

**EVALUATION ON THE CONSTITUTIONAL COURT’S ANNULMENT DECISION
DATED 24.07.2019, NUMBERED 2018/73 E. AND 2019/65 K.**

The Constitutional Court (“Court”) has annulled Article 48, paragraph 8 of the Law No. 657 stipulating security investigation and archive research prior to employment in public offices with its decision dated 24.07.2019, numbered 2018/73 E. and 2019/65 K. (“Decision”). The Decision has been published on the Official Gazette dated 29.11.2019. You may kindly find our evaluations on the Decision in this bulletin.

The Court determined that the information obtained through security investigation and archive research prior to employment in public offices is personal data and that the collection, recording and use of information concerning an individual's private, work and social life, including asking questions about their private life by public authorities restricts the right to respect for private life.

The Court’s assessment mainly concerns the authority of the State to intervene in the core area of the individual’s rights and the boundaries to be respected in limiting fundamental rights and freedoms. The Court annulled Article 48, paragraph 8 of the Law No. 657¹ on the ground that the relevant article, which restricts the right to request protection of personal data, – declared void – was not sufficiently clear, understandable nor foreseeable and also breached the essence of the right.

We believe that conducting security investigation and archive research prior to employment in public offices may prevent the effective use of certain other fundamental rights of individuals as well. Indeed, it is likely that individuals who want to affiliate with unions, organizations, affiliations etc. cannot fully exercise their freedom of assembly and freedom of association due to the possibility that this might have a negative impact on their prospective employment in public offices. Consequently a restriction on the essence of the protection of personal data might have a deterring effect on the society. Such consequences would also damage other fundamental rights such as freedom of association and expression. Therefore, we believe that the Court’s decision is fitting.

Kind Regards,

Koyuncuoğlu & Köksal Law Firm

* As the explanations given in our newsletter are prepared pursuant to the legislation in effect in the Republic of Turkey and the disclosures made to the public by the relevant official authorities, in case of uncertainty, we advise you to seek advice and support from us before the final transactions are carried out. Otherwise, our Law Firm cannot be held responsible for the actions to be taken on the basis of the explanations contained herein and the consequences of such actions.

¹ The subject matter of the Decision, which is the relevant provision of the Law no. 657, was adopted by the Law No. 7070, titled “Law on Certain Amendments to Be Made within the Scope of The State of Emergency”. The Constitutional Court annulled Article 60 of the Law No. 7070 and Article 48, paragraph 8 of the Law No. 657 as a consequence.