

## The Constitutional Court has decided that Tracking Working Hours with the Fingerprint Registration System Violates the Right to Request the Protection of Personal Data

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Application filed in the Constitutional Court ("**Court**") decision published in Official Gazette dated 19 April 2022 and numbered 31814, is regarding the allegation that the right to request the protection of personal data within the scope of the right to respect for private life has been violated due to tracking of working hours with fingerprint registration system.

In the present case;

- The applicant ("**Applicant**") works as public officer at mayorship of Söke ("**Institution**"). The Applicant's fingerprint was registered by the Institution upon the tracking of working hours with the fingerprint system at the workplace. The Applicant objected to the registration of the fingerprint and the tracking of working hours with the fingerprint system and demanded the removal of the implementation. The applicant emphasized that fingerprints enable individuals to be identified physically, and that it is accepted as personal data under Personal Data Protection Law numbered 6698 ("**Law**"), it remains within the scope of privacy, and this right is protected in the Constitution and international conventions.
- Upon the refusal of the Institution, the applicant filed a lawsuit at Aydın 1st Administrative Court ("**Local Court**") for the annulment of the administrative action. The Institution stated that its employees and the applicant have obligation to comply with working hours and that a camera and fingerprint recorder are installed in order to monitor the entry and exit of the personnel.
- The Local Court accepted the case and decided to cancel the administrative action. In the rationale of the decision, it was emphasized that the personnel's fingerprint scanning system and control of working hours should be evaluated within the framework of the processing of personal data within the scope of the right to respect for private life. It has been stated that the Code on Public Officials numbered 657 includes regulations for determining the working hours of public officers, but there is no detailed legal regulation on the control of working hours.
- Against this decision, an appeal was made by the Institution. Institution's attorney emphasized that the fingerprint system used by many institutions serves the purpose of monitoring the personnel's compliance with the working hours and does not violate the right to respect for private life.
- İzmir Regional Administrative Court, 2<sup>nd</sup> Administrative Litigation Department accepted the appeal and decided to dismissal of the case. In the rationale of the decision, it is stated that the use of technological systems by the administrations to carry out public services efficiently is in accordance with the public interest. Thereupon, the applicant made an individual application and brought the matter to the Court.
- The Court (i) found the claim that the right to request the protection of personal data within the scope of the right to respect for private life has been violated acceptable, (ii) determined that the right to demand the protection of personal data under the right to respect for private life, which is assured in article 20 of the Turkish Constitution has been violated, and (iii) decided to convey the decision to the Local Court for a retrial in order to eliminate the consequences of the violation of the right to request the protection of personal data.

You can access the full text of the Court decision with application number 2018/11988 published in Official Gazette dated 19 April 2022 and numbered 31814, at [this link](#). (Only available in Turkish)

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