

**THE RIGHT TO PERSONALITY
AND ITS DIFFERENT MANIFESTATIONS
AS THE CORE OF PERSONAL DATA**

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ABSTRACT

This article deals with the right lying at the core of personal data. It is widely accepted in continental European law that data protection serves and supports the individual's right to personality. However, it is debatable to which of the different manifestations of the general right to personality that data protection is related. In this context, the first view proclaimed is that the right lying at the core of personal data is an individual's right to privacy. Nevertheless, this stance especially fails to explain the reason why public information can be considered to be personal data. Therefore, it becomes necessary to explain the right related to data protection with another manifestation of the right to personality. In this context, it is acceptable that the right lying at the core of personal data protection is the "right to informational self-determination," that was recognized in 1983 by the German Constitutional Court, based on the fact that the manifestations of the right to personality are not finite.

ÖZ

Bu makale kişisel veri kavramının özünde yatan hakkın tespiti ile ilgilidir. Kıta Avrupası Hukukunda kişisel verilerin korunmasının bireyin kişilik hakkının korunmasına hizmet ettiği kabul edilmektedir. Ne var ki, söz konusu kavramın genel

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kişilik hakkının çeşitli görünüm türlerinden hangisi ile ilişkili olduğu meselesi tartışmaya açıktır. Bu çerçevede ileri sürülen ilk görüş kişisel verilerin özünde yatan hakkın bireyin mahremiyet hakkı olduğudur. Ancak bu görüş, özellikle, aleni nitelikteki veri türlerinin de kişisel veri olarak kabul edilmesinin nedenini açıklayamamaktadır. Bu nedenle, kişisel verilerin korunması ile ilişkili olan hakkın kişilik hakkının görünüm türlerinden bir başkasıyla açıklanması gerekmektedir. Bu bağlamda, kişisel verilerin özünde yatan hakkın, kişilik hakkının görünümünün sayılabilir olmadığından yola çıkan Alman Anayasa Mahkemesi'nin 1983 yılında geliştirdiği "enformasyonel self-determinasyon hakkı" olduğunun kabul edilmesi mümkündür.

Keywords: *Personal data, data protection, right to personality, privacy, informational self-determination right, Data Protection Directive, Draft Code on Protection of Personal Data.*

Anahtar Kelimeler: *Kişisel veri, veri korunması, kişilik hakkı, mahremiyet, enformasyonel self-determinasyon hakkı, Veri Koruma Direktifi, Kişisel Verilerin Korunması Kanunu Tasarısı.*

INTRODUCTION

Personal data is defined as any information relating to an identified or identifiable person. This information can be about a person's identity, ethnic origin, physical characteristics or health, education and employment situation. Similarly, a person's beliefs and ideas constitute personal data. In this context, personal data protection stands for the legal arrangement of the scope, procedure and enforcement of personal data processing: the collection, recording, storage, disclosure and destruction of personal data.

In today's global world, information has turned into an economic asset. Personal data has become a source of conflicting interests. On one hand, the subjects of such data demand full autonomy on data about themselves, while on the other hand data processors (governments and private businesses) insist on free access to personal data. Maintaining a balance of interests requires identification of the rights lying at the core of personal data. Despite the property rights and intellectual property rights perspectives debated in the Anglo-American legal system, according to the prevailing opinion in continental Europe, personal data is associated with the data subject's right to personality. However, it should be determined to which of the manifestations of the right to personality that personal data is related.

I. The Right to Personality as the Core of Personal Data

In continental Europe, personal data is accepted as a part of the right to personality of the subject of the data.¹ According to this view, data protection

¹ Scott Rempell, *Privacy, Personal Data and Subject Access Rights in the European Data Directive and Implementing UK Statute – Durant v. Financial Services Authority as a Paradigm*

serves to protect the individual's right to privacy, which is one of the many manifestations of the right to personality. This stance is mainly based on the fact that any breach concerning the protection of personal data constitutes an infringement of the right to personality of the subject of the data.² For instance, it is possible to violate someone's right to personality by illegally obtaining and using personal data, in the fields of banking, e-commerce, etc., or by disclosing some private information to the public.³ As a result, the protection of personal data aims to prevent infringement of the right to personality that can cause quantifiable and unquantifiable damage to a person.

II. Personal Data and Related Manifestations of the Right to Personality

In the Turkish legal system, the existence of an independent right to personality has been recognized.⁴ However, in addition to the recognition of a general right to personality in Article 24 of the Turkish Civil Code (TCC) and Article 49 of the Turkish Code of Obligations (CoO), several different manifestations of the right to personality are also addressed in some others acts. For instance, Articles 25 and 26 of the TCC codify the right to one's name.

of Data Protection Nuances and Emerging Dilemmas, 18 FLA. J. INT'L L. 807, 813 (2006); Pamela Samuelson, *Privacy As Intellectual Property?* 52 STANFORD L. REV. 1125, 1142 (2000). On the contrary, in the Anglo-American Legal System, the relationship between personal data, and property and intellectual property rights is being studied as well.

² The historical background of this view can be found in the Nazi Germany. Hence, the protective stance of continental Europe is a result of the misuse of personal data, which was collected by both the State and the private sector in Germany. As a result, this misuse led contemporary Europe to accept informational privacy as a civil right, so that it can be strictly protected. See Samuelson, *supra* note 1, at 1143; Rempell, *supra* note 1, at 814.

³ Stefan Dassler, *DATENSCHUTZ IN DER MODERNEN INFORMATIONSGESELLSCHAFT* [DATA PROTECTION IN THE MODERN INFORMATION SOCIETY] 18 (Wissenschaftlicher Verlag 2007); Eren Ersoy, *Gizlilik, Bireysel Haklar, Kişisel Verilerin Korunması* [Privacy, Personal Rights, Protection of Personal Data], 2, at <http://ab.org.tr/ab06/bildiri/6.doc> (last visited Dec. 19, 2007); M. Gökhan Ali, *Mernis'in Hukuki İncelemesi* [Legal Analysis of Mernis], 1, at <http://www.hukukcu.com/bilimsel/kitaplar/mernis.htm> (last visited Dec. 19, 2007); Cavidan Soykan, *Bireysel Gizlilik ve Kişisel Verilere Erişim Hakkı* [Personal Privacy and the Right to Access to Personal Data], 1, at <http://inet-tr.org.tr/inetconf11/bildiri/38.doc> (last visited Dec. 20, 2007); Esra Tekil Yıldız, *İnternet Üzerinde Kişisel Verilerin Korunması* [Protection of Personal Data on the Internet], PROF. DR. FAHİMAN TEKİL'İN ANISINA ARMAĞAN [IN MEMORY OF PROF.DR.FAHİMAN TEKİL] 779, 779 (Beta Publishing 2003).

⁴ Çiğdem Akbulut, *MANEVİ TAZMİNAT TALEBİNİN HUKUKİ NİTELİĞİ VE ŞARTLARI* [LEGAL NATURE OF AND CONDITIONS FOR THE CLAIM OF NON-PECUNIARY COMPENSATION] 2 (Unpublished master's thesis 1989); Serap Helvacı, *GERÇEK KİŞİLER* [NATURAL PERSONS] 73 (Arıkan Publishing 2006); Jale G. Akipek and Turgut Akintürk, *TÜRK MEDENİ HUKUKU, I. CİLT, BAŞLANGIÇ HÜKÜMLERİ, KİŞİLER HUKUKU* [TURKISH CIVIL LAW, VOL. I, PRELIMINARY PROVISIONS, LAW OF PERSONS] 362 (Beta Publishing 2002).

Additionally, Article 66 of the Law on Intellectual and Artistic Works, which authorizes legal action in case of an infringement of the economic and moral rights of creators of copyrighted works, and Article 47 of the CoO, which discusses the immaterial compensation to be paid in case of bodily harm and death of a person, are examples of some other manifestations of the right to personality.⁵

Accepting a general right to personality as a starting framework, and then codifying specific manifestations of this right, serve to create the best protection of one's personality. In this way, it becomes possible to protect everyone from breaches that are not specifically regulated by law and to overcome the harmful effects of social and technical developments on the right to personality.⁶ However, this does not mean that there are several different rights to personality; there is only one, single right to personality and the different aspects that are regulated by law are just manifestations of this general right to personality.⁷ Accordingly, the general right to personality functions as the basis

⁵ Akbulut, *supra* note 4, at 4; Mustafa Dural, TÜRK MEDENİ HUKUKUNDA GERÇEK KİŞİLER [NATURAL PERSONS IN TURKISH CIVIL LAW] 113 (Istanbul University Publishing 1977); Mustafa Dural and Tufan Ögüz, TÜRK ÖZEL HUKUKU CİLT II KİŞİLER HUKUKU [TURKISH PRIVATE LAW VOL. II LAW OF PERSONS] 92 (Filiz Publishing 2002); Ergun Özsunay, GERÇEK KİŞİLERİN HUKUKİ DURUMU [LEGAL SITUATION OF NATURAL PERSONS] 150 (Istanbul University Publishing 1978); Haluk Tandoğan, *Şahsiyetin Akit Dışı İhlallere Karşı Korunmasının İşleyiş Tarzı ve Basın Yoluyla Olan İhlallere Karşı Özel Hayatın Korunması [The Method of Operation of the Protection of the Personality against Extracontractual Infringements and the Protection of Private Life against Infringements through the Press]*, 20 ANKARA ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ [ANKARA U. L. J.] 1, 13 (1963); Abdülkadir Arpacı, KİŞİLER HUKUKU (GERÇEK KİŞİLER) [LAW OF PERSONS (NATURAL PERSONS)] 106 (Beta Publishing 2000).

⁶ Sibel Özel, ULUSLARARASI ALANDA MEDYA VE İNTERNETTE KİŞİLİK HAKLARININ KORUNMASI [PROTECTION OF THE RIGHTS OF PERSONALITY ON THE INTERNATIONAL LEVEL MEDIA AND THE INTERNET] 26 (Seçkin Publishing 2002); W. Siebert, *Şahsiyet Hakları ile İlgili Meseleler [Issues on the Rights of Personality]* (Bilge Öztan Trans.), 20 ANKARA ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ [ANKARA U. L. J.] 217, 222 (1969); Helvacı, *supra* note 4, at 73. For instance, 100 years ago, the violation of the right to personality via the Internet was not an issue. However, today, this breach is covered by the provisions protecting the general right to personality. Similarly, as long as it can be associated with the general right to personality, any new type of breach that might arise in the future should be covered by the law.

⁷ Dural, *supra* note 5, at 113; Serap Helvacı, TÜRK VE İSVİÇRE HUKUKLARINDA KİŞİLİK HAKKINI KORUYUCU DAVALAR [ACTIONS SAFEGUARDING THE RIGHT OF PERSONALITY IN TURKISH AND SWISS LAWS] 42 (Beta Publishing 2001); M. Kemal Oğuzman, Özer Seliçi and Saibe Oktay-Özdemir, EŞYA HUKUKU [PROPERTY LAW] 116 (Filiz Publishing Co. 2004); Rona Serozan, *Kişilik Hakkının Korunmasıyla İlgili Bazı Düşünceler [Some Opinions on the Protection of the Right of Personality]*, 14 MUKAYESELİ HUKUK ARAŞTIRMALARI DERGİSİ [JOURNAL OF COMPARATIVE LAW STUDIES] 93 (1977); M. Kemal Oğuzman, *İsviçre ve Türkiye'de Medeni Kanun ve Borçlar Kanununda Şahsiyetin Hukuka Aykırı Tecavüze Karşı Korunması ve Özellikle Manevi Tazminat Davası Bakımından Yapılan Değişiklikler [Amendments of the Civil Law and the Law of*

of all its different manifestations and as a general tool to protect personality from any new type of breach.⁸

A. The Right to Privacy as the Core of Personal Data

In continental Europe, it is widely claimed that among the different manifestations of the general right to personality, protection of personal data is related to the individual's right to privacy. In this context, data protection is directed at protecting the privacy – or the private life – of the subjects of the data.⁹ As a matter of fact, the concept of “information privacy” refers to an individual's control over the processing – the acquisition, disclosure, and use – of personal information.¹⁰

The relationship between data protection and privacy protection is portrayed in various national and international data protection regulations. For instance, Article 1 of the “Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on The Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data” (the “Directive”)¹¹ explicitly states its objective to protect the fundamental

Obligations on the Protection of the Personality against Illegal Infringement and Especially Action for Non-Pecuniary Compensation in Switzerland and Turkey], HALUK TANDOĞAN'IN HATIRASINA ARMAĞAN [IN MEMORY OF HALUK TANDOĞAN] 7, 10 (Banka ve Ticaret Hukuku Araştırma Enstitüsü 1990); Özsunay, *supra* note 5, at 97; Akbulut, *supra* note 4, at 14; Aydın Zevkliler, Beşir Acarbey and Emre Gökyayla, MEDENİ HUKUK [CIVIL LAW] 444 (Seçkin Publishin 1999); Arpacı, *supra* note 5, at 108; Hıfzı Veldet Velidedeoğlu, TÜRK MEDENİ HUKUKU: ŞAHSIN HUKUKU [TURKISH CIVIL LAW: LAW OF PERSONS] 97 (İstanbul University Publishing 1956).

⁸ Siebert, *supra* note 6, at 222; Özel, *supra* note 6, at 26.

⁹ Fred H Cate, *PRIVACY IN THE INFORMATION AGE* 42 (Brookings Institution Press 1997). For instance, Bucher argues that information regarding an individual's health or family condition lies in his/her private sphere and any third party disclosure of such data constitutes an intervention with private life. Additionally, due to the possibility of disclosure in the future, even keeping such data constitutes an intervention with private life. See Andreas Bucher, *NATÜRLICHE PERSONEN UND PERSÖNLICHKEITSSCHUTZ* [NATURAL PERSONS AND THE PROTECTION OF PERSONALITY] 135-136 (Helbing and Lichtenhahn Publishing 1986). Similarly, the Swiss Federal Court accepts that information written on the patient files of doctors are a part of the patients' private sphere (BGE 119 II 225), and also, physical defects of the patients constitute private information as well (BGE 109 II 360).

¹⁰ Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 *STAN. L. REV.* 1193, 1205 (1998); Electronic Privacy Information Center, *PRIVACY & HUMAN RIGHTS 2002: AN INTERNATIONAL SURVEY OF PRIVACY RIGHTS AND DEVELOPMENTS* 3 (Electronic Privacy Information 2002); Domingo R. Tan, *Personal Privacy in the Information Age – Comparison of Internet Data Protection Regulations in the United States and the European Union*, 21 *LOY. L. A. INT'L & COMP. L. REV.* 661, 664 (1999).

¹¹ See 2002 OJ (L201) 37-47.

rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.¹² Similarly, Article 1 of the Turkish Draft Code on Protection of Personal Data (“Draft Code”) states that the Draft Code aims to protect the integrity of the individuals’ material and spiritual entity as well as their fundamental rights and freedoms.

The main criticism brought to this stance is that the concepts of privacy protection and data protection are non-synonymous. As a matter of fact, in spite of being related to each other, these two concepts are quite different from one another. For instance, any data which is entirely wrong does not infringe the privacy of an individual. However, the same piece of information constitutes personal data as long as it is about an identified or identifiable person. In fact, this is the reason why Article 12 of the Directive and Article 12 of the Draft Code entitle the subject of every single piece of data to have the right to be informed that data processing is taking place, to have the right to view the data, and the right to request corrections if necessary.¹³

Another criticism would be that it is apparent from some of the data protection regulations, mainly the Directive, that the interests protected by these regulations are not limited to the right to privacy. For instance, according to Article 1 of the Directive, the Directive aims “in particular” to protect the right to privacy. The expression of “in particular” shows that the objective of data protection includes, but is not limited to, the protection of privacy.¹⁴

¹² Article 1 - Object of the Directive

1. In accordance with this Directive, Member States shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data.

2. Member States shall neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded under paragraph 1.

¹³ Article 29 Data Protection Working Party, *Opinion 4/2007 on the Concept of Personal Data*, 7, at http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf (last visited Dec. 31, 2007).

¹⁴ Additionally, in Art. 8 of the Charter of Fundamental Rights of the European Union, “Protection of personal data” is regulated separately from the “Respect for private and family life” (Art. 7). Moreover, the concept of personal data, by definition, distinguishes the data which can lead to the identification of a person, from the anonymous one. In this context, it is not investigated if the information to be claimed personal data is confidential or infringes the data subject’s privacy. See David Lindsay, *Misunderstanding Personal Information: Durant v Financial Services Authority*, 6, available at <http://www.austlii.edu.au/au/journals/PLPR/2004/13.html> (last visited Dec. 18, 2007); Article 29 Data Protection Working Party, *supra* note 13, at 7.

The third and final criticism of this view of the right to privacy is that, according to classical human rights doctrine, everyone is obliged to refrain from infringing on another's privacy. In this context, the protection granted by this right is present as long as personal data is kept secret. In other words, following the public disclosure of any data, that information cannot be protected by a right to personality approach based on that right to privacy.¹⁵ Similarly, any behavior that has taken place in the public domain cannot be deemed to be a secret and cannot therefore be protected within the scope of the right to privacy. However, personal data does not have to be confidential; public information is deemed to be personal data in both the Directive and the Draft Code.¹⁶ This is because the processing of such data may still infringe the right to personality of the owner of the data. For instance, information about activities taking place in the public domain, such as an individual praying at a mosque/church, or participation in the meetings of a political party, may lead to discrimination against that individual in society. Therefore, it is not possible to accept that privacy is the main interest protected by data protection.

As a result, a stance accepting the right to privacy as the core of personal data fails to explain how public information can be personal data. However, it is a fact that publicly-known personal data also constitutes a part of the individual's personality. In this context, it is a necessity to analyze which other manifestations of the right to personality that personal data might be related to.

B. The Right to Informational Self-Determination as the Core of Personal Data

The concept of the right to privacy, which fails to explain the core of personal data, is only one of the manifestations of the general right to personality. However, manifestations of the right to personality are not finite, which means that new manifestations of this right might be recognized. Accordingly, in its Census decision of 1983,¹⁷ with the aim of explaining the core of personal data, the Constitutional Court of Germany has acknowledged a new manifestation of the right to personality, which is called the "right to informational self-determination" (das Recht auf Informationelle Selbstbestimmung).¹⁸

¹⁵ Corien Prins, *When Personal Data, Behavior and Virtual Identities Become a Commodity: Would a Property Rights Approach Matter?*, 3 SCRIPTED 270, 281 (2006).

¹⁶ Lindsay, *supra* note 14, at 6; Article 29 Data Protection Working Party, *supra* note 13, at 7.

¹⁷ 65 BVerfGE 1, 41-52 (1983).

¹⁸ Paul Schwartz, *The Computer in German and American Constitutional Law – Towards an American Right of Informational Self-Determination*, 37 AM. J. COMP. L. 675, 687 (1989); Dirk Burchard, *Verfassungsrechtliche Interessenabwägung im Informationsrecht [Constitutional*

The right to informational self-determination is the authority of the individual to decide when and within what limits information about him/her will be communicated to the others.¹⁹ However, the concept of informational self-determination does not provide the subject of the data with an absolute and unlimited right to control his/her own personal data. On the contrary, this right compels the State to organize data processing in a way that the personal autonomy of the subject of the data will be respected.²⁰ Because, as the Court ruled, despite being personality-based, information is a reflection of social reality and cannot be solely associated with the individual concerned. Therefore, the State should balance the interests of the individual and others (mainly the government and private businesses).²¹

The right to informational self-determination finds its basis in the German Constitution. Interpreting Article 1 of the Constitution regarding the protection of human dignity and Article 2 regarding the individual's right to self-development,²² the Constitutional Court acknowledged that these rights guarantee the individual's capacity to determine the disclosure and use of his/her personal data.²³ In this context, the Court decided that these two articles, which form the basis of the individual's right to personality, also include the right of informational self-determination.²⁴ Hence, as expressly held by the

Weighing of Interests in the Right to Information], 3 KRITV 239, 240 (1999); Virtual Privacy Office, *Informational Self-Determination – What Does that Mean?*, 1, at <http://www.datenschutz.de/privo/recht/grundlagen> (last visited Jun. 30, 2008).

¹⁹ Antoinette Rouvroy and Yves Poulet, *The Right to Informational Self-determination and the Value of Self-Development. Reassessing the Value of Privacy for Democracy*, 3, at http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=Antoinette_rouvroy (last visited Oct. 1, 2008); Bernd R Beier, *Genetic Testing and the Right of Self-Determination: The Experience in the Federal Republic of Germany*, 16 HOFSTRA L. REV. 600, 609 (1988).

²⁰ Schwartz, *supra* note 18, at 690. Accordingly, the State should regulate when and how personal data can be processed and also the conditions that the data subject may object data processing.

²¹ Rouvroy and Poulet, *supra* note 19, at 12.

²² Art. 1/1: "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority."

Art. 2/1: "Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law."

²³ Rouvroy and Poulet, *supra* note 19, at 3; Schwartz, *supra* note 18, at 686; Beier, *supra* note 19, at 605.

²⁴ Virtual Privacy Office, *supra* note 18, at 1; Schwartz, *supra* note 18, at 686-687. Hence, in its Schacht-Briefe decision of 1954, the German Constitutional Court acknowledged that the general right to personality arises from the individual's rights to human dignity and self-development. See Klaus Martin, *DAS ALLGEMEINE PERSÖNLICHKEITSRECHT IN SEINER HISTORISCHEN ENTWICKLUNG [THE GENERAL RIGHT TO PERSONALITY IN ITS HISTORICAL DEVELOPMENT]* 228-231 (Kovac 2007);

German Constitutional Court, an individual who is unaware of the processing of his/her personal data (or even the identity of the processor and his/her aims), lacks the opportunity to make free decisions, and develop one's self.²⁵ Therefore, as a rule, each and every subject of data must consent to the processing of his/her data and be able to demand correction or destruction of this data as appropriate.

Relating personal data to the right of informational self-determination is appropriate for the results. Hence, this right, as recognized by the German Constitutional Court covers all kinds of data, without distinguishing between private or public information. In other words, by accepting the right of informational self-determination right as the core of data protection, it becomes possible to protect any kind of data, either private or not.

Accepting the right to informational self-determination as the core of personal data is also appropriate in terms of balancing the conflicting interests that underlie data protection. Hence, in accordance with the needs of the contemporary world, in addition to protecting the individuals' right to personality, data protection regulations are also directed at the protection of the free-flow of personal data.²⁶ A stance based on the right to informational self-

Philipp Wüllrich, *DAS PERSÖNLICHKEITSRECHT DES EINZELNEN IM INTERNET* [THE RIGHT TO PERSONALITY OF THE INDIVIDUAL ON THE INTERNET] 101 (Jenaer Wissenschaftliche Verlagsgesellschaft 2006); Zahit İmre, *Şahsiyet Hakkının Korunmasına İlişkin Genel Esaslar, Özellikle İsim Hakkı ve İsim Hakkının Korunması*, [General Principles on the Protection of the Right of Personality, Especially Right on Name and the Protection of Right on Name], DR. A. RECAI SEÇKİN'E ARMAĞAN [IN MEMORY OF DR. A. RECAI SEÇKİN] 797, 798 (Ankara University Faculty of Law Publishing 1974); Dural, *supra* note 5, at 116.

²⁵ Marc Langheinrich, *Privacy in Pervasive Computing*, 12, available at <http://www.vs.inf.ethz.ch/publ/slides/2008-05-22-langheinrich-pvc08.pdf> (last visited June 30, 2008); Schwartz, *supra* note 18, at 690; Rouvroy and Poulet, *supra* note 19, at 11.

²⁶ See *supra* note 10. Data protection is a matter of the contemporary information society. While triggering globalization, technological developments have also accelerated the movement to the information society. In this context, as information became equivalent to power, globalization removed the boundaries in the world and the necessity of information free-flow arose. Moreover, information, which is the raw material of the information economy, gained increasing financial value. See Seth P Hobby, *The EU Data Protection Directive- Implementing a Worldwide Data Protection Regime and How the US Position Has Progressed*, 1 INT'L L. AND MGMT REV. 155, 155 (2005); İbrahim Armağan, *BİLGİ VE TOPLUM I* [INFORMATION AND SOCIETY I] 7-8 (Otağ 1974); Paul Sholtz, *Transaction Costs and the Social Costs of Online Privacy*, 6 FIRST MONDAY 5, 17 (2001); Lucas Bergkamp, *EU Data Protection Policy – The Privacy Fallacy: Adverse Effects of Europe's Data Protection Policy in an Information-Driven Economy*, 18 COMPUTER LAW AND SECURITY REPORT 31, 31 (2002); Shubhankar Dam, *Remedying a Technological Challenge: Individual Privacy and Market Efficiency; Issues and Perspectives on the Law Relating to Data Protection*, 15 ALB. L. J. SCI. & TECH 338, 340 (2005); Jeffrey H Matsuura, *A MANAGER'S GUIDE TO THE LAW AND ECONOMICS OF DATA NETWORKS* 71 (Artech

determination, protects both the individual's personality and also the free flow of data, which has gained commercial value in today's global world.²⁷ After all, rather than being an absolute and unlimited right of the subject of the data, the right of informational self-determination obliges the State to regulate the limits of data processing and safeguard the free-flow of personal data within these boundaries. In other words, by legitimizing data processing within designated limits, the State should also look after the interests of data processors. Thus, the aims of data protection can be achieved through a stance accepting the right to informational self-determination right as the core of data protection.

IV. CONCLUSION

In today's information society, information has considerable commercial value. In a free-market economy, businesses collect and use personal data for improving their marketing strategies and even sell these data for marketing purposes to third parties who do not collect their own data. As a result, businesses increase their profit margins and acquire direct financial benefit from the data they sell. At this point, the debate about the lying right at the core of personal data arises.

The prevailing doctrine in continental Europe is that personal data is a part of the right to personality for the subject of the personal data. However, this view is on acceptable legal grounds only if associated with the right of informational self-determination. Otherwise, the free-flow of personal data and the balance between the interests of the subjects of the data and processors of the data cannot be maintained. In this context, the only concern is that this right, which is a relatively new manifestation of the right to personality, lies outside the traditional classification of the right to personality and is not widely studied. In order to overcome this challenge, doctrine and case law have a very important role to further develop this concept within the scope of disputes that may arise.

BIBLIOGRAPHY

Akbulut, Çiğdem, *Manevi Tazminat Talebinin Hukuki Niteliği Ve Şartları* [Legal Nature of and Conditions for the Claim of Non-Pecuniary Compensation] (Unpublished master's thesis 1989).

House 2000); Prins, *supra* note 15, at 273; Paul Schwartz, *Property, Privacy, and Personal Data*, 117 HARV. L. REV. 2055, 2057 (2004).

²⁷ Virtual Privacy Office, *supra* note 18, at 1.

- Akipek, Jale G., and Turgut Akıntürk, *Türk Medeni Hukuku, I. Cilt, Başlangıç Hükümleri, Kişiler Hukuku* [Turkish Civil Law, Vol. I, Preliminary Provisions, Law of Persons] 362 (Beta Publishing 2002).
- Ali, M. Gökhan, *Mernis'in Hukuki İncelemesi* [Legal Analysis of Mernis], 1, available at <http://www.hukukcu.com/bilimsel/kitaplar/mernis.htm>.
- Armağan, İbrahim, *BILGI VE TOPLUM I* [INFORMATION AND SOCIETY I](Otağ 1974).
- Arpacı, Abdülkadir, *Kişiler Hukuku (Gerçek Kişiler)* [Law Of Persons (Natural Persons)](Beta Publishing 2000).
- Article 29 Data Protection Working Party, *Opinion 4/2007 on the Concept of Personal Data*, 7, available at http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf.
- Beier, Bernd R., *Genetic Testing and the Right of Self-Determination: The Experience in the Federal Republic of Germany*, 16 HOFSTRA LAW REVIEW 600 (1988).
- Bergkamp, Lucas, *EU Data Protection Policy – The Privacy Fallacy: Adverse Effects of Europe's Data Protection Policy in an Information-Driven Economy*, 18 COMPUTER LAW AND SECURITY REPORT 31 (2002).
- Bucher, Andreas, *NATÜRLICHE PERSONEN UND PERSÖNLICHKEITSSCHUTZ* [NATURAL PERSONS AND THE PROTECTION OF PERSONALITY] (Helbing and Lichtenhahn Publishing 1986).
- Burchard, Dirk *Verfassungsrechtliche Interessenabwägung im Informationsrecht* [Constitutional Weighing of Interests in the Right to Information], 3 KRITV 239, 240 (1999).
- Cate, Fred H., *PRIVACY IN THE INFORMATION AGE* 42 (Brookings Institution Press 1997).
- Dam, Shubhankar, *Remedying a Technological Challenge: Individual Privacy and Market Efficiency; Issues and Perspectives on the Law Relating to Data Protection*, 15 ALBANY LAW JOURNAL OF SCIENCE & TECHNOLOGY 338 (2005).

- Dassler, Stefan, DATENSCHUTZ IN DER MODERNEN INFORMATIONS-GESELLSCHAFT [DATA PROTECTION IN THE MODERN INFORMATION SOCIETY](Wissenschaftlicher Verlag 2007).
- Dural, Mustafa, TÜRK MEDENİ HUKUKUNDA GERÇEK KİŞİLER [NATURAL PERSONS IN TURKISH CIVIL LAW] (Istanbul University Publishing 1977).
- Dural, Mustafa, and Tufan Ögüz, TÜRK ÖZEL HUKUKU CİLT II KİŞİLER HUKUKU [TURKISH PRIVATE LAW, VOL. II, LAW OF PERSONS](Filiz Publishing 2002).
- Electronic Privacy Information Center, PRIVACY & HUMAN RIGHTS 2002: AN INTERNATIONAL SURVEY OF PRIVACY RIGHTS AND DEVELOPMENTS (Electronic Privacy Information 2002).
- Ersoy, Eren, *Gizlilik, Bireysel Haklar, Kişisel Verilerin Korunması [Privacy, Personal Rights, Protection of Personal Data]*, 2, available at <http://ab.org.tr/ab06/bildiri/6.doc>.
- Helvacı, Serap, TÜRK VE İSVİÇRE HUKUKLARINDA KİŞİLİK HAKKINI KORUYUCU DAVALAR [ACTIONS SAFEGUARDING THE RIGHT OF PERSONALITY IN TURKISH AND SWISS LAWS] (Beta Publishing 2001).
- Helvacı, Serap, GERÇEK KİŞİLER [NATURAL PERSONS] 73 (Arıkan Publishing 2006).
- Hobby, Seth P., *The EU Data Protection Directive- Implementing a Worldwide Data Protection Regime and How the US Position Has Progressed*, 1 INTERNATIONAL LAW AND MANAGEMENT REVIEW 155 (2005).
- İmre, Zahit, *Şahsiyet Hakkının Korunmasına İlişkin Genel Esaslar, Özellikle İsim Hakkı ve İsim Hakkının Korunması, [General Principles on the Protection of the Right of Personality, Especially Right on Name and the Protection of Right on Name]*, DR. A. RECAI SEÇKİN'E ARMAĞAN [IN MEMORY OF DR. A. RECAI SEÇKİN](Ankara University Faculty of Law Publishing 1974).
- Kang, Jerry, *Information Privacy in Cyberspace Transactions*, 50 STANFORD LAW REVIEW 1193 (1998).
- Langheinrich, Marc, *Privacy in Pervasive Computing*, available at <http://www.vs.inf.ethz.ch/publ/slides/2008-05-22-langheinrich-pvc08.pdf>.

Lindsay, David, *Misunderstanding Personal Information: Durant v Financial Services Authority*, 6, available at <http://www.austlii.edu.au/au/journals/PLPR/2004/13.html>.

Martin, Klaus, DAS ALLGEMEINE PERSÖNLICHKEITSRECHT IN SEINER HISTORISCHEN ENTWICKLUNG [THE GENERAL RIGHT TO PERSONALITY IN ITS HISTORICAL DEVELOPMENT] (Kovac 2007).

Matsuura, Jeffrey H., A MANAGER'S GUIDE TO THE LAW AND ECONOMICS OF DATA NETWORKS 71 (Artech House 2000).

Oğuzman, M. Kemal, Özer Seliçi and Saibe Oktay-Özdemir, EŞYA HUKUKU [PROPERTY LAW](Filiz Publishing Co. 2004).

Oğuzman, M. Kemal, *İsviçre ve Türkiye'de Medeni Kanun ve Borçlar Kanununda Şahsiyetin Hukuka Aykırı Tecavüze Karşı Korunması ve Özellikle Manevi Tazminat Davası Bakımından Yapılan Değişiklikler [Amendments of the Civil Law and the Law of Obligations on the Protection of the Personality against Illegal Infringement and Especially Action for Non-Pecuniary Compensation in Switzerland and Turkey]*, HALUK TANDOĞAN'IN HATIRASINA ARMAĞAN [IN MEMORY OF HALUK TANDOĞAN] 7, 10 (Banka ve Ticaret Hukuku Araştırma Enstitüsü 1990)

Özel, Sibel, ULUSLARARASI ALANDA MEDYA VE İNTERNETTE KİŞİLİK HAKLARININ KORUNMASI [PROTECTION OF THE RIGHTS OF PERSONALITY ON THE INTERNATIONAL LEVEL MEDIA AND THE INTERNET](Seçkin Publishing 2002).

Özsunay, Ergun, GERÇEK KİŞİLERİN HUKUKİ DURUMU [LEGAL SITUATION OF NATURAL PERSONS] (Istanbul University Publishing 1978).

Prins, Corien, *When Personal Data, Behavior and Virtual Identities Become a Commodity: Would a Property Rights Approach Matter?* 3 SCRIPTED 270 (2006).

Rempell, Scott, *Privacy, Personal Data and Subject Access Rights in the European Data Directive and Implementing UK Statute – Durant v. Financial Services Authority as a Paradigm of Data Protection Nuances and Emerging Dilemmas*, 18 FLORIDA JOURNAL OF INTERNATIONAL LAW 807 (2006).

Samuelson, Pamela, *Privacy As Intellectual Property?* 52 STANFORD LAW REVIEW 1125 (2000).

- Schwartz, Paul, *Property, Privacy, and Personal Data*, 117 HARVARD LAW REVIEW 2055 (2004).
- Serozan, Rona, *Kişilik Hakkının Korunmasıyla İlgili Bazı Düşünceler [Some Opinions on the Protection of the Right of Personality]*, 14 MUKAYESELİ HUKUK ARAŞTIRMALARI DERGİSİ [JOURNAL OF COMPARATIVE LAW STUDIES] 93 (1977).
- Siebert, W. *Şahsiyet Hakları ile İlgili Meseleler [Issues on the Rights of Personality]* (Bilge Öztan Trans.), 20 ANKARA ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ [ANKARA U. L. J.] 217 (1969).
- Soykan, Cavidan, *Bireysel Gizlilik ve Kişisel Verilere Erişim Hakkı [Personal Privacy and the Right to Access to Personal Data]*, at <http://inet-tr.org.tr/inetconf11/bildiri/38.doc>.
- Tan, Domingo R., *Personal Privacy in the Information Age – Comparison of Internet Data Protection Regulations in the United States and the European Union*, 21 LOYOLA OF LOS ANGELES INTERNATIONAL & COMPARATIVE LAW REVIEW 661 (1999).
- Tandoğan, Haluk, *Şahsiyetin Akit Dışı İhlallere Karşı Korunmasının İşleyiş Tarzı ve Basın Yoluyla Olan İhlallere Karşı Özel Hayatın Korunması [The Method of Operation of the Protection of the Personality against Extracontractual Infringements and the Protection of Private Life against Infringements through the Press]*, 20 ANKARA ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ [ANKARA U.L.J.] 1 (1963).
- Rouvroy, Antonienette, and Yves Poulet, *The Right to Informational Self-determination and the Value of Self-Development. Reassessing the Value of Privacy for Democracy*, 3, at http://works.bepress.com/cgi/viewcontent.cgi?article=1006&context=antoinette_rouvroy.
- Schwartz, Paul, *The Computer in German and American Constitutional Law – Towards an American Right of Informational Self-Determination*, 37 AMERICAN JOURNAL OF COMPARATIVE LAW 675 (1989).
- Sholtz, Paul, *Transaction Costs and the Social Costs of Online Privacy*, 6 FIRST MONDAY 5 (2001).
- Velidedeoğlu, Hıfzı Veldet, *TÜRK MEDENİ HUKUKU: ŞAHSIN HUKUKU [TURKISH CIVIL LAW: LAW OF PERSONS]* (İstanbul University Publishing 1956).

Virtual Privacy Office, *Informational Self-Determination – What Does that Mean?*, 1, at <http://www.datenschutz.de/privo/recht/grundlagen>.

Wüllrich, Phillip, *DAS PERSÖNLICHKEITSRECHT DES EINZELNEN IM INTERNET [THE RIGHT TO PERSONALITY OF THE INDIVIDUAL ON THE INTERNET]*(Jenaer Wissenschaftliche Verlagsgesellschaft 2006).

Yıldız, Esra Tekil, *İnternet Üzerinde Kişisel Verilerin Korunması [Protection of Personal Data on the Internet]*, PROF. DR. FAHİMAN TEKİL’İN ANISINA ARMAĞAN [IN MEMORY OF PROF.DR.FAHİMAN TEKİL] 779 (Beta Publishing 2003).

Zevkliler, Aydın, Beşir Acarbey and Emre Gökyayla, *MEDENİ HUKUK [CIVIL LAW]* (Seçkin Publishing 1999).