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***Constitutional Court's Decision on Inspection of Employees' Correspondences on the Corporate E-mail Account***

Turkish Constitutional Court granted a decision (“Decision”) on September 17, 2020 regarding an applicant’s claims on violation of right to request protection of personal data under right to privacy and freedom of communication due to inspection of correspondences on corporate e-mail account and termination of employment contract on the grounds of these correspondences. The Decision was published on the Official Gazette on October 14, 2020. The Constitutional Court accepted the applicant’s claim by stating that the constitutional protection regarding personal data under right to privacy and freedom of communication were not taken into consideration during the proceedings, thus the right to request protection of personal data and freedom of communication of the applicant are violated. One key point that has caused the violation was that the employee in question was not informed beforehand that the employer can inspect the communication in workplace devices when deemed necessary. So this point made by the Constitutional Court actually confirmed the significance of informing employees about the employer’s right for inspection or getting consent for this when needed in case of internal investigation, which is an issue that we have always made our clients aware before starting such internal proceedings in order the safeguard the legitimacy of the actions that might be taken against the employees afterwards.

***Background of the Case***

The applicant (“Applicant”) was working with a team of five people, and following a discussion in the workplace, three members of the team filed a complaint against the Applicant to the management of the firm and stated that the team manager has lost objectivity in his relationship with the Applicant, thus supported the Applicant in each case and left other team members in a difficult situation, that the Applicant was generally rude to the team members and that the necessary environment for healthy execution of the projects was lost.



Consequently, further to the interview with the Applicant, the management of the firm inspected the Applicant's correspondences on the corporate e-mail account. As a result, the firm terminated the Applicant's employment contract. In the termination notification, it was stated that the correspondences on the corporate e-mail account, which is used to ensure the continuity of the business and also known to be controlled at any time by the employer and kept confidential for security reasons at the enterprise network, had been inspected to investigate the claims against the Applicant.

The Applicant stated that the personal correspondences made over his corporate e-mail account were inspected by the employer without his consent, that there was no written or verbal rule at the workplace that employees' corporate e-mail accounts could be inspected.

As a consequence, the Applicant filed a lawsuit against the employer to be reinstated at his job. The court of first instance dismissed the case and the decision was appealed by the Applicant. The 9th Civil Chamber of the Supreme Court approved the decision of the first instance court. Accordingly, the Applicant filed an individual application before the Constitutional Court (2016/13010) on July 15, 2016 with the claim that the right to request protection of personal data and freedom of communication has been violated.

### ***The Constitutional Court's Evaluation***

Constitutional Court stated that the Applicant's e-mail information and correspondences should be considered within the scope of "*information relating to an identified or identifiable natural person*", therefore the access, use and processing of this information should be examined in terms of the right to request protection of personal data under the right to privacy and freedom of communication.

Constitutional Court also noted that in principle, the employer can control the communication instruments made available to the employees within the scope of its management authority in order to ensure the efficient conduct of the business and the control of the information flow, and to establish certain rules regarding the use of communication instruments. At that point



the Constitutional Court adds that unless employees were informed beforehand that the employer can monitor and inspect the communication in workplace devices when deemed necessary, the employees can reasonably expect that there will be no such oversight. The Constitutional Court also emphasized that the management authority of the employer is limited to the conduct of the business in the workplace and ensuring the order and safety of the workplace.

The Constitutional Court consequently stated that within the scope of the positive obligations of the State, the courts should examine to the extent possible whether certain safeguards are provided by the third party who intervenes with the certain right. To that end the courts should observe (i) whether there are legitimate reasons for the inspection of communication instruments made available to the employees and the content of the communication made through these instruments, (ii) whether the processing is transparent and the employer informs the employees in advance of the processing activities, (iii) whether the intervention on the employee's right to request protection of personal data and freedom of communication is related to and efficient for the purpose of investigation, (iv) whether there is another method less intrusive to achieve such purpose, (v) whether the intervention is proportionate and related and limited to the purpose and (vi) whether the balance between the consequences and impact of the inspection of the employee's communication and conflicting interests and rights of the employer is considered.

The Constitutional Court unanimously concluded that the constitutional safeguards regarding the right to request protection of personal data and freedom of communication were not taken into consideration during the proceedings, thus the right to request protection of personal data and freedom of communication of the Applicant were violated. Accordingly, Constitutional Court stated that there is a legal benefit in retrial in order to eliminate the consequences of violation of the right to request protection of personal data and freedom of communication.

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