

8 April 2022

INFORMATION NOTE ON THE CONSTITUTIONAL COURT DECISION RENDERED AS PER THE INDIVIDUAL APPLICATION NUMBERED 2020/20874

In the decision of the Constitutional Court Decision dated February 02, 2022 and numbered 2020/20874 published in the Official Gazette dated April 07, 2022 and numbered 31802 rendered as per the "Ümit Karaduman Application", it was decided that the right to demand the protection of personal data within the scope of the right to respect for private life as well as the freedom of communication have been violated due to the recording of the letters sent to or received by the detained Applicant in the National Judicial Network Information System ("UYAP").

I. SUMMARY OF FACTS

The Applicant was arrested for being a member of an armed terrorist organization and is in detention in the Penitentiary Institution. It was conveyed to the penitentiary institutions across the country through the public prosecutor's offices following the Circular dated October 10, 2016 issued by the General Directorate of Prisons and Detention Houses (the "**Circular**"), that all letters, faxes and petitions must be scanned and recorded in UYAP, with the exception of the letters and faxes in closed envelopes, given by those convicted or detained in penitentiary institutions to the official authorities or to their lawyers for their defense. Penitentiary institutions have accordingly started implementations in accordance with the content of the Circular. The letters sent and received by the Applicant were recorded in UYAP within the scope of the aforementioned Circular.

Applicant applied to the Court of Execution to terminate the practice of recording the letters he sent and received in UYAP and to have the records deleted. In his petition, Applicant emphasized in his petition that there was no legal basis for the permanent recording of the letters he received and sent to the system, and that his requests for the termination of this practice and the deletion of the records were not answered by the Penitentiary Institution, and argued that his right to respect for private life and the presumption of innocence have been violated.

Court of Execution emphasized that as per Article 68/2 of the Law No. 5275 on the Execution of Penalties and Security Measures (the "**Law**"), it is regulated that the letters, faxes and telegrams sent or received by those convicted would be inspected by the letter reading commission, and in the absence of a commission, by the highest chief of the institution. It stated that this practice was not found to be unconstitutional, as the action was taken in accordance with the aforementioned provision in the present case. The decision became final.

In the meantime, with the decision of the Council of State Administrative Case Divisions dated September 14, 2020 and numbered 2020/403, a decision of stay of execution of the aforementioned Circular was rendered, on the grounds that it is not possible to accept that the registration process is unlimited and unconditional, the supervisory authority given within the framework of the Law and the Regulation on the Management of Penal Institutions and the Execution of Penalties and Security Measures (the "**Regulation**") should be regulated within its scope and limits and in a way not to violate the forgoing, the said regulation would result in the recording in the electronic environment of even letters that are completely private and within the scope of personal privacy, without any time and quality limitations, it is regulated that the private correspondence, which may include personal data of those convicted or detained that have nothing to do with the judicial process, to UYAP without any criteria, there is uncertainty on how long they will be kept in the system, whether they will be made

available to third parties for their access and use, whether, how and with which institutions they will be shared by the prison authorities.

II. RELEVANT LEGISLATION

National Legislation: Law No. 6698 on the Protection of Personal Data Art. 1, Art. 3, Art. 5, Art. 6, Art. 28; Criminal Procedure Law No. 5271 Art. 38/A, Circular of the Ministry's Information Processing Department dated November 10, 2011 and numbered 124/1 1-3-5-15, Law Art. 68 , Regulation Art. 122, Art. 123, Law No. 1721 on the Administration of Prisons and Jails Art. 2/E, Circular dated January 19, 2021 issued by the General Directorate of Prisons and Detention Houses 1-2-3.

International Legislation: European Convention on Human Rights Art. 8, Convention on the Protection of Individuals Against Automatic Processing of Personal Data dated January 28, 1981 Art. 2/a, Art. 6, Art. 9, the section about the outside world relations of those convicted or detained (24.1, 24.2, 24.3, 24.4, 24.5) of the Recommendation REC (2006) 2 of the Committee of Ministers of the Council of Europe to Member States on European Prison Rules.

International Case Law: European Court of Human Rights, Leander v. Sweden, App. No: 9248/81, 26/03/1987, § 59 and § 48; Kopp v. Switzerland, App. No: 23224/94, 25.03.1998, § 53; Amann v. Switzerland, App. No: 27798/95, 16.02.2000, § 69; Rotaru v. Romania, App. No: 28341/95, 04.05.2000, §§ 43, 44, 46; S. and Marper v. the United Kingdom, App. No: 30562/04, 30566/04, 04.12.2008, § 67; Silver et al. v. the United Kingdom, App. No: 5947/72...25.03.1983, §§ 85-90 and § 98; Klass et al. v. Germany, App. No: 5029/71, 06.10.1978, §§ 42-55; Campbell v. the United Kingdom, App. No: 13590/88, 25.03.1992, § 34 and § 45; Mehmet Nuri Özen/Turkey, App. No: 15672/08....11.01.2011, § 51 decisions.

III. ASSESSMENT OF THE CONSTITUTIONAL COURT

Referring to its Kemal Karanfil decision (Kemal Karanfil, App. No: 2017/24776, 24.05.2018, § 48), the Constitutional Court stated that, with some exceptions, recording of the correspondence, which provide the Applicant's communication with the outside world, to UYAP after being audited by the institution's administration and opening and reading letters containing personal information and keeping them in the system constitute interference with the applicant's private life and correspondence.

It should be determined whether the limitation complies with the criteria of being foreseen by the law, having a legitimate aim, not being contrary to the requirements of the democratic social order and the principle of proportionality, all stipulated under Article 13 of the Constitution and correspond to the present application. In this context, it should first be examined whether there is a legal basis for the intervention in the present application.

It has been emphasized that the existence of the laws on the restriction of fundamental rights and freedoms in form is not sufficient, and the criterion of legality also requires a material content, and at this point, the essence of the law gains importance. In terms of the present application, it has been stated that the determination of the rules regulating In terms of the present application, it has been mentioned that the entry of information into the relevant system should be conditional on carrying out the legitimate purposes that form the basis of the intervention, and the relevant legal regulations should include clear and detailed provisions on which information can be recorded, which authorities they can be forwarded to, under what conditions such a communication is possible, and the procedure to be followed while forwarding the information to the relevant authorities. It has been emphasized that the regulation regarding the aforementioned system should provide the citizens with the opportunity to make sufficient foresight in terms of the manner and scope of the exercise of the discretionary authority

granted to the competent authorities in collecting, recording and sharing with the relevant authorities or otherwise using the information.

It has been stated that the law or the legislation based on the relevant law should determine the scope of the systematic recording of correspondence as well as the principles regarding the retention of letters, content and private information and personal data included therein. In addition, the relevant legislation should also include clear and detailed rules that will ensure that the addressees have sufficient security against excess of authority and arbitrariness regarding the retention period of the prisoners' correspondence, the access of third parties to these correspondences, the use and destruction of the data contained, and the secrecy of the data.

IV. CONCLUSION

In the present application, it was regulated by the Circular that all faxes and correspondence should be scanned and recorded in UYAP, with the exception of letters and faxes in closed envelopes, given by those convicted or detained to official authorities or to their lawyers for their defense. This arrangement allows the prisoner's correspondence, which is not unsafe, which include personal information, and which is not related to judicial processes, to be kept in UYAP. This acceptance results in diverging from the procedure determined by the legislation for the letters in the physical environment based on whether or not they are unsafe. In addition, since there is no clear regulation on how long the prisoner's correspondence will be kept in the system, under what conditions they will be made available to third parties for access and use, with which authorities they can be shared by the penitentiary institution, and how personal data and privacy will be protected, it has been determined that there is unclarity in terms of the foregoing issues. Accordingly, it was unanimously ruled that the Applicant's right to respect for private life in terms of privacy and requesting the protection of personal data and the right to freedom of communication guaranteed in Articles 20 and 22 of the Constitution, have been violated.

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Should you have any queries on the above, please do not hesitate to contact us.

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Contact

Ece Güner Toprak
Managing Partner
eg@guner.av.tr

Burçak Kurt Biçer
Partner
bkb@guner.av.tr

Can Güner
Managing Associate
cg@guner.av.tr

Ecem Çetinyılmaz
Managing Associate
ec@guner.av.tr

Guner Law Office
Levent Caddesi, Alt Zeren Sokak No.7
Levent 34330, İstanbul
T +90 212 282 4385
F +90 212 282 4305
info@guner.av.tr
www.guner.av.tr