

A SNAPSHOT OF RECENT DECISIONS OF THE DATA PROTECTION BOARD

The Turkish Data Protection Board (the "**Board**") published certain decisions on its website on 2 March 2021, clarifying implementation of data privacy rules in Turkey to greater extent. In majority of its decisions, the Board once more affirmed previous precedents on unlawful processing and transfer of personal data and highlighted the importance of data minimisation principle where processing of personal data should be adequate and limited to data processing purposes. In addition to those, the following decisions of the Board are notable for implementation of data privacy rules:

Voice Recording of Surveillance Cameras

The Board resolved that the use of surveillance cameras with voice recording feature can only be chosen if the purpose of data processing cannot be reasonably fulfilled by other means, which are less intrusive to fundamental rights and freedom of data subjects (e.g. surveillance without voice recording). Considering this, the Board run a necessity test and concluded that the use of surveillance cameras with voice recording feature is beyond the necessary purposes and legal interest for which data is processed, and therefore breaches the principle of proportionality.

Calling Potential Customers with Marketing Purposes without Legal Grounds

In another decision, the Board reviewed a complaint regarding a phone call received for marketing of hospital check-up services, without the prior consent of the data subject. In this case, the data subject was contacted by the call center of the hospital. Upon review of the service agreement between the call centre and the hospital, the Board concluded that the call centre is acting as (i) the "data processor" as regards the former patients, as the hospital instructed the call centre to use the identity of the hospital when calling former patients of the hospital, and (ii) the "data controller" when contacting potential customers (whose contact data were not provided by the hospital). After specifying the roles of the parties, the Board identified that the claimant data subject was a potential customer and accordingly, the call centre was acting as the data controller pursuant to the terms of the service agreement. Consequently, the Board imposed an administrative fine on the call centre as the phone call was based on neither an explicit consent of the data subject nor a no consent condition provided under the Data Protection Law (e.g. performance of contract, legal interest, etc.).

Transfer of Publicly Available Personal Data by Trade Registries

The Board concluded that processing (including disclosure) of publicly available personal data appearing in trade registry records are nonetheless subject to data privacy rules, despite their publicly available nature. The Board stated that publicly available personal data cannot be processed with purposes other than those for which they are publicly available. Thus, any kind of processing beyond those purposes would be unlawful.

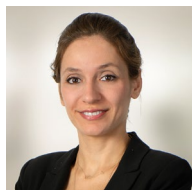
These decisions reveal the implementation of data privacy rules by the regulator and clarify various concerns of data processors around interpretation of restrictions.

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