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Research Article

The Privacy Right of Legal Person Taxpayer

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ABSTRACT

Since tax authorities have very wide powers within the scope of legislation regarding tax inspections, tax privacy for a legal person is as important as for a natural person. It is a fact that legal persons and natural persons are not protected equally in respect of personal data protection. Since a legal person has to comply with extensive public disclosure, limited protection for a legal person is understandable. However, it could not be possible to claim that a legal person is out of the application of personal data protection law. This study is aimed to underline the importance of the protection of the privacy right of legal person taxpayers despite the public disclosure. However, legal disclosure of banking secrecy for the exchange of tax information is out of the scope of this study. Examining the decisions of the Turkish Constitutional Court and the European Court of Human Rights, we try to determine in which subject and from what perspective the privacy right of legal person taxpayer is protected. Contrary to the belief that a legal person taxpayer has no sensitive information like the natural taxpayer, specifically, the protection of commercial secrets is very important and vital for them. Also, in many decisions rendered by the Turkish Constitutional Court and the European Court of Human Rights, it is admitted that a legal person has a right to privacy.

Keywords: Legal person taxpayer, privacy right, Turkish Constitutional Court, European Court of Human Rights, information, natural taxpayer, public disclosure, commercial secret

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1. Introduction

The privacy rights of legal person taxpayers have received less attention than natural person taxpayer rights. This is partly acceptable because the right to privacy is often associated with individuals and concerns are less pronounced in the case of legal person taxpayers. Despite the relative lack of importance regarding the legal person's right to privacy, it is clear that privacy and trade secrets for legal person taxpayers remain important. In particular, in the international information exchange for multinational businesses to combat tax evasion and tax avoidance, the disclosure of a trade secret also brings to mind privacy concerns such as competing effectively in the market. The focus of this study is to examine whether the privacy of the legal person taxpayer is protected under the European Court of Human Rights¹ ("ECtHR") and the Turkish Constitutional Court by examining the decisions rendered by these Courts. Since the personal data of all the taxpayers are stored in the warehouse of the National Revenue Office, the potential risk of abuse of the storage should be discussed. Then, the protection of personal data has been dealt with by the ECtHR under Article 8 of the European Convention of Human Rights ("ECHR") in several cases; the ECtHR's decisions should be examined. Also, the Turkish Constitutional Court has ruled that the term "everyone" is used in relation to personal data in the text of paragraph 3 of Article 20 of the Constitution² and decided that a legal person is also the subject of the right to personal data protection guaranteed under the Article 20 of the Constitution.

2. Tax Data and Risk of Abuse

The right to privacy is an indispensable right for all taxpayers because a tax authority frequently has information which is pertaining to one's private life. Furthermore, in taxation, there is a wide area where the right to privacy, family, home, and correspondence have interfered. The fact that a tax authority is entitled to require the applicant to produce a list of his private expenditure, subject to the risk of a tax assessment measure, constitutes an interference with his private life (Wöhler, 2018, p. 210)³. As stated by Cockfield, "the use of huge amounts of data can have an actual and potential impact on the right to confidentiality and privacy of the taxpayer in case that the taxpayer's personal and business information may be used to construct a detailed profile of an individual's identity, including her religious beliefs, political alliances, and personal behavior" (Debelva & Mosquera 2017, p. 364). Other examples of personal information about taxpayers that will need to be protected are, for instance, the taxpayer's address, identity number, civil status, and biometric information. Therefore, the tax office has a piece of very sensitive information about taxpayers, and the protection of the confidentiality of this information becomes indispensable for taxpayers.

While the collection of personal data of taxpayers by the tax administration is detailed, the absence of regulation regarding personal data is a dilemma. With globalization, the use of information technologies by public institutions has become a necessity. Since the modernization of the tax administration and projects⁴ related to the effective delivery of the taxation service *Data*

1 According to Article 8 of the European Convention on Human Rights: "1. Everyone has the right to respect for his private and family life, his home, and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

2 Article 20/3 of the Turkish Constitution "Everyone, owner of the personal data has a right to request the protection of personal data".

3 X. v. Belgium, (Application no. 9804/827), 01.12.1987.

4 It was developed to establish a system for which named data warehouse.

Warehouse Project (VERIA)⁵ received by the Turkish Revenue Office (“GIB”) from internal and external sources being developed, combating the tax evasion by processing data requires less effort. The declaration and notification information of taxpayers and information received from third parties (public and private sector institutions) about taxpayers and non-payers are stored in said warehouse (veri ambarı).

Increasing the efficiency and productivity in tax inspections, within the intranet structure, the data warehouse is opened for use of the audit staff of the GIB. In compliance with legislation, all data of the taxpayer would be obtained from other public institutions. It has created a very rich and advanced data warehouse that it stores. These data are IOP data, processed with data mining techniques in its warehouse.

The information there is compared with the taxpayers’ declarations. and risk analyses are made. Tax reviews are being done now also based on this risk analysis. The “*risk management system*” that the tax administration uses effectively, collects data from different sources in a data warehouse.

Based on taxpayer profile by processing the larger amount of data, the tax administration can decide which taxpayer would be audited. This automatic profiling of taxpayers could ultimately lead to the automation of decisions which might have negative consequences on both natural and legal person tax payer’s right to privacy. Also, through the data they collect from taxpayers and other sources, the government not only has taxpayers’ tax status but also has many personal data such as their habits, relatives, and preferences. For tax exemptions, the administrator may have information about the taxpayer’s racial or ethnic origins or personal expenses (Kalyon, 2021, s.109). These exemptions may even include information about religious beliefs. Examples include situations where governments impose “*church taxes*”⁶ or where donations to religious or charitable organizations are subject to tax deductions (Scarcella, 2019, p. 11).

Donations and aids that are accepted as discounts are regulated by subparagraph 4 of paragraph 1 of Article 89 of the Turkish Income Tax Law (“GVK”) and subparagraph (c) of paragraph 1 of Article 11 of the Turkish Corporate Tax Law (“KVK”) and Article 89/4 of the KVK. According to the Article, the portion of “*donations and aids made against receipt,*” which does not exceed a certain amount, can be deducted from the tax base. So that donations and aids made within the scope of the relevant Article to be deducted from the tax base, the name of the association to which donations are made by the taxpayer must be conveyed to the tax administration. In this way, tax authorities will also be aware of which associations and foundations the taxpayers are making donations to, requesting deductions from the income reported in their income tax return.

5 Automation projects in the Turkish Revenue Administration (On request or through continuous information, the information collected by the company is uploaded to the data warehouse system which is stored and kept confidential.).

6 Wasmuth v. Germany, (Application no. 12884/03), 17.02.2011, In this decision, the ECtHR decided on the church tax applied to the taxpayer. The applicant filed a lawsuit on the grounds that the mandatory declaration made to his employer that he did not pay taxes to the church violated the freedom of religion and conscience and the right to protection of personal data was violated. In this case, the ECtHR decided that the statement “*the applicant does not need to pay church tax*” does not violate articles 9 of the ECHR and articles 8 of the ECHR, which regulate the freedom of religion and conscience. According to the Court, there was an interference with the freedom of religion and conscience and the protection of private life, but the interference was proportionate to its purpose. It is an informational letter written to inform the applicant about not paying faith tax to churches or religious groups authorized to collect taxes. Here, in our opinion, the ECtHR has accepted that a person’s religious belief is collected for the purpose of information and has decided that articles 8 and 9 of the ECHR have not been violated.

Similarly, in the 5th, 6th, 7th, 10th, and 11th subparagraphs of the 89th Article of the GVK and the (ç), (d), (e), and (f) subparagraphs of the 1st paragraph of the 10th Article of the KVK, donations, and aids, all of which can be deducted from the tax base, are prescribed. When we examine the aforementioned items, the donations and aids that are subject to discount are made to support education, health, religious education, and similar activities. In our opinion, donations to a foundation or association should undoubtedly be characterized as sensitive personal data that reflects the person's political thought,⁷ philosophy, values, and beliefs. At this point, there is no doubt that the processing of people's religious, philosophical thoughts and beliefs by tax authorities for taxation purposes is now within the scope of the protection of personal data (Kalyon, 2021, s. 121).

In the recent pending case of the ECtHR, the Court examines the applicable safeguards about the personal data stored in the database of the Taxpayers Information Service.⁸ This case would be the first decision directly rendered by the ECtHR about the tax data warehouse. For this reason, the final decision of the Court should be followed prudently. Even the court has not rendered its final decision, it should be underlined that the Court request to be informed by the Government about the safeguards against abuse of the tax data warehouse. In our estimation, the Court will carefully examine the safeguards that should be taken by the Government even if it is related to the tax data warehouse (which is estimated under the sovereignty of the State by the precedents of the ECtHR). Also, by said request, the Court affirms the obligation to take measures by the Government to prevent the abuse of tax data.

3. Personal Data Protection Right of the Legal Person Taxpayer

3.1. Personal Data Protection under Turkish Law

As a matter of fact, the right to the protection of personal data is regulated under Article 20 of the Turkish Constitution,⁹ which includes regulations regarding the privacy of private life.

7 Also, tax authorities of other States collect the personal data of the taxpayer and there is a risk of abuse. For example, in the USA, Richard Nixon is heard in his White House tapes: "Are we going after their tax returns? I ... you know what I mean? There's a lot of gold in them thar hills." Nixon is accused of abusing the IRS "the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law." <https://iapp.org/news/a/what-tax-privacy-can-teach-us-about-todays-data-privacy-debates-in-the-us/>

8 Casarini v. Italy, (Application no. 25578/11), 1.03.2021, "Government are requested to describe the applicable safeguards, controls and guarantees against abuse. In particular, they are requested to specify, with reference to the situation at the relevant time and at present:

- (a) the data which is collected in the database;
- (b) the length of the data retention in the database;
- (c) the bodies or officials having access to the database;
- (d) the purposes for which the data stored in the database can be used;
- (e) who and how can authorise searches in the database;
- (f) the bodies or officials reviewing compliance with domestic law.

The Government are requested to inform the Court whether the Italian Revenue Police put in place, both at the relevant time and at present:

- (a) sufficient security measures for access to the tax registry;
- (b) an automated monitoring system which could effectively identify irregular access;
- (c) an effective tracking system for access and searches in the database and systematic controls on the work stations of its agents."

9 Legal person's right to fundamental right is also protected under the Finland Constitution. "Section 15 -Protection of property The property of everyone is protected." (<https://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>); In France, it is claimed that legal entities can make reference to the article 4 of the Declaration of the Rights of Man and of the Citizen in 1789 "Liberty consists of doing anything which does not harm others: thus, the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights. These borders can be determined only by the law."

The right to protection of personal data is also regulated as tax privacy under Turkish Procedural Law.¹⁰

The Turkish Constitutional Court considers personal data protection as a special form of the right to privacy¹¹. Already existing in the Constitution, the right to the protection of personal data has been concretely regulated by the KVKK. It should be noted that KVKK only regulates natural persons.¹² However, “*protection of personal data*” as a fundamental right regulated in Article 20 of the Turkish Constitution protects both natural and legal persons.

The current decision of the Turkish Constitutional Court,¹³ which declared that legal entities benefit from the right to protection of personal data included in Article 20 of the Turkish Constitution, stated that it is not possible to transfer even the data of legal entities disclosed to the public or in public registers without its consent.

In our opinion, said decision that personal data disclosed to the public or in the registries should not be deemed as “*consent to the transfer of data*” is a criterion that should be applied to both natural and legal persons. In many countries, like Turkey, a legal person is accepted to have a right to privacy just as a natural person.¹⁴

Privacy is a word; it refers to the secrets that have been evaluated about private life. In private, it does not seem to be visible separately from privacy. Although laws do not recognize a private life, it means that life in private life, general life in private life, having potential in personal life, health, economic, financial, criminal status, and records cover their own potential in their own life. For this reason, in the privacy of personal information, all information that has an interest is a part of it.

In summary, tax administration can collect and store all kinds of data, and said data can be preserved, changed, rearranged, classified, and subjected to advanced analysis processes. Concerning only disclosure, the only limit to the taxpayer is tax privacy. And the right to information is indispensable for the taxpayer. It is not possible to protect taxpayers; even they do not know the information stored by the tax administration. Detailed regulation is required for taxpayers since constitutional compliance is essential for all taxpayers.

10 First, to determine the scope of tax privacy, it is necessary to determine who the “*taxpayer*” and “*persons related to the taxpayer*” represent. In article 8 of the Turkish Tax Procedural Law (“VUK”), “*the taxpayer is the natural or legal person who has a tax debt to him according to the tax laws.*”. In the doctrine, there are also opinions that argue that commercial secrets such as manufacturing and business secrets belonging to businesses that do not belong to real people will not be considered within the scope of personal data and that only trade secrets belonging to a natural person are personal data, on the grounds that KVKK only covers information related to a natural person. In our opinion, as we will examine in detail, the protection of personal data of legal person taxpayers, all data related to the business of natural and legal person taxpayers, whether they are trade secrets or not, are also within the scope of personal data protection as per the first sentence of the last paragraph of Article 20 of the Constitution. At the same time, access by the administration to certain trade secrets and professional information should also be denied due to economic freedom and intellectual property rights of individuals, unless there is an overriding public interest and the information in question is not indispensable for taxation.

11 Turkish Constitutional Court E.2013/122, K. 2014/74 and t. 9.4.2014, “*The right to the protection of personal data means the protection of human dignity and as a particular form of the right to freely develop his personality*”.

12 Turkish Personal Data Protection Law only protects data belonging to real persons, but “*data controller*” and “*data processor*” can be both natural and legal persons. Data transfers realized within the body of a legal entity holding the title of data controller cannot be considered as transfers to a third party. The exchange of data between employees or different units operating within the legal entity cannot be considered as a transfer to a third party in this sense. Contrary to data sharing between different units within a legal entity, data transfer between different legal entities within the same group of companies (company group) will fall within the scope of application of Article 8.

13 Turkish Constitutional Court, E. 2013/84, K. 2014/183 and 4.12.2014.

14 see further information, Constitution of Austrian, Croatian, Czech, Finnish, German, Spanish, and Swiss.

Foreseeable regulation in the processing of personal data is very important for both natural and legal persons. For example, the guarantees such as how long the personal data will be kept and when it will be destroyed should not be vague and subjective. Both natural and legal persons whose personal data are processed should know how long their data could be kept. If the data processing procedures are not regulated in an objective and foreseeable manner, both Articles 2 and 90 of the Turkish Constitution will be violated.

Excessive collection of information about the taxpayer should be prevented, and appropriate data should be collected. Based on broad authority, it should not collect information for deterrent purposes, and in case of the processing of the data, the possible violations should be able to be foreseen and are determined in advance by the taxpayer protective regulations.¹⁵

Tax privacy is also regulated under Article 5 of the Turkish Tax Procedural Law (“VUK”). In cases where the interest of the taxpayer and the public interest conflict, some restrictions may be imposed on tax privacy. Under Article 5 of the VUK, the exceptions to tax privacy are listed. When we evaluate the tax privacy exceptions, in our opinion, the exceptions such as the declaration of the tax base, taxes, and tax penalties by the tax administration are a disproportionate intervention to the right to privacy and the protection of personal data. At the same time, income and corporate tax bases are the taxpayer’s personal data of financial nature, and the data is made public without the consent of the taxpayer. The administration has not disclosed the superior interest of the public in the disclosure of tax bases and penalties, which are the personal data of the taxpayer. Likewise, it is against the presumption of innocence of the taxpayer that those who issue “*false and misleading documents*” are reported to professional organizations and union chambers. In our opinion, it is unlawful to put the taxpayer under suspicion with an administrative decision without a court decision and to damage his commercial reputation.

3.2. Personal Data Protection Under ECHR

The ECHR is applicable when it comes to taxpayers’ rights and concretely right to privacy and all regulations should be in line with Article 8 of the ECHR and the precedents of the ECtHR. It is true that the ECHR does not directly regulate data protection; however, the right to data protection is considered as one aspect of the right to respect private life which is guaranteed by Article 8 of the ECHR. Therefore, almost every situation in relation to personal data can be qualified as a protected right under Article 8 of the ECHR.

Some terms used in Article 8 of the ECHR may be less important in relation to legal persons, while other terms may be more relevant. For example, it is very difficult to determine what “*private and family life*” means in relation to a legal person and whether it has any meaning in this context (Cavelti & Hongler 2018, p. 316). According to the ECtHR, private life cannot be limited to the inner world of the individual and includes the right to establish and develop relations with other people and the outside world.¹⁶ Therefore, it may be controversial whether a legal entity’s private and family life is protected. However, the commercial assets of the legal entities, their commercial relations, or the information regarding their personalities during their activities can be considered within the scope of personal data. The issue of the subject matter of the right to

15 In our opinion, legal person taxpayers directly benefit from the Constitution when a right is violated, but rather than waiting for a right to be violated and benefiting from the legal regulations, only one goal is aimed in the study; and it is the regulation of the collection, recording, storage, and transfer of all personal data of all taxpayers in accordance with the law on the protection of personal data.

16 Niemietz v. Germany, (Application no. 13710/88), 16.12.1992.

personal data protection was clarified by the ECtHR. The ECtHR has examined the allegations of the legal person applicants regarding the violation of its privacy data rights. Civil guarantees can apply and have indeed been applied by the ECtHR to disputes arising from acts of public authorities. This is proof that the ECHR is relevant to protecting legal person taxpayers' rights.

Such information, for example, company capital, founders, shareholders, head office address, board members, and the terms of office specified in the Articles of association, legal representative, and resolutions of the board of directors, is deemed as publicly available information. Although commercial in nature and the legitimate interest of the owner, explicit information is not protected since this is publicly known information (Ekmekçi Çalıcıoğlu ve Ateşgaoğlu 2019, s. 1778). Legally or publicly disclosed information may be considered outside the scope of personal data protection. However, in our opinion, a legal person may have some unknown addresses (e.g., manufacturing or commercial planning address, warehouse address, etc.) that are within the scope of personal data protection.

The issue of providing personal protection for legal persons has been dealt with by the ECtHR in its decisions. It has been clarified in the Bernh Larsern Holding case that the legal person could be the applicant. The ECtHR examines the allegations of the applicant, not in the sub-category of "right to private life" in the ECHR 8/1 but the sub-category of "right to respect for housing" and the "right to respect for communications" have been gracefully affirmed.¹⁷ When examining the decision in terms of the criterion of necessity in a democratic society, the ECtHR considers that national authorities had a certain degree of discretion in the light of the importance of the interest to be protected and the gravity of the interference. In addition, it has been stated by the Court that there is a wider discretion for a legal person compared to a natural person. When examining whether the recording of all irrelevant data relating to the tax inspection was proportionate to the legitimate aim, the Court noted that necessary and appropriate measures had been taken by the tax administration against abuse. Consequently, the ECtHR held that there was no violation of Article 8 of the ECHR. In a recent decision, the ECtHR disappointed the taxpayers.¹⁸ Namely, it is stated that publishing the applicant's personal data such as addresses and unpaid tax amounts on the internet does not violate Article 8 of the ECHR. We cannot agree with this decision and the proportionality between the applicant and the State is not balanced, also publishing the personal data via intranet would violate the "right to be forgotten." Besides, publishing the applicant's ad-

17 Bernh Larsen Holding AS and Others v. Norway, (Application no. 24117/08,) 08.07.2013, par 105-106 "The Court further reiterates that in certain previous cases concerning complaints under Article 8 related to the search of business premises and the search and seizure of electronic data, the Court found an interference with "the right to respect for home" (*ibid.*, § 71) and "correspondence" (*ibid.*, § 71, and *Wieser and Bicos Beteiligungen GmbH*, cited above, § 45). On the other hand, it did not find it necessary to examine whether there had also been an interference with the right to respect for "private life" (*ibid.*). Turning to the particular circumstances of the present case, the Court observes that during a meeting between representatives of the tax authorities and the first applicant company, B.L.H., on its premises on 9 March 2004, the former ordered the latter, pursuant to section 4-10 (1) (b) of the Tax Assessment Act, to provide access to and enable the tax auditors to take a copy of all data on a server used by all three applicant companies. Both B.L.H. and I.O.R., respectively the first and third applicant companies, rented space on the server, which was owned by Kver, the second applicant company. All three companies' offices were in the same building. Although the disputed measure was not equivalent to a seizure imposed in criminal proceedings or enforceable on pain of criminal sanctions (see paragraph 43 above), the applicant companies were nonetheless under a legal obligation to comply with the order to enable such access. The imposition of that obligation on the applicant companies constituted an interference with their "home" and undoubtedly concerned their "correspondence" and material that could properly be regarded as such for the purposes of Article 8. In the absence of any argument to the contrary, the Court has found no basis for differentiating between the applicant companies in this respect"

18 L.B. v. Hungary, (Application no. 36345/16), 31.05.2021.

dresses would cause a grave consequence (i.e., burglary) as stated in the previous decision of the ECtHR.¹⁹ Even in this decision, the applicant is a natural person, it is important to observe the approach of the ECtHR about the public shaming legislation.

Enshrined in Article 8 of the ECHR, whether it is internal foreign correspondence or commercial correspondence, is also relevant to data privacy (Ehrke-Rabel, 2018, p. 81). Therefore, the right to privacy for a legal person and the correspondence of its taxpayers is accepted. However, it's reasonable to argue that it might seem less sensitive from a privacy perspective in general, such correspondence, for example, a doctor and his client, or between two newlyweds (Schabas, 2015, p. 400).

These disclosure requirements for businesses are unlimited. In particular, in accordance with the obligation to inform the public, a business is required to disclose all necessary information, especially, in a tax audit, a legal entity taxpayer should clearly present information or all receipts, but in our opinion, this public disclosure obligation does not mean being deprived of privacy rights. Right to privacy is important for the publication of information, and it is accepted that confidential commercial information is protected under Article 8 of the ECHR.²⁰ It also relates to the question of what the taxpayer must disclose to the authorities. Public disclosure of the tax information should meet three conditions stated in Article 8/2 of the ECHR²¹: legality (legal base and foreseeable), legitimate aim, necessary in a democratic society. Also, in some cases, the ECtHR requires procedural safeguards such as judicial review besides the said three conditions.²²

In the aforementioned Casarini decision, it is expected that the ECtHR will clarify tax data is deemed as "data" under Article 8 of the ECHR and the obligations of the State to protect the tax data as well as personal data.

19 Alkaya v. Turkey, (Applicant no. 42811/06), 9.10.2012.

20 Bernh Larsen Holding AS and Others v. Norway, (Application no. 24117/08,) 08.07.2013, par 129 "*The main issue in the instant case relates to the fact that by taking a backup copy containing all the existing documents on the server, the tax authorities had obtained the means of accessing great quantities of data which did not contain information of significance for tax assessment purposes and which thus fell outside the remit of section 4-10 (1). That included private documents and correspondence of employees and other persons working for the companies, and confidential commercial information about the companies themselves and other companies; in other words, documents that affected the rights and interests of individuals and companies that were protected by Article 8 of the Convention.*"

21 Article 8 of the Convention– Right to respect for private and family life "*There shall be no interference by a public authority with the exercise of this right except such as it is in accordance with the law and is necessary for a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of the rights and freedoms of others.*"

22 Norwegian tax authorities broke into a taxpayer's (legal entity) business and searched and copied all the digital data available on a server. In the aforementioned case, private correspondence and other documents belonging to the employees were seized by the tax authorities. However, the ECtHR did not qualify the seizure of non-tax-related personal data as a violation of personal data, that because it provides effective and sufficient guarantees to the taxpayer by the member state. In reaching this decision, the ECtHR considered the following: in the case at issue, the use of the shared computer network alleged to have taken place was the applicant's own choice; the task of tax authorities to parse and identify documents in the common computer network has become very difficult.

Accordingly, it will be necessary to evaluate each event separately; In this decision, it was not accepted by the ECtHR that the tax administration should bear a great burden due to the preference of the taxpayer. According to the ECtHR, a fair balance has been struck between ensuring efficiency in examining the information provided for tax inspection and the applicant companies' right to privacy.

4. Conclusion

When the decisions of the Turkish Constitutional Court and the European Court of Human Rights are examined, it is seen that Article 8 of the European Convention of Human Rights and Article 20 of the Turkish Constitution regarding the right to protection of personal data can be applied to all taxpayers. However, we see in the decisions that it was decided that the right to protect personal data could be restricted on the grounds of the economic welfare or national security of the state.

The use of data must be lawful as well as the legality of data collection; the data should be used in accordance with the purpose for which it was collected. Special protection measures should be introduced in the processing of taxpayers' private data such as religious beliefs, opinions, and convictions. We suggest that access to the taxpayer's sensitive data should be made by the administration only by certain persons and with special passwords, and this data should be used if it is very necessary and indispensable information to reveal the true nature of the taxable event and base. The confidentiality of taxpayer information has always been a cornerstone of tax systems. Also, legal person taxpayers have the right to expect their personal information processed by tax authorities to remain confidential. The taxpayer who trusts the tax system will comply more with its obligations.

Comprehensive policies and procedures regarding tax confidentiality should be reviewed regularly. Moreover, the fact that the administration is responsible for the implementation of the privacy policy should not be overlooked. Security screening should be done for people who will have access to confidential information. Training explaining their responsibilities regarding tax affairs should be given regularly by the GİB. Documents containing confidential information (whether paper, paper, or electronic) must be destroyed upon use.

Consequently, legal person taxpayers are required to expect that their financial information will not be intentionally or accidentally improperly disclosed. The Tax and Customs Administration should take appropriate measures to prevent the misuse, loss, unauthorized access, unintended disclosure, and alteration of data by unauthorized persons. Although there are no direct regulations in the constitutions regarding taxpayer rights and the exchange of taxpayer's information, general constitutional provisions and the ECHR constitute the basic basis of taxpayer rights.

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References

- Cavelti, L., & Hongler, P. (2019). The right to privacy: scope and boundaries of interference. In F. Başaran Yavaşlar & J. Hey (Eds.) *Tax Transparency* (pp. 301-318). (Annual Congress Zurich, 2018), IBFD Amsterdam.
- Dahlberg, M. (2019). *Taxpayers' rights protection during exchange of information*. (Master's Thesis). Uppsala University, Sweden.
- Debelva, F., & Mosquera, I. (2017). Privacy and confidentiality in exchange of information procedures: some uncertainties, many issues, but few solutions. *INTERTAX*, 45(5), Kluwer Law International BV, The Netherlands, 362-381.
- Ehrke-Rabel, E. (2018). Third parties as supplementary sources of tax transparency. In F. Başaran Yavaşlar & J. Hey (Eds.), *Tax Transparency* (pp. 65-94). EATLP.
- Ehrke-Rabel, T., & Schwarzenbacher. (2019). Chapter 16 Austria. In F. Başaran Yavaşlar & J. Hey (Eds.), *Tax Transparency* (pp. 371-400). (Annual Congress Zurich, 2018), IBFD Amsterdam.

- Ekmekçi Çalıcıoğlu, E., & Ateşagaoglu, E. (2019). Protection of tax payer's commercial data within the scope of turkish tax law. *Social Science Studies Journal*, 5(32),1775-1788.
- Kalyon, A. (2020). Güncel avrupa insan hakları mahkemesi kararları ışığında vergi incelemesi ve aramalarında mükellefin özel hayatına müdahaleye karşı sağlanan usuli güvenceler, *Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi*, 15(193), 1359-1381.
- Kalyon, A. (2021). *Türk vergi hukukunda kişisel verilerin korunması*. Ankara: Seçkin Yayıncılık.
- Kaye, T. A. (2019). Chapter 43 United States. In F. Başaran Yavaşlar & J. Hey (Eds.), *Tax Transparency* (pp. 1081-1110). (Annual Congress Zurich, 2018), IBFD Amsterdam.
- Scarcella, L. (2019). Tax compliance and privacy rights in profiling and automated decision making, *Internet Policy Review*, 8(4), 1-19.
- Schabas. A.W. (2015). *The European Convention on human rights: a commentary*.Oxford, Oxford University Press.
- Wöhler, V. (2018). *Data protection and Taxpayers' Rights: Challenges Created by Automatic Exchange of Information*, European and International Tax law and Policy Series, IBFD Amsterdam.