



The Impact of Timing: Applications of Misdemeanors in terms of the Amendments of Turkish Data Protection Law

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Introduction

The Law on the Amendment of the Code of Criminal Procedure and Certain Laws (“**Amendment Law**”), which includes amendments to the “Law No. 6698 on the Protection of Personal Data” (“**Law**” or “**Law No. 6698**”), was published in the Official Gazette of March 2, 2024 and number 32487. Articles 33, 34, 35 and 36 of the Amendment Law amended the Articles 6, 9 and 18 of Law No. 6698, respectively, and added a new provisional article to the Law.

The amendments entered into force on June 1, 2024 and the first paragraph of Article 9 of the Law, which regulates the procedures and principles regarding the transfer of personal data abroad, continued to be applied until September 1, 2024 along with the amended version of the article.

Such situation has raised questions in the context of the application of the Law in terms of time, as there are differences in terms of the time of the occurrence of the misdemeanor acts, the date of the complaint made to the Personal Data Protection Authority (“**DPA**” or “**Authority**”) and the time of the decision of the Personal Data Protection Board (“**Board**”). On December 19, 2024, the Authority published an informatory note titled “Implementation of Misdemeanors in Terms of Time within the Scope of the Amendment to the Law No. 6698 on the Protection of Personal Data dated March 2, 2024” (“**Informatory Note**”) in order to eliminate the uncertainties in practice in terms of the application of the Law in terms of time.

1. Changes Introduced by the Amendment Law

With Article 33 of the Amendment Law dated March 2, 2024, amendments were made to Article 6 of Law No. 6698, titled "Conditions for Processing Special Categories of Personal Data". Additionally, Article 34 of the Amendment Law introduced changes to Article 9 of Law No. 6698, titled "Transfer of Personal Data Abroad," while Article 35 amended Article 18, titled "Misdemeanors." Furthermore, Article 36 of the Amendment Law added a provisional article to Law No. 6698.

2. When Did the Amendments Enter into Force?

The amendments came into force on June 1, 2024. Although the provisions relating to the processing of special categories of personal data and the transfer of personal data abroad was effective as of this date, it is provided that some of the previous provisions relating to the transfer of personal data abroad remained in force until September 1, 2024.

2.1. Types of Acts and Offenses Definitions

Different concepts and types are used to define offences: Instantaneous offences and continuous offences. Offences in which the act and the violation resulting from this act do not continue over time are defined as instantaneous offences. The main characteristic of these offences is that the violation is not continuous. On the other hand, a continuous offence is an offence in which the harmful or dangerous situation continues uninterruptedly due to the continuity of the act that constitutes the offence and the continuity of the perpetrator's behavior.

Similar to the crimes referred as instantaneous crimes in criminal law, if there is an act that requires the application of administrative sanctions, it will be defined as an instantaneous misdemeanor, and the misdemeanor will be considered to have occurred as the result occurs at the time the action is committed. In continuous misdemeanors, the date of the misdemeanor will be accepted as the date when the act is completed.

2.2. Sources to be Used in the Determining the Right Law in Terms of Time

In its informatory note, the DPA, while making an assessment regarding the application of the Law in terms of time, firstly drew attention to the first paragraph of Article 5 of the Law No. 5326 on Misdemeanors. According to this article, the provisions of the Turkish Criminal Code No. 5237 regarding the application in terms of time also apply to misdemeanors. With this statement, the DPA emphasized that the principles of criminal law should be taken into account in the interpretation of the Law on Misdemeanors.

The basic principle of the application of criminal law norms in terms of time is the application of the law in force at the time of the offence. In instantaneous crimes, the law in force at the time the crime is committed; in continuous crimes, the law in force at the time the result has ceased shall be applied, regardless of whether it is in favor or against the perpetrator.

As an exception to this practice, it is stated in Article 7 of the Turkish Criminal Code that if the provisions of the law in force at the time the crime was committed and the provisions of the laws that entered into force later are different, the law in favor of the perpetrator will be applied and executed. The principle of application of the favorable provision stipulates that if an act that was considered a crime in accordance with the legal norms of the time it was committed is decriminalized by a regulation that entered into force later, or if the regulation that entered into force later is in favor of the perpetrator compared to the regulation that existed at the time the

crime was committed, the later norm shall be applied to the acts that were committed before. As mentioned above, pursuant to the Law on Misdemeanors, this provision shall also be applied in matters related to misdemeanors.

To determine the administrative sanction to be applied to an act, it is necessary to determine the time when the act was committed correctly. In the second paragraph of Article 5 of the Law on Misdemeanors, it is regulated that the misdemeanor shall be deemed to have been committed when the perpetrator commits an act of execution or omission. Article 15 of the Law on Misdemeanors stipulates that in misdemeanors that can be committed with continuous acts, the act shall be considered as a single act until the administrative sanction decision is made. The concept of misdemeanor that can be committed with continuous acts is rooted in the concept of continuous offence.

3. Conclusion

In the light of the amendments, the following table can be used to illustrate which law applies to which act.

Time of the Act	The Time of the Complaint	Type of Misdemeanor	Applying Law
Committed and completed before the amendment	Filed before or after the amendment	Instantaneous and continuous crimes	Favorable Law
Started before the amendment and continues	Filed before the amendment	Continuous crimes	1. If the act was ceased before the amendment: Favorable Law 2. If act was ceased after the amendment or if it is still continuing: New Law
Started before the amendment and continues	Filed after the amendment	Continuous crimes	If the act was ceased after the amendment: New Law
Committed and completed after the amendment	-	-	New Law

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