or identifiable living individual**. Different pieces of information, which collected together can lead to the identification of a particular person, also constitute personal data.
- Personal data that has been **deidentified, encrypted or pseudonymised** but can be used to re-identify a person remains personal data and falls within the scope of the law.
- Personal data that has been rendered **anonymous** in such a way that the individual is not or no longer identifiable is not considered personal data. For data to be truly anonymised, the anonymisation must be irreversible.

Kimliği belirli veya belirlenebilir gerçek kişiye ilişkin her türlü bilgidir. Adı soyadı, TC no, e-mail, sosyal hesapları, adres, tlf ile ilişkilendirilen alışveriş detayları, kamيرا görüntüsü, veya bir fotoğrafla eşleştirilmesi, giriş çıkış saatleri, iş başvuru formları, şikayet formları, elektronik veya kağıt ortamında tutulan her türlü kişisel bilgi

## Concept of Personal Data II

GDPR: 'The principles of data protection should apply to any information concerning an identified or identifiable natural person.'

Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information should be considered to be information on an identifiable natural person.

To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and the cost of the processing.

The principles of data protection should therefore not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. This Regulation does not therefore concern the processing of such anonymous information, including for statistical or research purposes.'

This Regulation does not apply to the personal data of deceased persons.

## Concept of Personal Data III Identifiable

In determining whether a natural person is 'identifiable', account should be taken of **all reasonable means available to the controller or another person to directly or indirectly identify the natural person**.

- A piece of information can help to identify someone directly, for example a person's first and last name; or
- a piece of information can help to identify someone indirectly, for example a membership number of a sports club. It is not required that the controller can effectively identify the data subject with the information. The fact that someone else can do this means that the information is regarded as personal data.

Example: a membership number of a sports club. Not everyone can identify a person with this number. This requires more information possessed by the association: which membership number belongs to which name? This information is not accessible to everyone. However, the fact that someone else (a member of the sports association) does have access to this database - and can make the link between membership number and name - means that a membership number is a personal data.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymized-data/>

## Concept of Personal Data III Identifiable

### Reasonable means

In order to determine whether someone is identifiable, it is considered whether **identification is reasonably possible for the controller or another person**. It is then considered which means could reasonably be used.

To determine what constitutes 'reasonable means', all kinds of factors need to be considered, such as

- the cost of identification
- the amount of time needed for identification,
- the available technology at the moment of identification, but also future technological developments.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymized-data/>

## Concept of Personal Data III Anonymised data

The GDPR does not apply to anonymised data.

Anonymisation is the process by which personal data are rendered unusable for identification purposes; the data are therefore no longer personal data and therefore the GDPR does not apply.

Anonymisation requires more than just omitting names or contact details from a dataset; 'customer 33' or 'student s84969623' are still personal data.

1) First, anonymous data can be obtained by **aggregation**. This is merging data into information such as: the average patient with disease X is between 60 and 70 years old.

2) Another method is **randomisation**. In this case, certain information in a dataset is replaced by random information. For example, within a group of participants in an investigation, the year of birth and the place of residence can be changed randomly. If the age is relevant for the study, the group of participants can be divided into different age categories. Then the age of a participant can be replaced by the age of someone else from the same age category. This allows you to make a statement about the group of participants in a certain age category, but not at an individual level. If you look at an individual case, the identity of the participant is no longer easy to trace based on his age.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymised-data/>

## Concept of Personal Data III/ Pseudonimisation

### Eric Arthur Blair?

Have you ever heard of Eric Arthur Blair? He is better known under his pseudonym: George Orwell, writer of the famous book 1984. A pseudonym is a false name or alias that clearly deviates from someone's real name and that can be used to shield your identity whenever you face publicity - as some writers do.

### Pseudonyms

A pseudonym can be an alias: a name other than the one in your passport. Such a 'pseudonym' does not need to be a real name, but can also have a different form. They can be all kinds of identifiers such as student number, IP address, membership number of the sports club, gamer's user name or bonus card number. Each of these data acts as a pseudonym of the person behind the alias. A pseudonym is therefore information about an identifiable natural person. Therefore, pseudonymised data qualify as personal data; with the conclusion that the GDPR applies to the processing of these data.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymised-data/>

## Concept of Personal Data III/ Pseudonimisation

Case:

Take the passenger list of an airline company. It contains names, addresses and passport numbers of passengers and their travel history. The file therefore also contains unique data: a passenger can be identified directly by name. The file contains valuable information that company analysts would like to use for commercial purposes (What are popular destinations? When do passengers prefer to fly? etc.). On the other hand, the information on passengers says a lot about passengers and it is not desirable that many airline employees know which passenger is flying where and when. Pseudonymisation offers a solution.

In case of pseudonymisation, the passenger data (name, address, passport number) is stored in one file and the travel history in the other file. In addition, each passenger is given a passenger number (P8705), so this data is added to the dataset. By separating passenger data and travel history, it is possible to find which passenger belongs to which passenger number in one file. In the other file, you can find which travel behaviour belongs to which passenger number. It is of course important (and also required in the GDPR) that these files are kept separately. In this way, the travel data can be analyzed without each employee knowing the true identity of the passenger. This limits the dissemination of sensitive information within the company and improves the protection of passengers' personal data.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymised-data/>

## Concept of Personal Data III/ Pseudonimisation

In order to keep the two files separate, the GDPR requires technical and organisational security measures. An example of a technical measure is that a system needs to be logged in by means of two factor authentication before the passenger data file can be viewed. An example of an organisational measure is to ensure that the number of people within the airline with access to both files is very limited. This could be for example only the manager IT and his assistant.

<https://www.privacycompany.eu/en/misunderstanding-2-pseudonymised-data/>

## Concept of Personal Data III/ Pseudonimisation

GDPR: 'pseudonymisation' means

- the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information,
- provided that such additional information is kept separately and
- is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;

## Concept of Personal Data IV

GDPR: '*Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.*'

## Concept of Personal Data V

### Examples of Personal Data

- a name and surname;
- a home address;
- an email address such as name.surname@company.com;
- an identification card number;
- location data (for example the location data function on a mobile phone);
- an Internet Protocol (IP) address;
- a cookie ID;
- the advertising identifier of your phone;
- data held by a hospital or doctor, which could be a symbol that uniquely identifies a person.

### Examples of data NOT considered as personal data

- a company registration number;
- an email address such as info@company.com;
- anonymised data.

## Concept of Personal Data VI Special Category Data (or Sensitive Personal Data)

Special category data is personal data is more sensitive, and so needs more protection.

This kind of data is especially sensitive, the exposure of which could significantly impact the rights and freedoms of data subjects and potentially be used against them for unlawful discrimination.

- Information about an individual's:
  - race;
  - ethnic origin;
  - politics;
  - religion;
  - trade union membership;
  - outfit;
  - genetics;
  - biometrics (where used for ID purposes);
  - health;
  - sex life; or
  - sexual orientation

Özel Nitelikli Kişi Veri;  
Öğrenildiğinde ligili kişinin mağdur olmasına veya ayrımcılığa maruz kalmasına neden olabilecek nitelikteki bilgilerdir.  
Daha iyi korunmaları gereklidir.

- Kişilerin ırk;
- etnik kökeni,
- siyasi düşüncesi,
- felsefi inancı,
- dini, mezhebi veya diğer inançları,
- kılık ve kıyafeti,
- dernek,
- vakıf ya da sendika üyeliği, sağlığı, cinsel hayatı, ceza mahkümüyeti ve güvenlik tedbirleriyle ilgili verileri ile biyometrik ve genetik verileri

## DATA PROCESSING

### Data Processing (Veri İşleme)

GDPR: processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means,

such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

The definition of processing is very wide:

- Obtaining
- Recording
- Holding
- Using
- Erasure
- Destruction
- "Any operation" on the data

### Data Processing (Veri İşleme)

KVKK: *Kişisel verilerin işlenmesi: Kişisel verilerin tamamen veya kısmen otomatik olan ya da herhangi bir veri kayıt sisteminin parçası olmak kaydıyla otomatik olmayan yollarla elde edilmesi, kaydedilmesi, depolanması, muhafaza edilmesi, değiştirilmesi, yeniden düzenlenmesi, açıklanması, aktarılması, devralınması, elde edilebilir hâle getirilmesi, sınıflandırılması ya da kullanılmasının engellenmesi gibi veriler üzerinde gerçekleştirilen her türlü işlemi,*

### Kişisel Veri (Personal Data) Nedir?

- ✓ "Kimliği belirli veya belirlenebilir gerçek kişiye ilişkin her türlü bilgi." any information that relates to an identified or identifiable living individual
- ✓ Gerçek kişiye ilişkin olma (tüzel kişiye değil!)
- ✓ Belirlenebilirlik: Sadece bir veriden ya da birkaç veriden kişinin kimliği belirlenebilir.
- ✓ Verinin nerede depolandığının veya nasıl işlendiğinin bir önemi yok !
- Anonimleştirilmiş veri?
- Psödonimleştirilmiş veri?  
(takma ad/maskeleme/bulanıklaştırma)



### Kişisel Veri Nedir?



adı, soyadı, doğum tarihi ve doğum yeri, telefon numarası, motorlu taşıt plakası, lokasyon bilgisi, pasaport numarası, özeçmiş, resim, görüntü ve ses kayıtları, parmak izleri, IP adresi, MAC adresi, yaptığı alış verişler, hakkındaki finansal bilgiler ...

### Kişisel Veri Nedir?

Kişisel veriden söz edebilmek için gereken üç unsur:

**1.Gerçek kişiye ilişkin olma:** Kişisel veri, gerçek kişiye ilişkin olup, tüzel kişilere ilişkin veriler kişisel verinin tanımının dışındadır.

Bir şirketin ticaret unvanı ya da adresi gibi tüzel kişiye ilişkin bilgiler (bir gerçek kişiyle ilişkilendirilebilecekleri durumlar haricinde) kişisel veri sayılmayacaktır.

<https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/7d5b0a2f-e0ea-41e0-bf0b-bc9e43dfb57a.pdf>

## Kişisel Veri Nedir?

Kişisel veriden söz edebilmek için gereken üç unsur:

**2. Kişiyi belirli veya belirlenebilir kılması:** Kişi veri, ilgili kişinin doğrudan kimliğini gösterebileceği gibi, o kişinin kimliğini doğrudan göstermemekle birlikte, herhangi bir kayıta ilişkilendirilmesi sonucunda kişinin belirlenmesini sağlayan tüm bilgileri de kapsar. Ör. İTÜ'de bilişim hukuku dersini veren öğretim üyesi

- Belirleme için makul zaman, çaba veya kaynak harcanması !

- Psödonimleştirilmiş veri? (Eric Arthur Blair? George Orwell?)

<https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/7d5b0a2f-e0ea-41e0-bf0b-bc9e43dfb57a.pdf>

## Anonimleştirilmiş veri

Anonim hale getirme kişisel verilerin başka verilerle eşleştirilse dahi kimliği belirli veya belirlenebilir bir gerçek kişiyle ilişkilendirilemeyecek hale getirilmesidir.

Anonim hale getirme bir veri kümnesindeki tüm doğrudan ve dolaylı tanımlayıcıların çıkarılarak veya değiştirilerek ilgili kişinin kimliğinin saptanabilmesinin engellenmesi ya da bir grup veya kalabalık içinde ayrıt edilebilir olma özelliğini, bir gerçek kişi ile ilişkilendirilemeyecek şekilde kaybetmesidir.

Veri üzerinden bir izleme yapılarak başka verilerle eşleştirme ve destekleme sonrasında verinin kime ait olduğu anlaşılmıyorrsa, bu verinin anonim hale getirildiği kabul edilemez.

**Anonimleştirilmiş veri kişisel veri olmadığından KVKK kapsamında değildir!**

<https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/7d5b0a2f-e0ea-41e0-bf0b-bc9e43dfb57a.pdf>

## Psödonimleştirilmiş Veri

GDPR: 'kişisel verilerin, kimliği belli veya belirlenebilir kişiden ayrı tutulan ve özel teknik ve idari tedbirlerle korunan ek bilgiler olmadan, ilgili gerçek kişinin kim olduğunu tespit edilemeyeceği şekilde işlenmesi'

Halen geri döndürülebilir yanı kişisel veriye çevrilebilir durumdadır. kişinin belirlenebilirlik olasılığının tamamen ortadan kalkmamış olması nedeniyle halen **kİŞİSEL VERİ NİTELİĞİNDİR** !

Özellikle araştırma ve istatistik faaliyetlerde kullanılır.

**Anonimleştirmeının aksine**, veriyi kişisel veri olmaktan çıkarmaya yönelik bir uygulama değil, veri **minimizasyonu ilkesinin uygulanması** ve böyledice veri sorumlusu veya veri işleyenin riskinin azaltılması sonucunu doğuran bir uygulamadır



## Kişisel Veri Nedir?

Kişisel veriden söz edebilmek için gereken üç unsur:

### 3. Her türlü bilgi:

bir gerçek kişinin; adı, soyadı, doğum tarihi ve doğum yeri gibi bireyin sadece kimliğini ortaya koyan bilgiler değil; telefon numarası, motorlu taşıt plakası, sosyal güvenlik numarası, pasaport numarası, özgeçmiş, resim, görüntü ve ses kayıtları, parmak izleri, e-posta adresi, hobiler, tercihler, etkileşimde bulunan kişiler, grup üyelikleri, aile bilgileri, sağlık bilgileri gibi kişiyi doğrudan veya dolaylı olarak belirlenebilir kılan tüm veriler kişisel veri olarak kabul edilmektedir.

<https://www.kvkk.gov.tr/SharedFolderServer/CMSFiles/7d5b0a2f-e0ea-41e0-bf0b-bc9e43dfb57a.pdf>

## Özel Nitelikli Kişi Veri (Special Category Data)

*Başkaları tarafından öğrenildiği takdirde ilgili kişinin mağdur olabilmesine veya ayırmalığı maruz kalabilmesine neden olabilecek nitelikteki veriler*

- ✓ Kişinin irki, etnik kökeni,
- ✓ Siyasi düşüncesi,
- ✓ felsefi inancı, dini, mezhebi veya diğer inançları,
- ✓ kılık ve kıyafeti,
- ✓ dernek, vakıf ya da sendika üyeliği,
- ✓ sağlığı, cinsel hayatı,
- ✓ ceza mahkümiyeti ve güvenlik tedbirleriyle ilgili verileri
- ✓ biyometrik ve genetik veriler



## DATA SUBJECT (DATA OWNER)

## Who's Data Subject?

- An individual who is the subject of personal data
- Only natural persons' data are protected under the law.
- Data subject: the natural person (**not legal person!!!**) whose personal data was processed.
- In the event that data of a legal person identify or determine any natural person, these data are also protected under the Law, in accordance with the definition of the personal data contained in the Law. However, the benefit protected here shall not belong to the legal person but to the natural person who is determined or can be determined according to the priority based on the regulation. Because the Law does not regulate the protection of legal persons' data at all.

## İlgili Kişi (Data Owner/Data Subject) Kimdir?



İlgili kişi, kişisel verisi işlenen gerçek kişiyi ifade eder.  
Kanunda, yalnızca gerçek kişilerin verilerinin korunması öngörülmüş, tüzel kişilerin verileri Kanun kapsamı dışında tutulmuştur.

<https://www.kvkk.gov.tr/SharedFolderServer/MSFiles/7d5b0a2f-e0ea-41e0-bf0b-bc9e43dfb57a.pdf>



YZV401E Legal Issues in AI  
5. Week

## SEVEN KEY PRINCIPLES OF DATA PROTECTION (Veri Korumasının Yedi Temel Prensibi)

### Seven Key Principles of Data Protection

- 1) Lawfulness, fairness and transparency ([hukuka uygunluk ve şeffaflık](#))
- 2) Purpose limitation ([belirli, açık ve meşru amaçlar için işlenme](#))
- 3) Data minimization ([veri azaltma](#))
- 4) Accuracy ([doğru ve güncel olma](#))
- 5) Storage limitation ([gerekli olan süre kadar saklama](#))
- 6) Integrity and confidentiality (security)
- 7) Accountability ([hesap verilebilirlik](#))

### Seven Key Principles of Data Protection

#### 1) Lawfulness, fairness and transparency

Personal data shall be  
processed lawfully, fairly and in a transparent manner in relation to individuals

- ✓ It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed.
- ✓ The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used.
- ✓ Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing.

## Seven Key Principles of Data Protection

### 2) Purpose limitation

Personal data shall be

collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes

✓ In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data

✓ The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum.

## Seven Key Principles of Data Protection

### 3) Data Minimization

Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed

#### ❖ Collection Limitation

- When collecting data, remember to ask yourself several questions for each point of data you are planning to collect:
- Does the individual know I am collecting the data?
  - How am I planning to use this data?
  - Does the individual know why I am collecting the data?
  - Is there a way of achieving this purpose without having to collect the data?
  - How long will I need the data for to achieve the purpose?

## Seven Key Principles of Data Protection

### 4) Accuracy

Personal data shall be

accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay

You must take every reasonable step to update or remove data that is inaccurate or incomplete. Individuals have the right to request that you erase or rectify erroneous data that relates to them, and companies must do so within a month.

## Seven Key Principles of Data Protection

### 5) Storage Limitation

Personal data shall be

kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required by the GDPR in order to safeguard the rights and freedoms of individuals

You must delete personal data when you no longer need it. The timescales in most cases aren't set. They will depend on your business' circumstances and the reasons why you collect this data.

## Seven Key Principles of Data Protection

### 5) Storage Limitation

Privacy Notice of Amazon

#### How long do we keep your personal information?

We keep your personal information to enable your continued use of Amazon Services, for as long as it is required in order to fulfil the relevant purposes described in this Privacy Notice, as may be required by law such as for tax and accounting purposes, or as otherwise communicated to you. For example, we retain your transaction history so that you can review past purchases (and repeat orders if desired) and what addresses you have shipped orders to, and to improve the relevancy of products and content we recommend.

## Seven Key Principles of Data Protection

### 6) Integrity and confidentiality (security)

Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using **appropriate** technical or organisational measures.

## Seven Key Principles of Data Protection

### 7) Accountability

The controller shall be responsible for, and be able to demonstrate compliance with the data protection laws.

Organisations must demonstrate that they are compliant with the law. Such measures include:

- adequate documentation on what personal data are processed, how, to what purpose, how long
- documented processes and procedures aiming at tackling data protection issues at an early stage when building information systems or responding to a data breach;
- the presence of a Data Protection Officer that be integrated in the organisation planning and operations etc. (DPO is obligatory only in EU, but not in Turkey!)



YZV401E Legal Issues in AI  
6. Week

### Data Controller-Data Processor

#### Data Controller-Data Processor

Evolving nature of the business: the increased **sophistication of outsourcing**, and the growing tendency of organisations to centralise IT systems.

- Marketing: Digital Marketing Agents
- CRM (consumer relationship management), benchmarking
- HR: Payroll, performance evaluation, training
- Security
- Sales (Dealers, Distributors)
- After Sales (Authorized Services)
- Information Technology Services (Cloud)

#### Data Controller-Data Processor



**Data Processor is the 'Marionette String Puppet' of the data controller.**

Data controller is the **key decision- maker** with regards to personal data.

## Data Controller-Data Processor

### Data Controller: (Veri Sorumlusu)

- ✓ A person who (alone or jointly or in common with other persons) determines **the purposes for which and the manner in which any personal data are, or are to be, processed**
- ✓ Real and legal persons who process personal data by automatic means or non-automated means as part of a filing system (Definition in Turkish Data Protection Act)
- ✓ The **data controller** determines the **purposes** for which and the **means** by which personal data is processed.
- ✓ If your company decides '**WHY**' and '**HOW**' the **personal data should be processed** it is the data controller. Employees processing personal data within your organisation do so to fulfil your tasks as data controller.

Veri sorumlusu, kişisel verilerin işleme amaçlarını ve vasıtalarını belirleyen, veri kayıt sisteminin kurulmasından ve yönetilmesinden sorumlu olan gerçek veya tüzel kişidir. Tüzel kişiler, kişisel verileri işleme konusunda gerçekleştirilen faaliyetler kapsamında bizzatı kendileri "veri sorumlusu" olup, ilgili düzenlemelerde belirtilen hukuki sorumluluk tüzel kişinin yanında doğacaktır. Bir şirket bünyesinde yer alan birimlerin tüzel kişiliği bulunmadığında, bu birimlerin veri sorumlusu olması mümkün değildir.

## Data Controller-Data Processor

### According to GDPR

- 'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, **determines the purposes and means of the processing of personal data**;
- 'processor' means a natural or legal person, public authority, agency or other body **which processes personal data on behalf of the controller**

### Art. 24 GDPR Responsibility of the Controller

*Taking into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons, the controller shall implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation.....*

## Data Controller-Data Processor

### Data Processor: (Veri İşleyen)

The data processor processes personal data only **on behalf of the controller**.

The data processor is usually **a third party external to the company**. However, in the case of groups of undertakings, one undertaking may act as processor for another undertaking.

- The duties of the processor towards the controller must be specified in a contract or another legal act. For example, the contract must indicate what happens to the personal data once the contract is terminated. A typical activity of processors is offering IT solutions, including cloud storage. The data processor may only sub-contract a part of its task to another processor or appoint a joint processor when it has received prior written authorisation from the data controller.
- There are situations where an entity can be a data controller, or a data processor, or both.

Veri işleyen ise, veri sorumlusunun verdiği yetkiye dayanarak onun adına kişisel verileri işleyen, veri sorumlusunun organizasyonu dışındaki gerçek veya tüzel kişiler olarak tanımlanmaktadır. Bu kişiler, kişisel verileri kendisine verilen talimatlar çerçevesinde işleyen, veri sorumlusunun kişisel veri işleme sözleşmesi yapmak suretiyle yetkilendirildiği ayrı bir gerçek veya tüzel kişidir.

## Data Controller-Data Processor

### **Data Controller and Data Processor EXAMPLES**

A brewery has many employees. It signs a contract **with a payroll company** to pay the wages. The brewery tells the payroll company

- when the wages should be paid,
- when an employee leaves or has a pay rise, and
- provides all other details for the salary slip and payment.

The payroll company **provides the IT system and stores the employees' data**. **The brewery is the data controller and the payroll company is the data processor**.

## Joint Controller

### GDPR Art. 26

*Where two or more controllers jointly determine the purposes and means of processing, they shall be joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject .....*

## Data Controller-Data Processor

### For example:

If X Co. sells widgets to consumers and uses E-mail Automation Co. to email consumers on their behalf and track their engagement activity, then with regard to such email activity data, **X Co. is the data controller, and Email Automation Co. is the data processor**.

## Data Controller-Data Processor

An accounting company, who is processing the data of their own employees and the customers employees?

For own employee data, the company is the data controller. For customers employee data, the company is the data processor.

Herhangi bir gerçek veya tüzel kişi aynı zamanda hem veri sorumlusu, hem de veri işleyen olabilir. Örneğin, bir muhasebe şirketi kendi personeliyle ilgili tuttuğu verilere ilişkin olarak veri sorumlusu sayılırken, müsterisi olan şirketlere ilişkin tuttuğu veriler bakımından ise veri işleyen olarak kabul edilecektir.

## Data Controller-Data Processor

WHY is this distinction is important?

- Data protection laws treats the **data controller as the principal party** for responsibilities such as collecting consent, managing consent-revoking, enabling right to access, etc.
- A data subject who wishes to revoke consent for his or her personal data therefore will contact the data controller to initiate the request, even if such data lives on servers belonging to the data processor.
- The data controller, upon receiving this request, would then proceed to request the data processor remove the revoked data from their servers.

Are we a controller?

- We decided to collect or process the personal data.
- We decided what the purpose or outcome of the processing was to be.
- We decided what personal data should be collected.
- We decided which individuals to collect personal data about.
- We obtain a commercial gain or other benefit from the processing, except for any payment for services from another controller.
- We are processing the personal data as a result of a contract between us and the data subject.
- The data subjects are our employees.
- We make decisions about the individuals concerned as part of or as a result of the processing.
- We exercise professional judgement in the processing of the personal data.
- We have a direct relationship with the data subjects.
- We have complete autonomy as to how the personal data is processed.
- We have appointed the processors to process the personal data on our behalf.

Are we a joint controller?

- We have a common objective with others regarding the processing.
- We are processing the personal data for the same purpose as another controller.
- We are using the same set of personal data (eg one database) for this processing as another controller.
- We have designed this process with another controller.
- We have common information management rules with another controller.

Are we a processor?

- We are following instructions from someone else regarding the processing of personal data.
- We were given the personal data by a customer or similar third party, or told what data to collect.
- We do not decide to collect personal data from individuals.
- We do not decide what personal data should be collected from individuals.
- We do not decide the lawful basis for the use of that data.
- We do not decide what purpose or purposes the data will be used for.
- We do not decide whether to disclose the data, or to whom.
- We do not decide how long to retain the data.
- We may make some decisions on how data is processed, but implement these decisions under a contract with someone else.
- We are not interested in the end result of the processing.



## LAWFUL DATA PROCESSING

### Lawfulness of Data Processing

GDPR Art. 6:

- Processing of personal data is considered lawful if:
- (1) the data subject has given consent;
  - (2) it is necessary for the performance of a contract to which the data subject is party;
  - (3) it is necessary for compliance with a legal obligation;
  - (4) it is necessary to protect the vital interest of the data subject or another natural person;
  - (5) it is necessary for the performance of a task carried out in the public interest;
  - (6) it is necessary for the purposes of the legitimate interests pursued by the controller or third party.

### Lawfulness of Data Processing

Data processing is lawful:

- Consent:** The data subject has freely given consent for their information to be processed for a specific purpose.
- Contract:** Processing is necessary due to the fulfillment of a contract.
- Legal Obligation:** Processing is necessary to comply with the law.
- Vital Interest:** Processing is necessary to save or protect an individual's life.
- Public Tasks:** Processing is necessary to perform a public interest in official functions. (Primarily applies to governmental agencies/entities.)
- Legitimate Interests:** Processing is necessary to the legitimate interests of an organization or a third-party affiliate.

### LAWFUL BASIS FOR PROCESSING UNDER GDPR



### Lawfulness of Data Processing/ I) CONSENT

Conditions for Consent

- Consent must be **freely given**; this means giving people genuine ongoing choice and control over how you use their data. (*Rizanın özgür iradeyle açıklanması*)
- Consent should be obvious and **require a positive action to opt in**. Consent requests must be prominent, unbundled from other terms and conditions, concise and easy to understand, and user-friendly. (*Rizanın bir malin satılması veya hizmetin verilmesi şartına bağlanamaması*)
- Consent must specifically cover the controller's name, the purposes of the processing and the types of processing activity. (*Rizanın bilgilendirmeye dayanması*)
- Explicit consent must be expressly confirmed in words, rather than by any other positive action.
- There is no set time limit for consent. How long it lasts will depend on the context.

### Lawfulness of Data Processing/ I) CONSENT

#### • How should we obtain, record and manage consent?

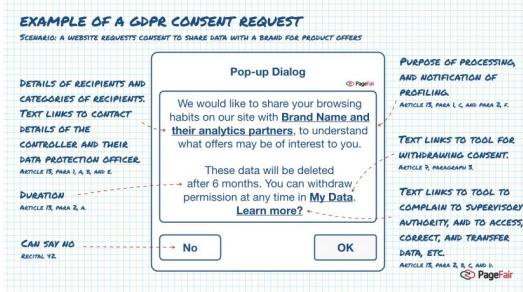
The consent request shall be prominent, concise, separate from other terms and conditions, and easy to understand. The consent shall include:

- the name of your organisation;
- the name of any third party controllers who will rely on the consent;
- why you want the data;
- what you will do with it; and
- that individuals can withdraw consent at any time.

## Lawfulness of Data Processing/ I) CONSENT

- ✓ **Active Opt-In:** Indication of consent must be unambiguous and involve a clear affirmative action (an opt-in). You must ask people to actively opt in. **Don't use pre-ticked boxes, opt-out boxes or other default settings.**
- ✓ **Consent Documentation:** Keep records to evidence and demonstrate consent – who consented, when, how, and what they were told.
- ✓ Keep consents under review and refresh them if anything changes. Build regular consent reviews into your business processes.
- ✓ **Distinct ('granular')** consent options for distinct processing operations are necessary. Wherever possible, give separate ('granular') options to consent to different purposes and different types of processing. You need to collect individual consent for each type of processing you apply. For example, marketing opt-in and acceptance for your data to be used for R&D of an application will need separate consent.
- ✓ **Unbundled consent:** Consent should be separate from other terms and conditions and should not generally be a precondition of signing up to a service (unless it's absolutely necessary for that service – see legal grounds)
- ✓ **Ability to withdraw:** Easy in, easy out. You need to make it easy for people to withdraw consent at any time they choose. Consider using preference-management tools.

## Lawfulness of Data Processing/ I) CONSENT



## Lawfulness of Data Processing/ I) CONSENT

- For processing special categories of personal data (like healthcare data) explicit consent is required!

Processing of special categories of personal data GDPR Art. 9

Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

- the data subject has given explicit consent to the processing of those personal data for one or more specified purposes,

**Özel nitelikli kişisel verilerin, ilgiliinin açık rızası olmaksızın işlenmesi yasaktır. (KVKK m. 6/II)**

Example: "A clinic for cosmetic surgery seeks explicit consent from a patient to transfer his medical record to an expert whose second opinion is asked on the condition of the patient. The medical record is a digital file. Given the specific nature of the information concerned, the clinic asks for an electronic signature of the data subject to obtain valid explicit consent and to be able to demonstrate that explicit consent was obtained."

## Lawfulness of Data Processing/ I) CONSENT

GDPR: 'Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement.'

This could include

- ticking a box when visiting an internet website,
  - choosing technical settings for information society services or
  - another statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data.
- !!! Silence, pre-ticked boxes or inactivity should not therefore constitute consent!!!
- ✓ Consent should cover all processing activities carried out for the same purpose or purposes.
- ✓ When the processing has multiple purposes, consent should be given for all of them.
- If the data subject's consent is to be given following a request by electronic means, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided."

## Lawfulness of Data Processing/ I) CONSENT

### Consent versus explicit consent

Explicit consent is required in certain situations where **serious data protection risk** emerge, hence, where a high level of individual control over personal data is deemed appropriate

Explicit consent matters regarding the even higher levels of control and data protection a data subject has in the case of special categories of personal data and special types/circumstances of personal data processing.

## Lawfulness of Data Processing/ I) CONSENT

### Example

A beauty spa gives a form to its customers on arrival which includes the following:

Skin type and details of any skin conditions (optional):

We will use this information to recommend appropriate beauty products.

If someone enters details of their skin conditions, this is likely to be a freely given, specific, informed and unambiguous affirmative act agreeing to use of that data to make such recommendations – but is arguably still implied consent rather than explicit consent.

## Lawfulness of Data Processing/ I) CONSENT

If someone enters details of their skin conditions, this is likely to be a freely given, specific, informed and unambiguous affirmative act agreeing to use of that data to make such recommendations - but is arguably still implied consent rather than explicit consent.

Another beauty spa uses the following statement instead:

Skin type and details of any skin conditions (optional):

I consent to you using this information to recommend appropriate beauty products

If the individual ticks the box, they have explicitly consented to the processing.

## Lawfulness of Data Processing/ I) CONSENT

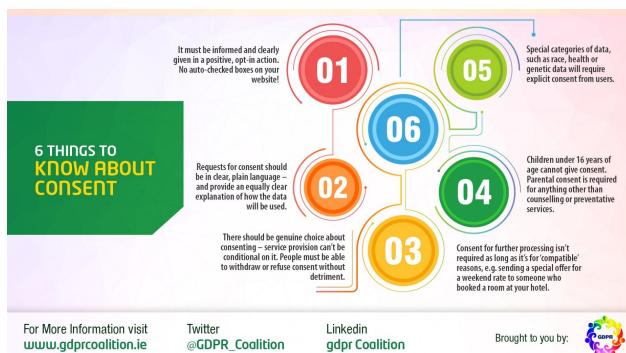
For individual decision-making and profiling explicit consent is required!

"the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her"

Profiling is defined by more than just the collection of personal data; it is the use of that data to evaluate certain aspects related to the individual. The purpose is to predict the individual's behaviour and take decisions regarding it. In the context of email marketing, it can be the choice to send a particular targeted email campaign instead of another one.

Profiling can be defined by three specific elements:

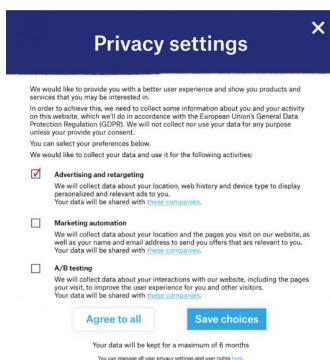
- It implies an automated form of processing;
- It is carried out on personal data; and
- The purpose of it is to evaluate certain personal aspects of a natural person to predict their behaviour and take decisions regarding it.



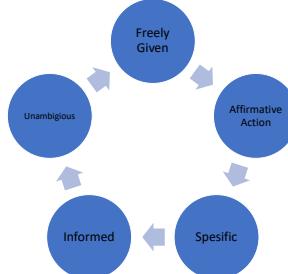
### When is consent invalid?

In summary, you do not have valid consent if any of the following apply:

- you have any doubts over whether someone has consented;
- the individual doesn't realise they have consented;
- you don't have clear records to demonstrate they consented;
- there was no genuine free choice over whether to opt in;
- the individual would be penalised for refusing consent;
- there is a clear imbalance of power between you and the individual;
- consent was a precondition of a service, but the processing is not necessary for that service;
- the consent was bundled up with other terms and conditions;
- the consent request was vague or unclear;
- you use pre-ticked opt-in boxes or other methods of default consent;
- your organisation was not specifically named;
- people did not tell people about their right to withdraw consent;
- people cannot easily withdraw consent; or
- your purposes or activities have evolved beyond the original consent.



## Conditions for a Valid Consent



### GDPR

Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to the processing of personal data relating to him or her, such as by a written statement, including by electronic means, or an oral statement.

## Consent- Informative

Consent must be specific and informed:

- cover the controller's name, the purposes of the processing and the types of processing activity;
- the name of your organisation and the names of any other controllers who will rely on the consent – consent for categories of third-party controllers will not be specific enough;
- why you want the data (the purposes of the processing);
- what you will do with the data (the processing activities); and
- that people can withdraw their consent at any time. It is good practice to tell them how to withdraw consent.

## Consent- Affirmative Action (OPT IN or OPT OUT?)

Consent should require a positive action to opt in.



## Consent- Who has the Burden of Proof? Withdrawal of Consent

GDPR Art. 7/3

- ✓ The data subject shall have the right to withdraw his or her consent at any time.
- ✓ The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal.
- ✓ Prior to giving consent, the data subject shall be informed thereof.
- ✓ It shall be as easy to withdraw as to give consent.
- ✓ There is no set time limit for consent. How long it lasts will depend on the context. You should review and refresh consent as appropriate.

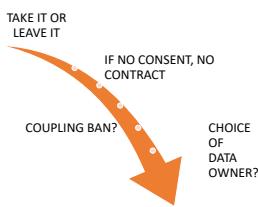
GDPR Art. 7/1

Where processing is based on consent, the controller shall be able to demonstrate that the data subject has consented to processing of his or her personal data.

## Case: Loyalty Cards



## Consent- Coupling Agreement



**freely given:** giving people genuine ongoing choice and control over how you use their data

GDPR

When assessing whether consent is freely given, utmost account shall be taken of whether, *inter alia*, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

## Lawfulness of Data Processing/ CONSENT

### How should we obtain, record and manage consent?

Make your consent request prominent, concise, separate from other terms and conditions, and easy to understand. Include:

- the name of your organisation;
- the name of any third party controllers who will rely on the consent;
- why you want the data;
- what you will do with it; and
- that individuals can withdraw consent at any time.

You must ask people to actively opt in. Don't use pre-ticked boxes, opt-out boxes or other default settings. Wherever possible, give separate ('granular') options to consent to different purposes and different types of processing.

Keep records to evidence consent – who consented, when, how, and what they were told. Make it easy for people to withdraw consent at any time they choose. Consider using preference-management tools.

Keep consents under review and refresh them if anything changes. Build regular consent reviews into your business processes.

## Lawfulness of Data Processing/ CONSENT

- Indication of consent must be unambiguous and involve a clear affirmative action (an opt-in). Pre-ticked opt-in boxes are banned.
- Distinct ('granular') consent options for distinct processing operations are necessary.
- Consent should be separate from other terms and conditions and should not generally be a precondition of signing up to a service.
- The companies shall keep clear records to demonstrate consent.

## Lawfulness of Data Processing/ II) CONTRACT

- Consent not needed if you process someone's personal data:
    - To fulfil your contractual obligations to them OR
    - because they have asked you to do something before entering into a contract (eg provide a quotation). **Example:** An individual shopping around for car insurance requests a quotation (*fiyat teklifi*). The insurer needs to process certain data in order to prepare the quotation.
  - The processing **must be necessary** for the performance of the contract.
  - You should document your decision to rely on this lawful basis and ensure that you can justify your reasoning.
  - It does not apply if you need to process one person's details but the contract is with someone else.
- Bir sözleşmenin kurulması veya ifasıyla doğrudan doğruya ilgili olması kaydıyla, sözleşmenin taraflarına ait kişisel verilerin işlenmesinin gerekliliği

## Lawfulness of Data Processing/ II) CONTRACT

- **Example:** When a data subject makes an online purchase, a controller processes the address of the individual in order to deliver the goods. This is necessary in order to perform the contract.
- However, the profiling of an individual's interests and preferences based on items purchased is NOT necessary for the performance of the contract. Even if this type of targeted advertising is a useful part of your customer relationship and is a necessary part of your business model, it is not necessary to perform the contract itself. **Therefore, for profiling consent is needed !**

## Lawfulness of Data Processing/ II) CONTRACT

You have a lawful basis for processing if:

- you have a contract with the individual and you need to process their personal data to comply with your obligations under the contract.  
!!!! Eg. Employer E shall ask for the personal data (Name, IBAN etc) of the employee F, in order to pay him the salary. For this data processing, consent of F is not needed as the processing is essential for the performance of the employment contract. !!!!
- you have a contract with the individual and you need to process their personal data so that they can comply with specific counter-obligations under the contract (eg you are processing payment details).
- you haven't yet got a contract with the individual, but they have asked you to do something as a first step (eg provide a quote) and you need to process their personal data to do what they ask. This applies even if they don't actually go on to enter into a contract with you, as long as the processing was in the context of a potential contract with that individual.

## Lawfulness of Data Processing/ III) FULFILLMENT of LEGAL OBLIGATION

- The data controller can rely on this lawful basis if you need to process the personal data to comply with another statutory obligation.
- The processing must be necessary.
- You should be able to either identify the specific legal provision or an appropriate source of advice or guidance that clearly sets out your obligation.

Veri sorumlusunun hukuki yükümlülüğünü yerine getirebilmesi için veri işlemenin zorunlu olması.

## Lawfulness of Data Processing/ III) FULFILLMENT of LEGAL OBLIGATION

- Eg. An employer needs to process personal data to comply with its legal obligation to disclose employee salary details to Turkish Social Security Institution (SGK). This data processing is a legal obligation for the employer.
- Eg. A financial institution relies on the legal obligation imposed by the Criminal Code (Ceza Kanunu) to process personal data in order submit a Suspicious Activity Report to the National Crime Agency when it knows or suspects that a person is engaged in, or attempting, money laundering.
- Eg. A court order may require the data controller to process personal data for a particular purpose and this also qualifies as a legal obligation.

## Lawfulness of Data Processing/ IV) VITAL INTERESTS

Eg. An individual is admitted to the A & E (Accident and Emergency) department of a hospital with life-threatening injuries following a serious road accident. The disclosure to the hospital of the individual's medical history is necessary in order to protect his/her vital interests.

vital interests are intended to cover only interests that are essential for someone's life !!!

Filli imkânsızlık nedeniyle rızasını açıklayamayacak durumda bulunan veya rızasına hukuki geçerlilik tanınmayan kişinin kendisinin ya da bir başkasının hayatı veya beden bütünlüğünün korunması için zorunlu olması.

## Lawfulness of Data Processing/ V) PUBLIC TASKS

- You can rely on this lawful basis if you need to process personal data:
  - 'in the exercise of official authority'. This covers public functions and powers that are set out in law; or
  - to perform a specific task in the public interest that is set out in law.
- It is most relevant to public authorities, but it can apply to any organisation that exercises official authority or carries out tasks in the public interest.
- You do not need a specific statutory power to process personal data, but your underlying task, function or power must have a clear basis in law.
- The processing must be necessary. If you could reasonably perform your tasks or exercise your powers in a less intrusive way, this lawful basis does not apply.
- Document your decision to rely on this basis to help you demonstrate compliance if required. You should be able to specify the relevant task, function or power, and identify its statutory or common law basis.

## Lawfulness of Data Processing/ V) PUBLIC TASKS

### Example

A university that wants to process personal data may consider a variety of lawful bases depending on what it wants to do with the data.

Universities are classified as public authorities, so the public task basis is likely to apply to much of their processing, depending on the detail of their constitutions and legal powers. If the processing is separate from their tasks as a public authority, then the university may instead wish to consider whether consent or legitimate interests are appropriate in the particular circumstances. For example, a University might rely on public task for processing personal data for teaching and research purposes; but a mixture of legitimate interests and consent for alumni relations and fundraising purposes.

## Lawfulness of Data Processing/ V) PUBLIC TASKS

### • Who can rely on this basis?

Any organisation who is exercising official authority or carrying out a specific task in the public interest. The focus is on the nature of the function, not the nature of the organisation.

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

*(processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.)*

This can be broken down into a three-part test:

- **Purpose test:** are you pursuing a legitimate interest?
- **Necessity test:** is the processing necessary for that purpose?
- **Balancing test:** do the individual's interests override the legitimate interest?

A wide range of interests may be legitimate interests. They can be your own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

The GDPR specifically mentions **use of client or employee data, marketing, fraud prevention, intra-group transfers, or IT security as potential legitimate interests**, but this is not an exhaustive list. It also says that you have a legitimate interest in disclosing information about possible criminal acts or security threats to the authorities.

İlgili kişinin temel hak ve özgürlüklerine zarar vermemek kaydıyla, veri sorumlusunun meşru menfaatleri için veri işlenmesinin zorunlu olması.

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

### Part 1: Purpose test

You need to assess whether there is a legitimate interest behind the processing.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Why do you want to process the data?</li><li>• What benefit do you expect to get from the processing?</li><li>• Do any third parties benefit from the processing?</li><li>• Are there any wider public benefits to the processing?</li><li>• How important are the benefits that you have identified?</li><li>• What would be the impact if you couldn't go ahead with the processing?</li><li>• Are you complying with any specific data protection rules that apply to your processing (eg profiling requirements, or e-privacy legislation)?</li><li>• Are you complying with other relevant laws?</li><li>• Are you complying with industry guidelines or codes of practice?</li><li>• Are there any other ethical issues with the processing?</li></ul> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

### Part 2: Necessity test

You need to assess whether the processing is necessary for the purpose you have identified.

- Will this processing actually help you achieve your purpose?
- Is the processing proportionate to that purpose?
- Can you achieve the same purpose without the processing?
- Can you achieve the same purpose by processing less data, or by processing the data in another more obvious or less intrusive way?

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

### Part 3: Balancing test

You need to consider the impact on individuals' interests and rights and freedoms and assess whether this overrides your legitimate interests.

#### Nature of the personal data

- Is it special category data or criminal offence data?
- Is it data which people are likely to consider particularly 'private'?
- Are you processing children's data or data relating to other vulnerable people?
- Is the data about people in their personal or professional capacity?

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

The following purposes constitute a legitimate interest:

- fraud prevention;
- ensuring network and information security; or
- indicating possible criminal acts or threats to public security.

Therefore, if you are processing for one of these purposes you may have less work to do to show that the legitimate interests basis applies.

The following activities may indicate a legitimate interest:

- processing employee or client data;
- direct marketing; or
- administrative transfers within a group of companies.

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

#### Example

An insurance company wants to process personal data to spot fraudulent claims on the basis of legitimate interests.

Firstly it considers the purpose test. It is in the company's legitimate business interests to ensure that its customers do not defraud it out of money. However at the same time the company's other customers and the public in general also have a legitimate interest in ensuring that fraud is prevented and detected.

As it has met the purpose test the insurance company can then go onto consider the necessity test and then the balancing test.

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

#### Example

An individual uploads their CV to a jobs board website. A recruitment agency accesses the CV and thinks that the individual may have the skills that two of its clients are looking for and wants to pass the CV to those companies.

It is likely in this situation that the lawful basis for processing for the recruitment agency and their clients is legitimate interests.

The individual has made their CV available on a job board website for the express reason of employers being able to access this data. They have not given specific consent for identified data controllers, but they would clearly expect that recruitment agencies would access the CV and share with their clients, indeed, this is likely to be the individual's intention. As such, the legitimate interest of the recruitment agencies and their clients to fill vacancies would not be overridden by any interests or rights of the individual. In fact, those legitimate interests are likely to align with the interests of the individual in circulating their CV in order to find a job.

## Lawfulness of Data Processing/ VI) OVERRIDING LEGITIMATE INTEREST

Marketing method	Is legitimate interests likely to be appropriate?
Post	✓
'Live' phone calls to TPS/CPTS registered numbers	✗
'Live' phone calls to those who have objected to your calls	✗
'Live' phone calls where there is no TPS/CPTS registration or objection	✓
Automated phone calls	✗
Emails/text messages to individuals – obtained using 'soft opt-in'	✓
Emails/text messages to individuals – without 'soft opt-in'	✗
Emails/text messages to business contacts	✓

## Lawfulness of Data Processing

### VI) OVERRIDING LEGITIMATE INTEREST



## Lawfulness of Data Processing

### GDPR Art. 6:

Processing of personal data is considered lawful if:

- (1) the data subject has given consent;
- (2) it is necessary for the performance of a contract to which the data subject is party;
- (3) it is necessary for compliance with a legal obligation;
- (4) it is necessary to protect the vital interest of the data subject or another natural person;
- (5) it is necessary for the performance of a task carried out in the public interest;
- (6) it is necessary for the purposes of the legitimate interests pursued by the controller or third party.

- **Kişisel verilerin işleme şartları KVKK MADDE 5-**  
(1) Kişi bilgi sahibinin açık rızası olmadıkça işlenemez.  
(2) Aşağıdakilerden birinin birliği hâlinde, ilgili kişinin açık rızası aranmasının kişisel verilerinin işlenmesi mümkünür:  
a) Kanunlarda açıkça öngörülmüş.  
b) Fiziksel imkânsızlık nedeniyle rızasını açıklayamayacak durumda bulunan veya rızasına hukuki geçerlilik tanınmayan kişinin kendisini ya da bir başkasının hayatı veya beden bütünlüğünün korunması için zorunlu olması.  
c) Bir sözleşmenin kurulması veya ifaçılığa doğrudan doğruya ilgili olması kaydıyla, sözleşmenin taraflarına ait kişisel verilerin işlenmesinin gerekliliği.  
d) Veri sorumlusunun hukuki yükümlülüğünü yerine getirebilmesi için zorunlu olması.  
e) İllegel kişinin kendisi tarafından alınıştırılmış olması.  
f) Bir hakkı tesisi, kullanılması veya koruması için veri işlemeyen zorunlu olması.  
g) İllegel kişinin temel hak ve özgürlüklerine zarar vermemek kaydıyla, veri sorumlusunun mesru menfaatleri içineverilen işlenmesinin zorunlu olması.