

**Personal Data Protection Board’s Decision No. 2023/1461 dated August 24, 2023, regarding “The recording of video and audio by an educational institution using cameras”**

**Date of Decision** : August 24, 2023

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**Subject Summary** : Recording of video and audio by an educational institution using a camera

In summary, the complaint letters submitted to the institution state that the data controller is a tenant of one of the data subjects, that a meeting took place between them due to a rental dispute, and that in a formal notice subsequently sent by the data controller, it was stated that audio and video recordings of the data subjects were made during the meeting, and in this regard, in the response notice sent by the data subjects to the data controller, it was reminded that the recording of audio and video without the data subjects’ explicit consent constitutes a criminal offense under Article 133 et seq. In the response notice sent by the data controller, it was stated that the collection of audio and video recordings of the relevant individuals without their explicit consent and approval constitutes a criminal act under the provisions of Article 133 et seq. of the Turkish Penal Code (TCK). However, it was noted that the data controller had responded only to one of the relevant individuals and not to the other, and it was requested that the necessary actions be taken.

The Board noted that, “...considering that the data controller is a workplace, the personal data processing activities conducted by the data controller via cameras within the framework of occupational health and safety comply with Article 5(2)(c) of the Personal Data Protection Law No. 6698 (the Law), “The processing of personal data is necessary for the data controller to fulfill its legal obligations” under subparagraph (c) of paragraph (2) of Article 5, and “The processing of personal data is necessary for the legitimate interests of the data controller, provided that it does not harm the fundamental rights and freedoms of the data subject” under subparagraph (f), in this regard, while it is assessed that no action under the Law can be taken regarding the complaint about the recording of the data subject’s image without their explicit consent, as reliance on the other data processing conditions in Article 5 of the Law is not applicable, it has been decided to initiate an investigation regarding the data controller’s failure to address the data subject’s questions and requests concerning the lack of information provided to them, and to assess the recording of audio—given the claims that the camera recording contains both video and audio—in light of the principle that such processing must be “relevant, limited, and proportionate to the purposes for which it is processed.”

Within the scope of the investigation initiated regarding this matter, a defense was requested from the data controller, and in the response provided by the data controller, it was summarized as follows:

- They operate preschool, primary, and secondary education institutions; pursuant to the amendment made in 2017 to Article 11 of the Ministry of National Education’s Regulation on Private Educational Institutions, it has become possible to establish a

security camera system capable of storing video recordings for at least fifteen days, prioritizing school entrances and building doors; for this reason, video and audio recordings are made using security cameras in the schools,

- For this purpose, video and audio recordings are made using cameras in areas of the school open to the general public, and one of these cameras is located in the founder's office; this fact is also known to the relevant parties,
- The real estate used as a school is leased from the relevant parties, and therefore a landlord-tenant relationship exists between them; during a meeting with the landlord, video and audio recordings were made while the rent payment was being made in cash; when asked for a receipt regarding the rent payment, the landlord stated that such a receipt was unnecessary and that the relationship was based on trust;
- Following this statement, the relevant lessor claimed that they had not received the payment made by the plaintiffs in order to demand additional rent payments, and requested another rent payment. In response to this demand, it was communicated to the lessor that the video and audio recordings were in the plaintiffs' possession and constituted evidence,
- It was explained to the landlord that the claim in the notice of demand they sent—that the video and audio recordings were made without permission or notice—was untrue, and that this situation did not constitute the offense under Article 133 of the Turkish Penal Code (TCK). For the offense under Article 133 of the Turkish Penal Code to be established, private conversations between individuals must have been recorded by a person or persons not party to the conversation; in the present case, such a situation does not exist,
- Accordingly, the video and audio recordings were made to prove that the rent paid to the relevant landlord had been received—in response to the claim that the rent had not been paid and the demand for an unearned sum—and as a security measure; it was also communicated that these recordings could not be provided to the relevant landlord due to their evidentiary nature,
- On the other hand, the other relevant party has no legal relationship with them, and therefore, it cannot be claimed that their data was processed,
- Given that they did not have 50 employees at the time of the incident, they have no liability arising from the Law; furthermore, even if they had 50 employees, the creation of a VERBIS record within the timeframe recognized by the Institution was not required due to the incident, meaning they have no obligations under the Law, and the records obtained were not collected in accordance with the Law,

- Since they have no legal liability, they are not obligated to provide the requested information to the complainants; furthermore, since no personal data regarding the other relevant individual was processed, no response was provided regarding the request,
- Consequently, it was stated that the recorded video and audio were intended for the purpose of obtaining evidence, do not violate the Law, and will be used before judicial authorities due to their evidentiary nature.

Following the investigation into the matter, the Personal Data Protection Board issued its Decision No. 2023/1461 dated August 24, 2023;

- In the data controller's response to the Institution, it was stated that video and audio recordings were made for security purposes, citing that such recordings were permitted in areas open to general use at the school in accordance with the provisions of the Ministry of National Education's Regulation on Private Educational Institutions; however, upon reviewing the relevant legislation, it is observed that the locations where video recordings may be made are enumerated, and the installation of cameras in certain specific locations is prohibited. Furthermore, it is noted that the aforementioned provisions pertain solely to video recordings and do not establish a specific provision,
- Video recording obtained via cameras does not constitute a legitimate necessity in all cases; for the processing of personal data through this method to comply with the Law, it must be impossible to achieve the purpose requiring the recording through other reasonable means, and the reason necessitating the recording must indicate a superior interest that takes precedence over individuals' fundamental rights and freedoms,
- The collection of audio recordings in addition to video recordings requires an assessment of whether a legitimate interest exists regarding the processing of personal data, whether conflicting interests are present, and whether the processing is proportionate even if a legitimate interest exists; the data controller operates as an educational institution, its students are preschool, elementary, and secondary school students, all necessary measures for their safety must be carried out with the utmost care, and when considered alongside the need to fulfill occupational health and safety objectives for employees, the collection of video recordings via cameras constitutes a processing activity that is suitable, legitimate, and proportionate for achieving these objectives, in such a situation, there is no requirement to record audio in addition to video, and processing additional data creates a conflict of interest regarding the right to privacy of all data subjects in general and the right to the protection of personal data in particular; on the other hand, while video recording for security reasons is a common practice, the collection of audio recordings under the same justification goes beyond the reasonable expectations of the data subjects,

- As also stated in the Decision No. 2019/78 of the Personal Data Protection Board dated March 25, 2019, pursuant to Article 5(2)(f) of the Law, “while determining the condition that ‘the processing of personal data is necessary for the legitimate interests of the data controller, provided that it does not harm the fundamental rights and freedoms of the data subject,’ there are certain matters that data controllers must evaluate,”
- Among these, when considering the criteria that “the processing of personal data is necessary to achieve the said interest” and “a benefit will be derived from the legitimate interest, which is of a nature that can compete with the data subject’s fundamental rights and freedoms, and it is not possible to achieve this benefit through any other means or method without processing personal data,” while the current practice of recording video via camera aligns with the purpose of ensuring security and is sufficient to achieve this purpose, there is no legitimate interest on the part of the data controller in additionally recording audio, as the conditions of necessity and the impossibility of achieving this benefit through any other means or method without processing personal data no longer apply,
- Even in the scenario where only audio recording is made instead of video recording, if there is no compelling reason to mandate such processing, the continuous recording of communication between individuals would constitute a significant interference with certain fundamental rights and freedoms, including the right to privacy and the protection of a person’s physical and mental well-being, in such a case, the balancing test of conflicting interests must be conducted carefully, and the grounds justifying the processing must not be expanded,
- In the specific case at hand, the processing of audio data for the purpose of using it as evidence to resolve a dispute between the relevant individuals and the data controller, as well as for security purposes, cannot be considered a valid reason justifying the processing of audio data; therefore, even in a situation where only audio is recorded without video, the processing of personal data cannot be deemed to fall within the scope of legitimate interests,
- Since the data controller’s practice of recording audio was found to be inconsistent with the Law, the processing activity in question is in any case unlawful, and therefore there is no need to separately examine whether the obligation to provide information was fulfilled, however, since there is a lawful basis for processing under the Law regarding the collection of video recordings, the question of whether the duty to inform has been fulfilled must also be addressed separately with respect to the lawful processing of personal data,
- Although there is no violation of the Law regarding the collection of video recordings of the relevant individuals without their explicit consent, as stated in the “Guidelines on the Fulfilment of the Duty to Inform,” the duty to inform is an obligation that must be fulfilled independently of both explicit consent and the other conditions for personal

data processing set forth in the Law, Pursuant to subparagraph (a) of the first paragraph of Article 5, titled “Procedures and Principles,” of the “Communication on the Procedures and Principles to Be Followed in Fulfilling the Duty to Inform,” the data controller is required to fulfill the duty to inform, Pursuant to subparagraph (e) of the first paragraph of the same article, the burden of proof regarding the fulfillment of the obligation to provide information rests with the data controller; based on the assessment that the data controller has failed to prove that information was provided to the relevant individuals;

- It was determined that the personal data processing activity carried out through audio recording was conducted without relying on any of the conditions for data processing set forth in Article 5 of the Law; in this regard, the data controller was found to have acted in violation of the first paragraph of Article 12 of the Law, which requires the data controller to take all necessary technical and administrative measures to ensure an appropriate level of security in order to prevent the unlawful processing of personal data, It has been determined that this constitutes a violation of the first paragraph of Article 12 of the Law, and accordingly, a fine of 200,000 TL has been imposed on the data controller pursuant to subparagraph (b) of paragraph (1) of Article 18 of the Law,
- The recording of video footage via cameras was assessed as lawful under the scope of Article 5, Paragraph 2, Subparagraph (c) of the Law, which states that “data processing is necessary for the data controller to fulfill its legal obligations,” and subparagraph (f), which states “the processing of data is necessary for the legitimate interests of the data controller, provided that it does not infringe upon the fundamental rights and freedoms of the data subject,” the data controller’s obligation to provide information remains in effect; however, the data controller failed to prove that this obligation was fulfilled, and for this reason, having acted in violation of the provision set forth in Article 10 of the Law, an administrative fine totaling 230,000 TL, including 30,000 TL pursuant to Article 18(1)(a) of the Law, shall be imposed on the data controller;
- The data controller is instructed to provide the personal data concerning the data subjects that they were unable to access following their requests to the data controller, to destroy the audio data processed in violation of the law, and to inform the Board of the outcome;
- Regarding the allegation that the data controller failed to address the data subjects’ questions and requests, the data controller is reminded that any applications made by the data subjects under the Law must be resolved in an effective, lawful, and fair manner, with reasons provided and within the prescribed timeframe, in accordance with the provisions of Article 13 of the Law and the provisions of Article 6 of the “Communication on the Procedures and Principles for Applications”, in an effective, lawful, and fair manner, with proper justification, and within the prescribed timeframe,