Approach towards the right to be forgotten under Turkish law in comparison with EU and US laws: a need for a reform?

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Abstract

This study firstly analyses the general approaches of EU and US laws to the right to be forgotten. Then, basing on the right to be forgotten, a variety of dimensions from comparative law, court practice, doctrinal views and different legal sub-branches are considered from the aspect of Turkish law. Although there is no specific provision on the right to be forgotten in Turkish law, the right has been subject to doctrinal discussions from different perspectives. It is also referred to in court judgments, specifically when an individual wishes to erase certain news, data, etc. from the digital and/or non-digital archive so they can make a fresh start to a new life. Granting that person the right to be forgotten is in terms of protecting personality rights and privacy while acknowledging that these interests may compete with rights to press freedom and freedom of expression. After scrutinising the doctrinal view and court judgments, this study concludes that considering Turkish law, certain provisions should be enacted on the right to be forgotten to ensure uniform interpretation and clarify the definition and conditions of application.

Keywords: *right to be forgotten; right to erasure; protection of personal data; freedom of expression and press; freedom of protection of personality rights and reputation.*

JEL Classification: K10, K33, K36, K38

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1. Introduction

As the digital revolution renders the world smaller and dramatically facilitates data collection, the law is also trying to keep up with the speed of change and meet emerging needs. Protection of personal data is one field that has seen significant efforts, with discussions on many topics, such as the scope of legal protection, determination of outstanding values, and the role of time regarding legal protection.[3] Various jurisdictions have introduced rules to protect personal data in an effort for the law to keep up with technological developments. Nevertheless,

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[3] For the ethics of right to be forgotten see Angela Guimaraes Perira, Luica Vesnic-Alujevic, Alessia Ghezzi. "The Ethics of Forgetting and Remembering in the Digital World through the Eye of the Media" in *The Ethics of Memory in a Digital Age* ed. By Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic (Hampshire:Palgrave Macmillan, 2014), 9-28.

many problems concerning personal data protection have arisen. One prominent example is the right to be forgotten.[4]

The right to be forgotten becomes critical when people who have had negative or disturbing experiences want to make a fresh start, erase the traces of the past and have hope for their future.[5] By means of the right to be forgotten, the data subject may ask for their personal information to be erased, destroyed or anonymised. For example, if a news report about the bankruptcy of a business person is still circulating on the internet, this may damage his commercial reputation when he wants to re-start. Another example is that a public official who has been cleared of bribery may request the removal of news reports on the allegations because they harm his personal reputation. In such contexts, do people have the right to request the erasure of information about themselves? Does an individual have the right to ask for being forgotten? Can values like press freedom or freedom of expression challenge this right?

This study firstly addresses the right to be forgotten from the perspectives of EU and US Laws which are claimed to be as the two mainstream approaches after indicating some general remarks on the right to be forgotten. Secondly, it analyses Turkish law's approach with regard to the right to be forgotten in comparison with EU and US laws. Then, Turkish law is deeply analysed considering several issues, such as whether the legislation includes a clear legal arrangement on the right to be forgotten, the legal nature of the right itself, various perspectives from other relevant fields of law, scientific interpretations of the right, supreme court judgments regarding the issue, and the fundamental rights and freedoms challenging the right to be forgotten. Finally, the conditions for enjoying the right to be forgotten are discussed while recommending new content for a potential legal arrangement. It is concluded that the right to be forgotten should be accepted in legal provisions for a coherent definition and certain conditions.

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[4] For the history of right to be forgotten see Yuriko Haga, "Right to be Forgotten: A New Privacy Right in the Era of Internet*"* in New Technology, Big Data and the Law, edited by Mark Fenwick, Nikolaus Forgo, (Springer, 2017), 100.

[5] Bert-Jaap Koops, *Forgetting Footprints, Shunning Shadows. A Critical Analysis of the "Right to Be Forgotten in Big Data Practice, (*Tilburg Law School Research Paper, 2011), 8; Norberto Nuno Gomes de Andrade, *"*Re-Proposing the Right to be Forgotten" In *The Ethics of Memory in a Digital Age* ed. By Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic , (Hampshire: Palgrave Macmillan, 2014), 65; Cecile de Terwange, "The Right to be Forgotten and Informational Autonomy in the Digital Environment" In *The Ethics of Memory in a Digital Age* ed. By Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic , (Hampshire: Palgrave Macmillan, 2014), 83; Giovanni Sartor, "The Right to be Forgotten: Balancing Interests in the Flux of Time"*, International Journal of Law and Information Technology,* (2016): 76.

2. General remarks on the right to be forgotten

There is no consensus on the dimensions of the right to be forgotten.[6] For example, within the doctrine, some suggest there are three dimensions.[7] The first refers to the right of the individual to ask for their personal data to be erased after a certain period.[8] This is based on the fact that the individual may request such an erasure including data also disclosed on the internet.[9] The second dimension is based on starting with a clean slate while the third focuses on addressing only up-to-date information. The last two dimensions are rather similar in that they are based on the idea that individuals may change and develop. Therefore, there should be no permanent connection with past information that may threaten such a development.[10] We also approach the right to be forgotten according to these dimensions.

Others explain the right to be forgotten in relation to the media's effects on private life.[11] These can take two forms. First, the right to privacy may be violated by disclosing data concerning an individual's private life via the media in defiance of their personality rights. Secondly, a political or social case whose social aspect overrides its private aspect may be disclosed to the public. Here, time factor becomes important[12] in that public welfare declines as the information becomes older while interests related to the individual's private life become more prominent.[13] In this case, the right to be forgotten could prevent the harmful effects of information about an individual's past.[14]

To draw inferences about the dimensions of the right to be forgotten in line with the above framework, it is useful to review the historical development of this right. It originated in civil law, specifically in *droit à l'oubli* in French law.[15]

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[6] The uncertainty related to the right to be forgotten is also discussed in terms of suggestions for the provision of the right. Among these solutions, expiration dates on digital information and contextualization are significant (for details, see Rolf H Weber, "The Right to Be Forgotten: More than a Pandora's Box", *J Intell Prop Info Tech & Elec Com L* 2, (2011): 126. Contextualization means addressing a matter alongside accompanying factors and situating words or statements in their proper contexts. (Alessandro Mantelero, "The EU Proposal for a General Data Protection Regulation and the roots of the 'right to be forgotten", *Computer Law & Security Review* 29, (2013): 235. Some propose regulating the right to be forgotten under the multilateral International Covenant on Civil and Political Rights (International Covenant on Civil and Political Rights, art. 17, Dec. 16, 1966, 999 U.N.T.S. 171) to publicize it globally. (Julia Kerr, "What Is a Search Engine: The Simple Question the Court of Justice of the European Union Forgot to Ask and What It Means for the Future of the Right to Be Forgotten", *Chi J Int'l L* 17, (2016): 233.

[7] Jasmine McNealy, "The Emerging Right to Be Forgotten: How a Proposal in Europe Could Affect the Sharing of Information", *Insights on L & Soc'y* 12, (2012): 14.

[8] McNealy, "The Emerging Right", 14.

[9] McNealy, "The Emerging Right", 14.

[10] McNealy, "The Emerging Right", 15.

[11] Mantelero, "The EU Proposal", 230. For conflicting interests such as privacy and freedom of expression etc. see also Sartor, "The Right to be Forgotten", 76.

[12] Weber, "The Right to Be Forgotten",121; Mantelero, "The EU Proposal", 230.

[13] Mantelero, "The EU Proposal", 230.

[14] Mantelero, "The EU Proposal", 230.

[15] Mantelero, "The EU Proposal", 229. For decisions regarding *droit a l'oubli* in France and in other European countries see Mantelero, "The EU Proposal", 229.

Translated as the "right to oblivion", it[16] refers to the right to prevent disclosure of past cases that are currently not publicly known[17]. In French law, it was introduced in connection with erasing criminal records as a means of rehabilitating offenders.[18] Similar rights have been discussed in the USA, Switzerland, England, and Germany, to enable convicts to request that their criminal data is erased to protect their reputation.[19]

Today, however, the right to be forgotten is generally addressed in relation to "search engines" rather than criminal records and media sources[20] like newspapers, television and cinema that may threaten personality rights. An internet-based definition of the right to be forgotten would thus concern the right of individuals to erase, restrict, delink or amend their personal information on the internet that is misleading, embarrassing, irrelevant or anachronistic.[21]

Given this historical development and other jurisprudence examined below, we argue that the right to be forgotten should include the right to erase, restrict, delink and amend personal data from all media tools including internet platforms that is embarrassing or that the person wishes to be forgotten. That is, the right to be forgotten requires the restriction of all media activities across platforms in line with the individual's requirement to decide freely about their life.[22]

3. Approaches of EU and US laws to the right to be forgotten

Before examining the approach of Turkish law to the right to be forgotten, it is helpful to discuss the case law, legislative and doctrinal approaches in the European Union (EU), the United States of America (US). The approaches taken within Turkish case law and doctrine can then be compared to these.

Kerr locates different approaches to the right to be forgotten along a spectrum, with the EU and USA offering two contrasting mainstream doctrines.[23] The EU's approach tries to protect private life by covering all search engines and

[16] Weber, "The Right to Be Forgotten", 120; John W Dowdell, "An American Right to Be Forgotten", *Tulsa Law Review* 52, (2017): 315.

[17] Michael J. Kelly and Satolam David, "The Right to Be Forgotten", *University of Illinois Law Review,* (2017): 25

[18] Kelly&Satolam, "The Right to Be Forgotten,", 25; Dowdell, "An American", 315.

[19] Kelly&Satolam, "The Right to Be Forgotten", 25; Dowdell, "An American", 315.

[20] A key precedent case in the historical process within the framework of dignity was filed by Alexandre Dumas after his photos with Adah Isaacs Menken were sold to a journalist and published. The case weighted the right of possession and the right to privacy against each other before being concluded in favour of the right to privacy of Dumas: Dowdell, "An American", 317-318.

[21] Kelly&Satolam, "The Right to Be Forgotten", 1; Ravi Antani, "The Resistance of Memory: Could the European Union's Right to Be Forgotten Exist in the United States?", *Berkeley Technology Law Journal Annual Review* 30, n. 4, (2015): 1173.

[22] Weber, "The Right to Be Forgotten",12; Mantelero, "The EU Proposal", 230.

[23] Kerr, "What Is a Search Engine", 233-234. For a similar approach see Dowdell, "An American", 314.

recognises the "right to be forgotten" in its case law and legislation[24] whereas the USA's approach is more cautious while highlighting freedom of expression.[25]

While it is debatable how much these two approaches are contradictory, US law certainly lacks any clear legal arrangement regarding the right to be forgotten whereas it is explicitly stated in Article 17 of the EU Regulation[26]. This difference may be based on economic conditions.[27] Specifically, most data addressed under the right to be forgotten is currently collected by US companies, which gain forecasting capabilities regarding individuals' economic and social life. The EU's approach, which favours the right to privacy therefore threatens this ability and its economic value. The common concern of both approaches is that freedom of expression and the right to information may be imperilled when the right to be forgotten is enjoyed infinitely and arbitrarily by grounding it in the right to privacy. Therefore, the EU balances the right to be forgotten with the rights to freedom of expression and information by introducing exceptions. As explained below, this view is reflected in positive law.[28]

Although there is no legal arrangement in US law that addresses the right to be forgotten, it is not *corpus alienum.*[29] For instance, *Melvin v. Reid*[30] in 1931 and *Sidis v. FR Publishing Corp*[31] in 1940 both addressed the public disclosure of facts that the plaintiff found embarrassing and wished to be forgotten. In *Melvin v. Reid,* the true story of a former prostitute involved in a murder case was narrated in a film called *The Red Kimono.* The court held that "any person living a life of rectitude has that right to happiness which includes a freedom from unnecessary attacks on their character, social standing or reputation". S*idis v. FR Publishing Corp.* dealt with Mr. Sidis' objection to an article in *The New Yorker* about his life story, which said that he was a child prodigy who later chose a simple life. The court concluded that "there were limits to the right to control one's life and facts about oneself and held that there is social value in published facts, and that a person cannot ignore their celebrity status merely because they want to".[32] Given that the complainant was a celebrity, the court ruled against the right to this individual's privacy.

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[24] Kerr, "What Is a Search Engine", 229-230; Samuel W Royston, "The Right to Be Forgotten: Comparing U.S. and European Approaches", *St Mary's Law Journal* 48, (2016): 254; Kelly&Satolam, "The Right to Be Forgotten", 4.

[25] Kerr, "What Is a Search Engine",233-234. For a similar approach see Dowdell, "An American", 314.

[26] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on The Protection of Natural Persons with Regard to the Processing of Personal Data and on The Free Movement of Such Data.

[27] Mantelero, "The EU Proposal", 234.

[28] Mantelero, "The EU Proposal", 235.

[29] Mantelero, "The EU Proposal", 232.

[30] *Melvin v. Reid* 112 Cal.App. 285, 297 P. 91 (1931). See also Antani, "The Resistance of Memory",1185.

[31] *Sidis v F-R Publishing Corporation* 311 U.S. 711 61 S. Ct. 393 85 L. Ed. 462 1940 U.S.

[32] For some rulings displaying the USA's approach, see *Doe v. Methodist Hosp*. 690 N.E.2d. 682, 693 (Ind. 1997) and *Hall v. Post* 372 S.E.2d 711, 717 (N.C. 1988). In these rulings, American courts generally rejected the requests for tort liability due to disclosure of truthful information belonging to private persons (Royston,"The Right to Be Forgotten", 255). For precedent cases, see McNealy,

These common practices in US courts indicate that the right to freedom of speech generally prevails over the right to privacy.[33] The former is based on certain constitutional principles, especially the right to openly and freely obtain and transmit information.[34] However, this approach prevents American courts addressing privacy rights in tort cases, in line with the Restatement Second of Torts.[35] Within this framework, the right to be forgotten may still be protected within privacy rights.

From a doctrinal perspective, debates continue in the USA on the necessity to clearly recognise the right to be forgotten and introduce appropriate legal arrangements. However, some studies imply that there is an overall tendency against this.[36] Some even claim that the right to be forgotten clearly contradicts the United States Constitution (First Amendment).[37] Supporters of the right to be forgotten claim that it needs to be accepted because privacy is gradually disappearing due to the development of the internet.[38] Given the concerns that this contradicts the Constitution, some suggest developing mechanisms to meet online privacy expectations rather than introducing a legal arrangement explicitly addressing the right to be forgotten.[39]

In fact, the right to be forgotten is recognised through legal arrangements in specific fields, such as laws requiring that credit defaulters' records are deleted after 10 years or the erasure of medical information and criminal records.[40] Thus, the right to be forgotten is already available under American law, but not for the internet.[41]

In contrast, the EU clearly recognizes the right to be forgotten in both legislation and case law[42]. Although there is no definition of or explanation about the right to be forgotten under the Article 17 of the EU Regulation, it is cited together

"The Emerging Right", 16, especially concerning the disclosure of medical information. These set the benchmark as "being **highly** offensive to a reasonable person". For instance, news about a person who contracted a rare disease was not found "**highly** offensive to a reasonable person" (McNealy, "The Emerging Right", 16). For detailed information, see Antani, "The Resistance of Memory", 1183-1204; Dowdell, "An American", 326-336.

[33] Royston, "The Right to Be Forgotten", 264.

[34] Royston, "The Right to Be Forgotten", 264; Antani, "The Resistance of Memory", 1183.

[35] Royston, "The Right to Be Forgotten", 264.

[36] Jeff John Roberts, "*The Right to Be Forgotten from Google? Forget It, Says US Crowd"*, Fortune (Mar. 12, 2015), accessed December 19, 2020, https://fortune.com/2015/03/12/the-right-to-be-forgotten-from-google-forget-it-says-u-s-crowd.

[37] Royston, "The Right to Be Forgotten", 254. For similar opinions in US Doctrine see Dowdell, "An American", 334.

[38] For the discussions see Roberts, *supra* n. 36.

[39] Royston, "The Right to Be Forgotten", 274-275.

[40] See. Dowdell, "An American", 337.

[41] In 2015, California recognized the right to be forgotten for minors with Cal. Bus&Prof.Cide 22580-22581. See Dowdell, "An American", 338.

[42] The international tendency seems more inclined to support the EU's approach, which recognizes the right to be forgotten in online activities with Russia, Japan, Canada, Hong Kong, Argentina, and Chile taking similar stances to the EU's. See Kerr, "What Is a Search Engine",234-235; Dowdell, "An American", 324; Setthakorn Puttamongkol, "Maybe Then I'll Fade Away: Modern Implications of Right to Be Forgotten", *Legal Newsletter AJLS Law Review*, (2015): 73-75. For French and German approaches see also Kelly&Satolam, "The Right to Be Forgotten", 25; Weber, "The Right to Be Forgotten", 121.

with the right to erasure in both the title of the article and in Recital 65 of the Regulation.[43] According to paragraph 1[44], "the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay". Moreover, the controller shall have the obligation to erase personal data without undue delay where the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed; or where the personal data have been unlawfully processed.[45] As mentioned earlier, the right to be forgotten undoubtedly conflicts with freedom of expression and the right to information. This right should therefore be balanced by introducing some exceptions like it is in Article 85 of the Regulation.[46]

It should be stated here that the EU's approach is based on the CJEU's well-known ruling in *Google v. Spain*.[47] This ruling has affected many national legislations and case laws internationally concerning the right to be forgotten. It addressed three matters. The first is whether the EU Directive (95/46) can be applied to companies founded outside the EU. Although Google Inc. was founded outside the EU, its subsidiary Google Spain operates in Spain and provides advertising services for Spanish residents[48]. The court therefore ruled that it falls under the scope of the EU Directive.[49] Secondly, the court considered whether search engines are data processors, which would make them subject to the EU Directive. The CJEU decided that they are data processors and that they are therefore data controllers under Article 2/b of the Directive. Although Google Spain and Google Inc. claimed that search engines do not process data in the web sites of third parties, but only list search results and online personal data indifferently, the court ruled that search

[43] Although the right to be forgotten is not explicitly regulated under the EU Directive repealed by the EU Regulation, the availability of the right to be forgotten is recognized in the doctrine and case law. Accordingly, its availability has been discussed within the framework of Articles 6 and 12 of the EU Directive (Mantelero, "The EU Proposal", 233).

[44] Within the doctrine, the EU Regulation has been criticized for not introducing a fundamental amendment in terms of the right to erasure in Article 12 of the Directive, although the right to be forgotten is explicitly mentioned in the Regulation. The draft Regulation essentially concretizes cases where the right to be forgotten can be enjoyed. See Mantelero, "The EU Proposal", 233.

[45] For those instances where the right to be forgotten is not applicable, see EU Regulation Art.17/3.

[46] According to the CJEU's Google Ruling, search engines provide links only for content drafted as part of journalistic activities. Therefore, data processing by search engines is not considered within the scope of the exception introduced to the right to be forgotten under journalism activities.[46] (ECJ, decision 13 May 2014, *Google Spain SL v. Agencia Espanola de Proteccion de Dato*s, Case C-131/12, paras 36-38). Some allege that in order to reach such a conciliation among the interests a case by case basis should be followed. Selen Uncular, "The Right to Removal in the Time of Post-Google Spain: Myth or Reality Under General Data Protection Regulation", *International Review of Law, Computers &Technology* 33 no. 3 (2019): 321.

[47] Sweden-Lindquvist case of EJC is also in relation with right to be forgotten (ECJ, decision, 6 November 2003, *Lindqvist*, Case C-101/01).

[48] For the "post-Google" court judgments in Spain see Miquel Peguera, "In the Aftermath of Google Spain: How The Right To Be Forgotten Is Being Shaped In Spain By Courts And The Data Protection Authority", *International Journal of Law and Information Technology 23,* no.4, (2015): 325-347.

[49] Royston, "The Right to Be Forgotten", 259. Further information for Google Ruling see also Dowdell, "An American", 319-320.

engines automatically collect, record, classify and serve these data to users, thereby processing data.[50] Thirdly, the CJEU addressed whether individuals have the right to be forgotten and, if so, what the conditions of this right are. It concluded that, in line with Article 6/1c and e, and Article 12/b of the Directive, "*inadequate, irrelevant, ... excessive in relation to the purposes of the processing at issue, or outdated, links must be erased from that list of results".*[51] Through this ruling, the CJEU decided that the balance between the legitimate interests of the data controller and the interests or fundamental rights and freedoms of the data subject should be considered in terms of precedence. The economic interests of the data controller are not sufficient to constitute a legitimate interest for processing an individual's data.[52]

Another remarkable point of the ruling is its sphere of influence. Only URLs in databanks within the EU must be removed in line with the right to be forgotten. However, because these are still listed in Google searches outside the EU,[53] an international agreement is necessary to remove the data worldwide from the search engine's lists.[54]

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[50] Royston, "The Right to Be Forgotten", 257; Kerr, "What Is a Search Engine", 224.

[51] Case C-131/12, *Google Inc. v. Mario Costeja González* (2014) ECR 107. On the other hand, the CJEU's Google Ruling is also based on the right to privacy regulated under Article 8 of the Charter of Fundamental Rights of the European Union.

[52] Case C-131/12 Google Inc. v. Mario Costeja González (2014) ECR 70,74, 91. CJEU's Google ruling has been criticized from various perspectives. Perhaps the most important criticism concerns the danger of considering search engines as data controllers because such a comprehensive interpretation may restrict freedom of expression. Some even assert that the CJEU has invented a "super human right" above other fundamental rights and freedoms. However, the right to be forgotten enables prevention or considerable restriction of access to web content (Kerr, "What Is a Search Engine",224; Internet Law — Protection of Personal Data — Court of Justice of the European Union Creates Presumption that Google Must Remove Links to Personal Data upon Request. — Case C-131/12, Google Spain SL v. Agencia Española de Protección de Datos (May 13, 2014)', (2014) 128 2 Harvard Law Review 739. For other opinions see also Kerr, "What Is a Search Engine",222-224; Royston, "The Right to Be Forgotten", 259-261; Internet Law — Protection of Personal Data — Court of Justice of the European Union Creates Presumption that Google Must Remove Links to Personal Data upon Request. — Case C-131/12, Google Spain SL v. Agencia Española de Protección de Datos (May 13, 2014)', (2014) 128 2 Harvard Law Review 741).

[53] Although it is not binding, in its Guidelines, Article 29 Working Party adopts an "all domain" approach and regulates that data subject to the right to be forgotten shall be removed from all domains. This has been criticized because it implies that any data subject in the world may have the right to remove all links due to the right granted in the EU. (Antani, "The Resistance of Memory",1209). In this regard, see also Dowdell, "An American", 319.

[54] Kelly&Satolam, "The Right to Be Forgotten", 21; Antani, "The Resistance of Memory",1208. Moreover, national authorities may take decisions at a global level. Thus, the Personal Data Protection Board of France (Comission Nationale de l'Informatique et des Libertes/CNIL) became the first national board to decide that Google should remove personal data both from Google.fr and Google global (Google.com). See Dowdell, "An American", 321.

4. Approach of Turkish law to the right to be forgotten

4.1 Some legal arrangements on personal data

It is better to consider the protection of personal data in general before evaluating the right to be forgotten under Turkish law. Turkish legislation provides for various legal arrangements on personal data or issues related to personal data, either at the constitutional level or under miscellaneous laws. The prominent provisions are summarised below.

In 2010, a third paragraph[55] was inserted into Article 20 of the Constitution of Turkey, setting out the constitutional principles to constitute a legal basis regarding personal data. According to this provision, "Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used consistently with envisaged objectives. Personal data can be processed only in cases envisaged by law or with the person's explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law".

Although data protection is a part of Turkish positive law at the constitutional level since 2010, a specific law on data protection has been enabled in 2016 with the entry into force of the Law on the Protection of Personal Data (LPPD) inspired by EU's Directive[56]. In the LPPD, personal data is generally defined as "all the information relating to an identified or identifiable natural person" (LPPD[57] art. 3/1/d).[58] Besides this general content, Article 6 of LPPD provides that personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, sect or other belief, clothing, membership of associations, foundations or trade-unions, health, sexual life, convictions and security measures, and biometric and genetic data are deemed to be personal data of a special nature[59].

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[55] The Constitution of the Turkish Republic, Art. 20/3 (Additional para.: 7/5/2010-5982/2 art.).

[56] Aslı Deniz Helvacıoğlu&Hanna Stakheyeva, "The Tale of Two Data Protection Regimes: The Analysis of the Recent Law Reform in Turkey in the Light of EU Novelties", *Computer Law &Security Review* 33 no.6, (2017): 816.

[57] For LLPD see 7.4.2016, OJ:29677. English version of LLPD can be reached at https://www. kvkk.gov.tr/Icerik/6649/Personal-Data-Protection-Law.

[58] This definition of the law is in line with the one in the EU Directive (Council Directive 95/46/EC of 11 November 1995) on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1995) OJ L 281. For detailed data on personal data see Hüseyin Can Aksoy, *Medeni Hukuk Ve Özellikle Kişilik Hakkı Yönünden Kişisel Verilerin Korunması* (Ankara: Çakmak Yayınevi, 2010), 1; Helvacıoğlu&Stakheyeva, "The Tale of Two Data Protection Regimes", 812; Tuğçe Güneş Karaçoban, "Vergi Ödevlilerinin Kişisel Verilerinin Korunması ve Kişisel Verilerin Korunması Kanun Tasarısı"*, İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi* 15, no.1-2*,* (2016): 801-824; Mesut Serdar Çekin, *AB Hukukuyla Mukayeseli Olarak 6698 Sayılı Kişisel Verilerin Korunması Kanunu,* (İstanbul: Oniki Levha Yayınları, 2018), 3. For further information for European Data Protection Law see Christopher Kuner, *European Data Protection Law* (New York: Oxford University Press, 2007).

[59] Also Article 134 of the Turkish Criminal Code and Article 9 of the Law on Directive of Publications on the Internet and Combatting Crimes include provisions with regard to data protection.

4.2 General remarks about the right to be forgotten

While there is legislation directly concerning personal data, neither the Constitution nor other laws include clear legal provisions on the right to be forgotten. However, many fundamental rights and freedoms in the Constitution may relate to the right to be forgotten. Firstly, Article 5 of the Constitution says that among the fundamental aims and duties of the State is, *inter alia*, to provide the conditions required for the development of the individual's material and spiritual existence. Secondly, Article 20/final paragraph of the Constitution provides that "everyone has the right to request protection of their personal data". Thirdly, Article 17(1) of the Constitution stating *"Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence"* is also referred in Turkish court judgements regarding right to be forgotten as scrutinized in detail below. Lastly, the right to be forgotten may contradict with fundamental rights and freedoms, such as the "freedom of expression and dissemination of thought" (Article 26), "freedom of science and the arts" (Article 27), and "freedom of the press" (Article 28). The right to be forgotten thus plays a restricting, balancing role. In the Constitution, the "principle of proportionality" is also adopted *inter alia* as a reason for restricting fundamental rights and freedoms (Article 13). Therefore, legal arrangements to be issued by the legislative body can only restrict fundamental rights and freedoms, such as "freedom of science and the arts" and "freedom of expression and dissemination of thought", in line with the principle of proportionality.[60] There should be no legal arrangement distorting the essence of a right or restricting the application of a right excessively. The provisions mentioned above may form a basis for inferences or justifications regarding the right to be forgotten, as far as they are appropriate to its nature.

In Turkish law, the right to be forgotten is currently available as a right specified in doctrine, court judgments and in the Turkish Data Protection Board's decision analysed below. Although already recognised gradually in doctrine and court judgments, in terms of both legal resources, the borders of the right to be forgotten have not yet been drawn clearly, and there is no consensus on its application conditions. Under Turkish law, whether in doctrine or judicial decisions, the right to be forgotten mostly relates to personality rights, which has miscellaneous aspects, such as protection of private life, honour, and reputation. Accordingly, even when it contradicts other values, such as freedom of press and freedom of expression, the right to be forgotten may take precedence, subject to certain conditions.

In terms of legal arrangements, Turkish Data Protection Board's decision[61] of 17 July 2020 (No. 2020/481) can be mentioned since it has a character of "regulatory administrative act" in Turkish law. According to the decision, an evaluation with regard to the demands of individuals for the exclusion of their names and surnames from the results of the search engines has been made. The Board

[60] Judgment of the Constitutional Court E:2016/16, K:2016/37, para.10: *"…The legislator is bound by the proportionality principle of the rule of law while making new legal arrangements…"*

[61] https://kvkk.gov.tr/Icerik/6776/2020-481, accessed October 10, 2020.

concluded that such requests can be dealt with considering the right to be forgotten according to the legal framework under Article 20 of Turkish Constitution, article 4,7 and 11 of the Law and article 8 of the Regulation. The individuals are entitled to apply for delisting their names and surnames from the index of the search engines. The search engines are qualified as "the data controller" in pursuant to art. 3 of the Law on the Protection of Personal Data and their activities are qualified as "data processing" in pursuant to the Google Decision. If their requests for delisting from the search engine's index are rejected or not responded, the data subjects can apply to the Board, or they can directly apply to the judicial authorities. The Board has been empowered to apply a "balancing test" between public interests and protection of fundamental rights and freedoms. Certain criteria[62], which might be updated in case of further need, should be taken into consideration by the Board while complaints from the individuals are considered. Moreover, according to the Board, these criteria might also be considered by the data controller while they assess applications directly addressed to them. As can be seen, after mentioning explicitly "the right to be forgotten", the Board has concretized the content of the right to be forgotten by introducing certain and clear criteria. The Board is also in favour of the idea that a balancing test among the interests like public interests and protection of fundamental rights and freedoms should be applicable as also observed in some Turkish court judgments. The sanction[63] occurring as a result of violations of the right to be forgotten has also been more clarified by the decision of the Board.

Although there is no clear law on the right to be forgotten in Turkish law, it is analysed in relation to the right to be erased in Article 7 of the Law on the Protection of Personal Data.[64] This provides for the conditions for erasing personal data whereby even if originally processed in compliance with the laws, personal data must be erased, destroyed, or anonymised by the controller, *ex officio* or on demand by the data subject, depending on "disappearance of reasons which require processing". Thus, "disappearance of reasons which require processing" is a precondition for implementing the provision. At this point, it should be emphasized that erasure, destruction or anonymization of personal data as regulated in article 7 of the Law should be processed in compliance with the general principles of article 4 of the Law. These general principles can be followed as: lawfulness and fairness, being accurate and actual, being processed for specified, explicit and legitimate purposes, being relevant, limited and proportionate to the purposes for which they are processed, and finally being stored for the period laid down by relevant legislation or the period required for the purpose for which the personal data are processed. These principles should also be considered from the aspect of right to be

[62] The criteria which can be reached at https://kvkk.gov.tr/SharedFolderServer/CMSFiles/68f1fb19-5803-4ef8-8696-f938fb49a9d 5.pdf, accessed October 10, 2020.

[63] According to article 18 of TPDL, those who fail to comply with obligations related to data security (to prevent unlawful processing and access) shall be required to pay an administrative fine of maximum 1.802.636 Turkish Lira in 2020 according to the 2020 update in Misdemeanour Law.

[64] Helvacıoğlu & Stakheyeva, "The Tale of Two Data Protection Regimes", 816.

forgotten. This legal arrangement is similar to the understanding[65] in the European Union where personal data should not be stored once there are no longer reasons for further processing.

Also, Article 9 of the Law on Regulation of Publications on the Internet and Combatting Crimes Committed by Means of Such Publication[66] provides that real or legal persons as well as institutions and organisations that believe that their personality rights have been violated may apply for the removal of publication of that content by means of a warning to the content provider, or if the content provider cannot be contacted, to the hosting provider, or they may also apply directly to a judge to request denial of access to the content. The requests of individuals claiming that their personality rights have been violated due to the content of internet publications should receive a response within twenty-four hours from the content and/or the hosting provider. In such cases, the judge only rules to block access to the content of the publication, part or chapter violating the personality rights (URL, etc.). He/she does not rule to block the publication's entire internet content. However, when the judge concludes that the violation of personality rights cannot be eliminated by blocking access to specific content via the declaration of a URL address, he/she may rule to block the publication's entire content in the internet site, by providing a justification. Upon being notified by the Access Providers Union[67] about the judgment to block access to content, the access provider must take the necessary action within four hours.

Blocking access to content due to privacy violations is also enshrined in the law, with similar remedies provided for. These remedies may also be implemented regarding personal data breaches via the internet, accompanying violations of personality rights or privacy. Remedies in the relevant provision may be referred to when individuals demand to enjoy the right to be forgotten. This provision thus forms the basis for related court judgments.

More importantly, Law No. 5651 does not limit internet blocking methods with only DNS and URL-based blocking (blocking access via IP addresses), similar methods can be used.[68] Therefore, "platform-based blocking" may become significant for enjoying the right to be forgotten.[69] In platform-based blocking, content is not disabled and access to the website is not blocked. Instead, access to the publication via search engines is prevented, although the specified publication may still be accessed directly through its own DNS or IP address. Platform-based blocking thus necessitates cooperation with search engines like Google and Yandex,

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[65] Helvacıoğlu & Stakheyeva, "The Tale of Two Data Protection Regimes", 816.

[66] Law Number: 5651, 4.5.2017 O.J. 26530-23.5.2017.

[67] For the Union of Providing Access, see Law 5651 art.6/A.

[68] Law 5651 art. 2/o: "Blocking access: *Blocking access from domain name means blocking access from IP address, blocking access to content (URL) and blocking access by using similar methods…"*

[69] Olgun Değirmenci, "Teknik Açıdan İnternet Erişiminin Engellenmesi Türleri ve Türk Hukukunun Tercihi"*, Terazi Dergisi* 13, no.143, *(*2018): 187.

and mobile applications stores, such as Apple Store and Google Play.[70] Therefore, given this cooperation, there are no obstacles to applying platform-based blocking in Turkish law.[71]

In addition to these, with an amendment that has become effective as of 31.07.2020, a paragraph has been inserted to article 8 of Law 5651. According to the provision, upon the demand of those whose personality rights are violated by the content of the internet publication, the judge may determine de-indexing of the applicants' names from the web site. In the court's judgment, it is also included which search engines are responsible from de-indexing. It should also be mentioned that Access Providers Union is responsible for the implementation of the judgment.

Another legal arrangement that may be considered regarding the erasure of personal data under the right to be forgotten under Turkish law is the Directive on the Erasure, Destruction and Anonymisation of Personal Data.[72] This regulates the principles and procedures for the erasure, destruction, or anonymisation of personal data processed wholly or partially by automated means or non-automated means on the condition of being part of any data recording system. In accordance with Article 7, once the processing conditions under Articles 5[73] and 6[74] cease to exist, the personal data must be deleted, destroyed, or anonymised by the data controller, either *ex officio* or on the request of the data subject.[75] These provisions may be applied in relation to the right to be forgotten.

To determine the position of the right to be forgotten in the Turkish law, different fields of law should be assessed. Although there is no clear legal regulation under the Civil Law on the right to be forgotten,[76] violation of the right to be forgotten may be assessed under provisions concerning personality rights. For example, in accordance with Article 24 of the Law, individuals who believe their rights have been violated may seek protection from the courts.[77] Such assessments

[70] According to a Google report, between 28.5.2014 and 08.04.2019, of 792,128 applications to Google, there were 3,072,482 demands to remove URLs of which Google removed 44.4%: (https://transparencyreport.google.com/eu-privacy/overview, accessed in 09.04. 2018).

[71] Değirmenci, "Teknik", 185.

[72] O.J. 30224-28.10.2017.

[73] Article 5 says that personal data shall not be processed without explicit consent of the data subject. It also contains conditions where personal data may be processed without seeking the explicit consent of the data subject. Article 6 regulates conditions for processing of special categories of personal data.

[74] The Law on the Protection of Personal Data 6698-24.3.2016- O.J. 29677-7.4.2016.

[75] Directive on the Erasure, Destruction and Anonymisation of Personal Data Erasure of personal data means rendering it completely inaccessible to and not re-usable by relevant users (Article 8). Destruction of personal data means rendering personal data completely inaccessible, irretrievable, and non-reusable (Article 9). Anonymisation of personal data means rendering such data completely unaccesible with any identified or identifiable person, even if the personal data is matched with other data (Article 10).

[76] Turkish Civil Code 4721-22.11.2011, O.J. 8.2.2001-24607.

[77] Turkish Civil Code Art. 24: "A person whose personality rights have been illegally violated may demand protection from the judge against those who have violated them. Every breach of personal rights is illegal in so far as it is not justified by the consent of the injured person, by a superior private or public interest or by the use of a power given by law."

can be observed in court judgments and explanations discussed below. Moreover, there is no clear provision under the Law on Obligations[78] on the right to be forgotten. However, in accordance with Article 58,[79] non-pecuniary damages, other forms of compensation, or a decision condemning the attack may be ruled in the case of results caused by violation of the right to be forgotten, as in the case of the damages to personality rights.

From a conflict of laws perspective, the right to be forgotten may come to the fore in conflicts with a foreign element, although there are no internationally recognised legal texts on the law applicable to data protection.[80] In this case, related national regulations are referred to, with the Law on Turkish Private and Procedural Law[81] being the main norm in Turkish law for determining which law applies in conflicts with a foreign element. At this point, for instance, a question about the applicable law may arise when the individual wishing to enjoy the right to be forgotten is a foreign national. There is no clear legal arrangement on the right to be forgotten in the Law on Turkish Private International and Procedural Law. However, the first paragraph of Article 35 on Responsibilities upon the Violation of Personality Rights provides that claims resulting from the violation of personality rights via media, such as press, radio, and television, or via the internet and other mass communications, according to the preference of the damaged party, will be subjected to a) the law of the habitual residence of the damaged party in the event that the party who caused the damage was in a position to know that the damage would occur in that state; b) the law of the state where the workplace or the habitual residence of the party who caused the damage is located; or c) the law of the state where the damage occurred in the event that the damaging party was in a position to know that the damage would occur in that state. The last paragraph of Article 35 provides that alternatives to the applicable law also apply to claims resulting from the violation of personality by processing personal data or limiting the right to information on personal data. In this case, if the violation of the right to be forgotten is regarded as a violation of personality rights from processing personal data, then the individual whose personality rights are violated may prefer one of the applicable laws, depending on the required conditions in the article. Accordingly, we believe that it is possible to choose whichever law provides superior and more rapid protection with regard to right to be forgotten. This understanding may provide protection by enabling the application of the law that mostly favours the individual whose personality rights have been violated. Moreover, when the applicable law is

[78] Turkish Code of Obligations 6098-11.1.2011, O.J. 4.2.2011-27836.

[79] Code of Obligations Art. 58: "A person whose personal rights have been breached might demand payment of a sum of money under the name of immaterial compensation. The judge may decide other types of relief instead of payment of compensation or add it to the compensation amount; he may specifically give a judgment blaming the breach and may decide the publication of such a judgment."

[80] Christopher Kuner, "The European Union and the Search for an International Data Protection Framework", *Groningen Journal of International Law* 2 no.2, (2014): 64.

[81] Law on Turkish Private and Procedural Law, Law Number: 5718, 27.11.2017, OJ: 26728.

determined as Turkish law, it will be applicable with all the substantive dimensions of right to be forgotten as mentioned in this paper.

Legal arrangements under Turkish tax legislation may also be evaluated in terms of "the right to be forgotten"[82]. Article 5/3 of the Tax Procedure Law No. 213 includes a provision regarding a "naming and shaming approach". Under this provision, unpaid taxes and fines of the taxpayers may be disclosed by the Ministry of Finance".[83] In Turkish law, the general rule is that tax administrators should not disclose the data of taxpayers because secrecy of taxes is guaranteed under Turkish law. However, Article 5/3 introduces an exemption to secrecy of taxes for the purposes of tax collection.[84] Although this provision has not been applied *de facto* until now, the Ministry of Finance might change its approach in time and taxpayers whose tax-related data has been disclosed may require to enjoy the right to be forgotten.

4.3 Approach of Turkish doctrine to the right to be forgotten

Turkish doctrine includes various views defining personal data as any information suitable to identify a specific person.[85] In this context, personal data that may be subject to the right to be forgotten could include biological features, such as height, eye colour, weight, and medical information such as past illnesses, surgeries, blood group, etc.; information on religious beliefs and opinions, political views and preferences; information on gender identity; signature, fingerprints, retinal scan and facial recognition;[86] bank account information, and information on education and

[82] For a study that deals with the EU countries' approach on this subject, see Bernardo D.Olivares Olivares, "The impact of GDPR on European Name&Shame tax defaulter lists", *Computer Law&Security Review* 35 no. 3, (2019).

[83] The Turkish Ministry of Finance had the authority to disclose tax evaders' identities on the only television channel - TRT1 (state television). The provision granting this power to was challenged before the Court of Constitution (See AYMK E:1986/5, K:1987/7), claiming that it contradicts with certain fundamental principles. The Court rejected the claim by emphasizing that the aim of that provision (Article 5 of Turkish Tax Procedural Act as amended by Art. 1 Act No:3239) is to preserve a very important public interest like preventing or at least reducing tax evasion.

[84] Funda Başaran Yavaşlar & Oytun Canyaş, "Türkiye'de Vergi Şeffaflığı", *Vergi Dünyası Dergisi* 37 no.443, (2018): 22.

[85] Yeşim Çelik, "Özel Hayatın Gizliliğinin Yansıması Olarak Kişisel Verilerin Korunması ve Bu Bağlamda Unutulma Hakkı", *Türkiye Adalet Akademisi Dergisi* 8 no.32 (2017): 91; Aksoy, *Medeni Hukuk,* 1; Çiğdem Ayözger, *Kişisel Verilerin Korunması* (İstanbul:Beta Yayınevi, 2016), 6.; Elif Küzeci, *Kişisel Verilerin Korunması* (Ankara: Turhan Kitabevi, 2018), 9; Aydın Akgül, *Danıştay ve Avrupa İnsan Hakları Mahkemesi Kararları Işığında Kişisel Verilerin Korunması* (İstanbul: Beta Yayınevi, 2014), 7-8; İbrahim Korkmaz, *Kişisel Verilerin Ceza Hukuku Kapsamında Korunması* (Ankara:Seçkin Yayınevi, 2017*),* 25; Hüseyin Murat Develioğlu, *6698 sayılı Kişisel Verilerin Korunması Kanunu ile Karşılaştırmalı Olarak Avrupa Birliği Genel Veri Koruma Tüzüğü uyarınca Kişisel Verilerin Korunması Hukuku* (İstanbul:Oniki Levha Yayınevi, 2017), 30.

[86] "Controlling the staff's working hours by using face identification system should be evaluated with regard to protection of secrecy of personal life that is regulated among fundamental rights and freedoms": Council of State, 11.D. E. 2017/816, K. 2017/4906, 13.6. 2017, accessed March 1, 2020, https://www.lexpera.com.tr/ictihat/danistay/11-d-e-2017-816-k-2017-4906-t-13-6-2017.

training. The doctrine defines personal data in compliance with the definition in the Law on the Protection of Personal Data.

Considering the cases in which such data are utilised, many humiliating or disturbing matters that somebody wants to forget may be addressed under the right to be forgotten. There people claiming that the right to be forgotten has two dimensions: the information provided by individuals themselves and information created, disseminated, and processed by third parties.[87]

There is no agreement within the doctrine on which platform the right to be forgotten can be raised in terms of search engines, digital platforms, or publicly accessible resources. Some argue that the right to be forgotten includes individuals' past experiences that made them miserable and that they do not want to remember, and recommend the erasure and removal of these, especially from digital archives, as long as they are not required for specific public interest.[88] Upon application of the right to be forgotten, access to digital data would be blocked by the service providers.[89] According to this approach, the right to be forgotten specifically applies to personal data in the individual's digital history. However, according to the second view[90], right to be forgotten also applies to publicly accessible personal data like books as also reflected in the decision of the Court of Cassation below.

Other definitions of the right to be forgotten emphasise digital data in digital media, by pointing to the irreversible removal of personal information in the digital memory upon the request of the individual concerned.[91] The aim of this understanding is narrower than the first one. The doctrine includes statements concerning social media within digital media, specifying that personal data is addressed under the right to be forgotten.[92]

Besides the lack of consensus on the platform on which the right to be forgotten will be raised, there is also no consensus on the legal nature of the right. Some claim that the right to be forgotten may be assessed under personality rights.[93] This derives from its close relationship with the fundamental rights and freedoms in the Constitution as well as personality rights and personality values under civil law. There are also those explaining the protection of the right to be forgotten in relation

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[87] "The right to be forgotten covers data provided by the individuals themselves voluntarily, and the content created processed and spread by third parties without notifying the data subject." Çelik, "Özel Hayatın", 97.

[88] Sinan Sami Akkurt, *"17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay Hukuk Genel Kurulu Kararı ve Mukayeseli Hukuk Çerçevesinde Unutulma Hakkı"*, *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 65, no.4 (2016): 2608; Aydın Akgül, "Kişisel Verilerin Korunmasında Yeni Bir Hak: Unutulma Hakkı ve AB Adalet Divanının Google Kararı"*, Türkiye Barolar Birliği Dergisi* 116, (2016): 34, Can Yavuz, "*Unutulma Hakkı",* (LL.M. Thesis University of Yeditepe,.2016), 42.

[89] Güney Nair& Emine Balta, "Bilgi İletişim Teknolojileri Kullanımında Sınırları Aşan Bir Sosyal Sorun Alanı Olarak Unutulma Hakkı", *Cumhuriyet Üniversitesi Sosyal Bilimler Dergisi* 41, no.2, (2017): 119.

[90] Akgül, "Kişisel Verilerin", 34.

[91] Serdar Gülener, "Dijital Hafızadan Silinmeyi İstemek: Temel Bir İnsan Hakkı Olarak Unutulma Hakkı", *Türkiye Barolar Birliği Dergisi* 102, (2012): 226.

[92] Akkurt, "17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay", 2620.

[93] Akkurt, "17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay", 2613.

to the second paragraph of Article 8 of the ECHR, the Right to Respect for Private and Family Life.[94] The reasons for the restriction provided for in this provision are also applicable in terms of Turkish law as it defines the limits of the right to be forgotten. Yet, in accordance with the last paragraph of Article 90 of the Constitution[95], ECHR provides a binding source of law. Regarding human rights, in case of a conflict with Turkish laws, ECHR provisions of prevail. In *M.L. and W.W. v. Germany* decision,[96] privacy rights in Article 8 of the ECHR was taken as the basis for requests to be forgotten and anonymisation in relation to a murder case.[97] In this case, the Court applied a balancing test by emphasising that privacy rights (ECHR Article 8) should be balanced against freedom of expression and freedom to access information (ECHR Article 10). Regarding news reports and internet archives concerning the murder, the ECtHR also considered historical value and the public interest before concluding that there was no violation of Article 8 of the ECHR. These conclusions have guided subsequent interpretation of the right to be forgotten under Turkish law.

There is no clear approach within the doctrine regarding the relationship of the right to be forgotten with the right to be erased under the Law on the Protection of Personal Data. Some opinions explain the right to be forgotten in parallel with the right to be erased claiming that the right to be forgotten is rooted in the right to be erased[98]. However, the right to be forgotten covers requests to erase both erroneous and embarrassing data.[99] On the other hand, there is an additional need for the right to be forgotten because the right to be erased is not sufficient in an environment where personal data spreads rapidly.[100] According to this understanding, the right to be forgotten is broader than the right to be erased, especially considering digital media. Similarly, some define the right to be forgotten as the right to request the erasure of personal data in the internet environment that the individual wishes to prevent third parties seeing; again from this perspective, the right to be erased may

[94] "Yet, the right to privacy is protected under Article 8 of the European Convention on Human Rights, taken as a reference point for those advocating the right to be forgotten". Şebnem Ahi, "Kişilere Kişisel Verileri Üzerinde Kontrol Yetkisi Veren Hak", *Bilişim* 42, (2014): 105-106.

[95] While talking about Europe it might also be noted that, ECtHR decisions have an indirect impact on Turkish Law in relation to Article 90(5) of the Turkish Constitution. This provides those international agreements have the force of law. Furthermore, if international agreements and domestic law contradict each other over fundamental rights and freedoms, then the provisions of international agreements shall prevail. Since the ECHR is an international agreement on fundamental rights and freedoms, its rulings prevail. Furthermore, as ECtHR's rulings constitute grounds for re-trial under Turkish law, any ruling that it makes concerning the right to be forgotten will be regarded as grounds for a re-trial by the Turkish courts.

[96] ECtHR, 28 June 2018, *M.L. and W.W. v. Germany* App no. 60798/10 and 65599/10 (March 28, 2019), https://hudoc.echr.coe.int/eng #{%22itemid%22:[%22002-12041%22]}.

[97] For an opinion that does not assess right to be forgotten as a separate right but evaluate it within the right to privacy see Haga, "Right to be Forgotten", 97.

[98] Küzeci, "Kişisel Verilerin", 230-231; Ayözger, "Kişisel Verilerin", 143; Develioğlu, "6698 sayılı", 90; Akkurt, "17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay", 2608.

[99] Develioğlu, "6698 sayılı", 90.

[100] Çelik, "Özel Hayatın", 396.

not always be sufficient, so the right to be forgotten has a broader scope than the right to be erased.[101]

Another view asserting that the right to be forgotten is different from the right to be erased states that right to be erased concerns the data controller, whereas the right to be forgotten involves internet search engines. [102] According to this view, it is more appropriate to specify the right to be forgotten as "complicating the finding" of the concerned data. In cases concerning the right to be forgotten, search engines should only exclude the specific URLs for that data from search lists, while the data itself remains in the URLs.

As mentioned above, in Turkey, the right to be erased is regulated under the Law on the Protection of Personal Data. While this provides protection to a certain extent in terms of the right to be forgotten, we believe that there should be a separate provision for this apart from the right to be erased as we presented at the end of this paper.

4.4 The right to be forgotten in court judgments

Although there is not a certain law on the right to be forgotten, it is clear that court judgments refer to the right to be forgotten. Individual applications before the Constitutional Court can be examined in this respect. Since 2014, individuals apply to the Constitutional Court as a domestic remedy, claiming violation of their fundamental rights and freedoms. One such notable decision in 2016[103] provides guidance on the right to be forgotten.

The case concerned three news reports, two in 1998 and one in 1999, published about the applicant and stored in the internet archives of a popular daily newspaper. They reported that a fine should be imposed following a criminal prosecution for alleged illegal drug-taking. The applicant argued that his private life and career were adversely affected because of the loss of his reputation due to the easy accessibility of these on-line news reports. The Constitutional Court in it is judgment (Application number: 2013/5653) considered the allegations of the applicant under Article 20(3) of the Constitution:

"Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person's explicit consent" and under Article 17(1) of the Constitution: *"Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence."* Given this analysis, the criteria envisaged

[101] Akgül, "Danıştay ve Avrupa", 15-18.

[102] Olgun Değirmenci, "Yargısal İçtihatların Ortaya Çıkardığı Bir Hak: Unutulma Hakkı (Çerçevesi ve Hak Üzerine Düşünceler"*, Terazi Hukuk Dergisi* 13, n.144, (2018); 153-154.

[103] Judgment of the Constitutional Court, N.B.B Decision, Application Number: 2013/5653, Date of Decision: 3.3.2016 accessed February 01, 2020, http://www.resmigazete.gov.tr/eskiler/2016/08/20160824-14.pdf.

by the Constitutional Court about the internet are significant as it ruled that an individual's honour and reputation may be damaged if such a news report remains accessible online for a long time, considering accessibility, prevalence, simplicity of storage.

Furthermore, the Constitutional Court underlined that publication of on-line news relates to the protection of personal data when content providers transfer personal data onto the Internet, thereby making news about individuals available through on-line newspaper archives. Its observations provide guidance for internet environment in connection regarding the right to be forgotten. The Constitutional Court[104] concluded that the internet environment makes information stored in the archives easily accessible, prevents news from being forgotten, and forces individuals to re-encounter whatever it was they wish to forget. While mentioning that the right to be forgotten provides a fair balance between fundamental rights and freedoms, the Court also referred to the CJEU's Google Ruling, which principally relied on the "relationship between the right of privacy and right to information and public interest of information in particular". Although internet prevents individuals from being forgotten, recognising the right to be forgotten would ensure a fair mechanism and protect the honour and reputation of individuals.

With respect to the types of news that the right to be forgotten may be applied to, the Court noted certain conditions that should be taken into account.[105] The Constitutional Court also noted that judges could take the measures mentioned in the

[104] "This condition emerging with the extensive use of internet has upset the balance between the freedom of expression and press, and the preservation of honour and reputation, in favour of the first following the extensive use of internet by the media. Freedom of expression and press, and the right to protect honour and reputation are among the fundamental rights and freedoms requiring equal protection. Therefore, it is essential to restore the imbalance between these two fundamental rights. In today's world, where it is difficult to forget things due to internet journalism, restoring this balance may be possible by recognizing the right to be forgotten for the sake of honour and reputation. Accordingly, the right to be forgotten is indispensable for restoring a fair balance (Court of Justice of the European Union, Google Spain SL, Google Ine./Spain Personal Data Protection Agency, Mario Costeja Gonzales, C-131/12, 13/5/2014). "The right to be forgotten is not explicitly governed under the Constitution of Turkey. However, Article 5, "Fundamental aims and duties of the state", attributes a positive obligation to the state: "to provide the conditions required for the development of the individual's material and spiritual existence". Considering the right to protect honour and reputation in the context of spiritual existence governed under Article 17, together with the right to request the protection of personal data guaranteed under paragraph three of Article 20, the state clearly has the responsibility to enable individuals make a fresh start by preventing the disclosure of past incidents. The right to request the erasure of personal data, especially within the right to protect personal data, provides individuals with the opportunity to forget the problems of the past.": Judgment of the Constitutional Court, (Application Number: 2013/5653) p.10.

[105] The right to be forgotten cannot be applied to news reports in newspaper archives. However, such archives clearly include important data for researchers, lawyers, and historians, especially based on freedom of the press. Accordingly, before removing news reports from the internet under right to be forgotten, the report should be assessed for each case in terms of the content and duration of release, currency, not being considered historical data, contribution to public welfare (social and future value), prominence of the subject (e. g. celebrity, politician, etc.), subject matter, inclusion of facts or judgments, and public interest. Judgment of the Constitutional Court, (Application Number: 2013/5653) p. 10.

fourth paragraph of Article 9 of the Law on Regulation of Publications on the Internet and Combatting Crimes Committed by Means of Such Publication to provide a balance between freedom of expression and the press and protection of the right to honour and reputation based on the right to be forgotten. In accordance with this provision, the judge may rule to merely block access to the publication, part, or section subject to violation of personal rights. The judge can make no decision on blocking access to the overall publication in the website unless it necessitates. However, if the judge concludes that the violation cannot be prevented by blocking access to the content by specifying its URL address, he may rule to block access to the whole on-line publication on the condition of submitting a reason. The Constitutional Court underlined that the principle of proportionality should be preserved while taking these measures and declared that internet news archives are guaranteed overall by freedom of the press. Because one of the main functions of the press in a democratic society is its "supervisory" role, its archives should be publicly available. Any intervention in this field should be interpreted within the meaning of freedom of expression and press.

Following its observations on fundamental rights and freedoms, and the right to be forgotten as well as its balancing function, the Constitutional Court ruled on the specific case to block access by erasing the personal data that made the news accessible rather than removing all the reports from internet archives. This would be in accordance with the principle of proportionality and consistent with freedom of the press. Moreover, it stated that the report on the plaintiff's criminal trial between 1998 and 1999 had become so outdated that it was not possible to claim that the report was still newsworthy for society or offered any future insight. Given that the applicant was not a political or popular person, the Court underlined that easy access to such on-line news in internet could damage his reputation. Finally, the Court noted that it could not be maintained that easy access to the news in internet was mandatory considering historical, statistical, or scientific objectives with respect to news on drug use. In the light of these observations, the Constitutional Court concluded that the news report about the applicant should be considered within the scope of the right to be forgotten, so access to the report should be blocked to protect the applicant's honour and reputation.

In a subsequent decision (Application number: 2014/1808) in 2017,[106] the Constitutional Court relied on similar principles and criteria to reach a contrasting

[106] "Considering also the periods … and the identity of the people who are the subject of news, it cannot be said that the news has lost actuality and public interest. Thus, bearing in mind the subject matter, news content, time elapsed since its first release, and the date of the final decision at the end of the criminal procedure, it was determined that the report is still newsworthy enough to require easy public accessibility to the archives, and accordingly that the conditions necessary to be considered within the right to be forgotten have not been ensured. Thus, considering freedom of speech and the press alongside the right to information and to receive news, it was concluded that a fair balance has been established between freedom of expression and the media, and the protection of the individual's spiritual integrity, and that there is no necessity to intervene at the discretion of the court of instance." Judgment of the Constitutional Court, G.D. Decision, Application Number:

ruling. This case concerned news reports about a person's membership of a criminal organisation published in the internet archives of two major national newspapers.

The Turkish Court of Cassation also made a decision (E. 2014/4-56, K. 2015/1679, dated 17.6.2015) that provides guidance on the right to be forgotten.[107] The plaintiff requested that his personal data on his private life should not be discoverable by third parties, so the data should be erased from the memories of the public as time elapsed. Another important observation was as follows: "Although the definitions of the right to be forgotten concern the digital data for the most part, it is evident that this right should be recognised for personal data kept in media easily accessible by the public rather than only the personal data stored in digital media, considering the features of this right and the relationship between this right and human rights." The Court decided that the name of the plaintiff mentioned in a book without his consent was of a personal data nature. Furthermore, its decision also referred to the Google Ruling: "The relevant data have no important role in public life and there is no particular reason implying public interest." Based on these observations, the Turkish Court of Cassation concluded that, "since his name was clearly mentioned in the book, the right of the sexual assault victim to be forgotten and thus her right to privacy had been violated". The Court of Cassation clearly relied on the right to privacy in its decision since the Law on the Protection of Personal Data had not yet been implemented at the time of this decision.[108] Although the Court emphasises the erasure of the plaintiff's past experiences that were revealed without

2014/1808 accessed March 30, 2019, https://www.lexpera.com.tr/ictihat/anayasa-mah kemesi/k-2014-1808-t-4-10-2017

[107] "The right to be forgotten, and, relatedly, the storage and preservation of personal data as much as required and for a short time indeed constitute the framework of the right to protect personal data. Basically, both of these rights aim at enabling individuals to have free disposition over their personal data and make plans for the future, without lingering on the obstacles of the past, and preventing the use of personal data against the person. The right to be forgotten aims to prevent past incidents that occurred either due to the individual's own will or caused by a third party to harm the future of the individual. It is indisputable that it is beneficial for the individual as well as for society to improve living standards and level of development if that person can shape their future by overcoming the problems of the past. The right to be forgotten can be explained as the individual's right to request that negative incidents from their past stored in digital media are forgotten after a while, and to request the erasure and prevent the spread of personal data that they do not want others to know. This right enables individuals to maintain control over their past and provides them with the right to request the erasure of certain past facts about themselves and to be forgotten. It also obliges the addressees to take measures against the use and retrieval of this personal data by third parties. This right also compels third parties to erase data objects like photos and blogs and enables individuals to request the removal of past punishments as well as photos and other data that may lead to negative comments about them. This also necessitates taking measures to prevent certain past features of an individual to be retrieved by chance. The right to privacy, protected within the framework of the respect for private life under Article 8 of the European Convention on Human Rights, also covers the legal interests of individuals in controlling data about themselves. Individuals have a legal interest in maintaining the privacy of their personal data, i. e. in preventing the disclosure and spread of personal data as well as access to this data by third parties, without their consent": The Turkish Court of Cassation, HGK, E. 2014/4-56, K. 2015/1679, T. 17.6.2015 (April 15, 2019), www.kazanci.com.tr.

[108] Helvacıoğlu&Stakheyeva, "The Tale of Two Data Protection Regimes", 816.

his consent from the society's memories, the main issue here is the denunciation of information on private life irrespective of the fact that how old it is. [109] If the name of the plaintiff had been anonymized in the book, there would not be any violation of the rights even though more than four years have passed. Because the main issue here is stating the full name of the plaintiff. [110] This point constitutes the violation of personality rights.[111]

Various decisions of the Criminal Chambers of the Turkish Court of Cassation on "the right to be forgotten" are relevant. For instance, in its Decision of 2017[112] the Court noted that the right to be forgotten was not clearly regulated in the Constitution. Nevertheless, the state was responsible for preventing others from learning about the past experiences of an individual so they could make a fresh start, considering the duty of protecting the individual's honour and reputation within the scope of the individual's personal improvement, as laid down in Article 17, and the right to request protection of one's personal data, as defined in Article 20(3) of the Constitution. The Court ruled that, in accordance with Article 5 of the Constitution, "the state is to provide the conditions required for the development of the individual's material and spiritual existence". Although not regulated in the Constitution, enjoying the right to be forgotten derives from Articles 5, 17, and 20 of the Constitution.[113]

Several parts of the Decision on the effects and results of the right to be forgotten are also notable. The Court focused on blocking partial access rather than blocking access to the publication "as a whole" in the website.[114] This implies that several methods may be adopted, such as erasing personal data relating to the news item that allows searches for that individual in the archive, anonymising the news report, and blocking just a certain section of a report. Thus, the principle of proportionality laid down in Article 13 of the Constitution can be satisfied. In line

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[109] Eren Sözüer, "*İnsan Hakları Hukukunda Unutulma Hakkı"*, (L.LM. Thesis, University of Istanbul, 2017), 171.

[110] Sözüer, "İnsan Hakları Hukukunda", 171.

[111] Sözüer, "İnsan Hakları Hukukunda", 171.

[112] Turkish Court of Cassation, 19.HD, E.2016/15510, K.2017/5325, 5.6.2017 accessed February 28, 2020.

[113] In another judgment, The Court of Cassation 19 th. Criminal Chamber (Court of Cassation 19 th. Criminal Chamber E:2019/31517, K:2019/14002) has considered the same criteria like "the content of the internet publication, its value from the society's view, whether it relates to a celebrity or a politician" etc. However, depending on the facts that the content relates to a member of a criminal organization and still stimulating the interest of the society and real, the Court concluded that public interest continues and proportionality among the freedom of press and personality rights are protected. Finally, the Court declared that the conditions of the right to be forgotten are not met although 15 years have passed since the publication of the news. Therefore, based on the similar values in other judgments, the Court has determined that the right to be forgotten does not come into existence this time. Also since Law 5651 is applicable in this case, this judgment is based on a narrower content (only internet environment has been considered) than the judgment dated 2015.

[114] "The scope for the prevention of access shall only cover the content of the release, section, and part (URL etc.) violating the personality right and that a decision preventing access to the whole release in the web site shall not be given as unless it is essential": Turkish Court of Cassation, 19. HD, 15510/5325, 5.6.2017, 5.

with this approach respecting the principle of proportionality, hindrances to freedom of the press can be minimised.

4.5 Approach towards the right to be forgotten under Turkish law in comparison with EU and US laws

Like US law, Turkish law provides no explicit law on the right to be forgotten. Nevertheless, this right is cited in court judgments in Turkey whereas it is mostly associated with privacy rights in US law. In US law, there is much stronger opposition to having an explicit legal arrangement regarding the right to be forgotten. In contrast, it seems more likely that Turkey will introduce a new law concerning this right, given the supportive stance in existing judgments.

In both legal orders, rulings have mentioned similar interests like public interest, newsworthiness, freedom of expression and privacy and the right of a person to lead his/her future. This reflects a similar viewpoint about the values that should be protected and/or are under threat in relation to the right to be forgotten. Although right to be forgotten is not explicitly mentioned in the US law, both legal orders adopt similar approaches under case laws[115] in terms of the media tools in relation to platforms such as books, films, and newspaper articles. Nevertheless, US law doctrine considers that the use of the right to be forgotten on digital platforms contradicts the Constitution. However, Turkish law doctrine offers no opinion on this point. As discussed earlier, US doctrine is cautious about an explicit legal arrangement whereas Turkish legal doctrine tends to support the right in general.

We can conclude that, in comparison to the approach in the USA, Turkish law emphasises protection of personal rights over freedom of speech and favours the right to be forgotten more. Turkish court decisions emphasise a balance among competing interests like protection of personal rights and freedom of speech which should be conducted in accordance with the merits of each case. This approach is different from US law, which is more cautious about restricting freedom of expression in social media.[116]

Whereas the EU Regulation mentions the right to be forgotten explicitly, no specific law citing the right to be forgotten is included in Turkish law. However, as mentioned before, the right to be forgotten is explicitly mentioned in Turkish case law. Possibilities for "withdrawal of consent" and "being no longer necessary in relation to the purposes for which they were collected or otherwise processed" can be inferred from the arrangements regarding the right to be forgotten under Article 17 of the EU Regulation. These are similar reasons to those in Articles 5 and 6 of the

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[115] *Melvin v. Reid* 112 Cal.App. 285, 297 P. 91 (1931) and *Sidis v F-R Publishing Corporation* 311 U.S. 711 61 S. Ct. 393 85 L. Ed. 462 1940 U.S.

[116] For a comparative analysis of EU and US approaches on the right to be forgotten, see Steven C. Bennett, "The Right to be Forgotten: Reconciling EU and US Perspectives", *Berkeley Journal of International Law* 30, no.1, (2012): 163,173; Haga, "Right to be Forgotten",103-104. For an experimental study of the conditions when Americans support the right to be forgotten, similar to the European approach, see Leticia Bode&Meg Leta Jones, "Ready to Forget: American Attitudes Toward the Right to be Forgotten", 33 (2), *The Information Society* 33, no.2, (2017): 77.

Turkish Law on the Protection of Personal Data. Moreover, Turkish doctrine mostly favours the right to be forgotten. Turkish court judgments make clear reference to the EU's Google ruling in that the ruling is both the basis of EU regulations and an inspiration for Turkish law.[117] Turkish court judgments also accept that the right to be forgotten must balance privacy rights with freedom of speech.

5. Suggestion regarding the scope of a possible legal arrangement on the right to be forgotten

We believe that Turkish law needs legislation on the right to be forgotten because it is distinct from the right to erasure since the right to be forgotten includes individuals' past experiences that made them miserable and that they do not want to remember. We argue that an ideal solution would require legislation on the right to be forgotten that balances personality values and fundamental rights against conflicting freedoms, such as freedom of the press and freedom of expression.[118] The legislation should regulate the scope of this right, its implementation conditions, and exceptional cases when the right to be forgotten would not apply. This is partly inspired by Article 17 of EU Regulation 2016/679. Our recommendation can also be derived from various court judgments of alongside general assessments of the doctrine. In such a legally secure environment created by the explicit provisions, the individuals would be able to foresee their rights more and they would be able to claim them before the administrative and/or judicial authorities more confidently.

At the outset, we should clarify when and where the right to be forgotten applies. The question to be answered is whether the internet environment, all digital and accessible media, or all media easily accessible by the public should be covered. As seen from the decision of the Court of Cassation, a printed book is also a platform where the right to be forgotten can be considered. We believe that although digital media are the primary platform accessible by third parties, all platforms like published books and news portals accessible by the public may involve the right to be forgotten.[119] We therefore argue that the scope of the right to be forgotten may be extended to other platforms apart from social media sites, websites, and mobile apps. Furthermore, it will be useful to specify the extent of restrictions on accessibility to digital media more clearly. For instance, different means to enjoy the right to be

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[117] GDPR has codified the right to be forgotten explicitly and if only the court judgements are taken into consideration, the right to be forgotten derives from the Google Judgement. So, indirectly, Google Judgment has been the basis of the right to be forgotten in GDPR: gdpr-info-eu/issues/right-to-be-forgotten/ accessed 25.01.2021.

[118] For a similar view, see Akkurt, "17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay ", 2626; Michael Hoven, *Balancing Privacy and Speech in the Right to be Forgotten 2012* accessed December 11, 2020, https://jolt.law.harvard.edu/digest/balancing-privacy-and-speech-in-the-right-to-be-forgotten. For a balanced approach to the right to be forgotten, see also Jef Ausloos, "The Right to be Forgotten - Worth Remembering?"*, Computer Law and Security Report* 28, no. 2 (2012): 152.

[119] For a similar approach about the wider coverage of the right to be forgotten, see Martha Garzia-Murillo&Ian MacInnes, "Cosi fan tutte: A Better Approach Than the Right to be Forgotten", *Telecommunications Policy* 42, (2018): 229; Akgül, "Kişisel Verilerin", 34.

forgotten should be specified, such as not displaying relevant content in the search engine, specific platform-based blocking, URL-based blocking, excluding introductory information from relevant pages of a book, erasing data in digital memories, and anonymisation.

Secondly, a possible law should offer a guidance on the "period" and length of period in relation to the moment of data processing. At this point, it is advisable not to define a certain period, but it should be enabled to consider the conditions in the specific case. Court judgments also tend to reflect this approach. A reasonable criterion for calculating the period may be "disappearance of the expected objective following the processing of personal data" or "being totally irrelevant to the personal data during the elapsed time". The elapsed period and justifying the disappearance of the objective should be considered sufficient to introduce the right to be forgotten.

Thirdly, objection of the individual whose personal data has been processed should be introduced as a fundamental principle of application. However, the essential condition for applying the right to be forgotten is the individual's request for removal of their data in order to break with the past and make a fresh start. We thus agree with the understanding that the right to be forgotten essentially allows rehabilitation and provides a second chance.[120] We consider that breaking with the past may be one of the factors to distinguish the right to be forgotten from the right to be erased. Being more specific than the existing provision on the right to be erased in Turkish law, a new provision on the right to be forgotten should not just allow the erasure of certain data but should also require that the plaintiff finds that data disturbing, is made miserable, wants to be forgotten, and/or has had their reputation tarnished. Therefore, any law should include a definition of the features of the right to be forgotten that distinguish it from the right to be erased and provide the determining factors. By adopting such an understanding, court judgments emphasising the feature of the right to be forgotten as "breaking with the past" would constitute a basis for a future law.

Any specific law on the right to be forgotten should also address the conditions under which the right cannot be enjoyed; that is, the exceptions to the enjoyment of the right. It will be necessary to determine the values challenging the right to be forgotten and identify those prevailing over it at the end of this challenge. For example, since freedom of expression, freedom of the press, and certain public values may challenge the right, exceptions should clearly be identified. In that regard, matters of outstanding public interest or data serving statistical purposes or information necessary for academic research could constitute exceptions to the right to be forgotten.[121] In such cases, specific assessments should be made as to whether it is possible to utilise the data by anonymisation or whether such use would enable the expected objective to be achieved. The availability of the anonymised data in that environment might both satisfy the data subject as their identity has not been disclosed and also protects the public interest. Accordingly, by introducing such

[120] For such an approach see Anna Bunn, "The Curious Case of the Right to be Forgotten", *Computer Law&Security Review* 31, (2015): 340.

[121] For a similar approach see Akgül, "Danıştay ve Avrupa", 18.

provisions on the exclusions related to the exercise of the right to be forgotten, courts will be able to provide a balance between these values to preserve the principle of proportionality.

Introducing a specific law on the right to be forgotten will provide for a definition of the right, its application conditions, and related exceptions and measures. In terms of legal arrangement, only a decision by the Board which has the status of regulatory administrative act might not provide satisfactory protection since it might be amended easily in comparison to laws. Moreover, data controllers might also file a suit against the application of such an act. Therefore, there is a need of a legal arrangement at the level of a law. Individuals will thus feel that they are protected legally while arbitrary applications by the courts will be prevented by ensuring certainty, and there will be uniform application of the law. Addressing the right to be forgotten only in court judgments under Turkish law fails to ensure uniformity and certainty because *stare decisis* is not accepted so courts do not depend on previous judgments. Introducing legislation on the right to be forgotten to correct this deficiency would allow a normative counterpart in Turkish law, which is part of the civil law system.

6. Conclusion

Despite the existence of certain provisions regarding data protection in Turkish law, there is no specific provision regulating the right to be forgotten. However, other provisions in Turkish law can provide reference points while interpreting the right to be forgotten. Considering Turkish legal doctrine and court judgments, we have observed that there is no consensus regarding the boundaries and/or application conditions of the right to be forgotten. Absent this, we find that the judgments of the Turkish Constitutional Court have a specific guiding character. The Court emphasises that the right to be forgotten balances protection of reputation against freedom of expression and the press. According to the Court, the right to be forgotten enables individuals to make a fresh start to their lives. Applying the principle of proportionality provides legal solutions like blocking access to specific web-pages to be implemented. Considering the Constitutional Court's understanding, and Turkish legal doctrine's general view on the right to be forgotten, Turkish law places more emphasis than US law on personality rights and less on freedom of speech and provides more support for the right to be forgotten. Turkish law is thus closer to the EU's approach in emphasising the personality rights within the framework of the right to be forgotten.

Yet, it has been concluded that provisions on the right to erasure are insufficient after considering specific conditions, such as the nature of data related to the right to be forgotten, its processing environment, and the consent of the data subject. We think that the right to be forgotten may specifically cover those instances when an individual wants to forget, so all those memories or events that are to be set aside might be subject to this right. This would also emphasise the distinction from the right to erasure. The right to be forgotten could cover all digital and non-digital

platforms while the time limit for the use of the right should be determined according to the certain conditions. A provision enabling flexibility in terms of time should also be inserted in the regulation. Finally, exceptions to the application of the general rule on the right to be forgotten, like protection of a superior public interest, should also be included within limits. A new specific law on the right to be forgotten will provide clarity and uniformity while preventing possible arbitrary court judgments.

Bibliography

1. Akgül, Aydın. "Kişisel Verilerin Korunmasında Yeni Bir Hak: Unutulma Hakkı ve AB Adalet Divanının Google Kararı", *Türkiye Barolar Birliği Dergisi* 116, (2016): 11-38.
2. Akgül, Aydın. *Danıştay ve Avrupa İnsan Hakları Mahkemesi Kararları Işığında Kişisel Verilerin Korunması*. İstanbul: Beta Yayınevi, 2014.
3. Akkurt, Sinan Sami. *"17.06. 2015 Tarih, E. 2014/4-56, K. 2015/1679 Sayılı Yargıtay Hukuk Genel Kurulu Kararı ve Mukayeseli Hukuk Çerçevesinde Unutulma Hakkı"*, *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 65, no.4 (2016): 2605-2635.
4. Aksoy, Hüseyin Can. *Medeni Hukuk Ve Özellikle Kişilik Hakkı Yönünden Kişisel Verilerin Korunması.* Ankara: Çakmak Yayınevi, 2010.
5. Antani, Ravi. "The Resistance of Memory: Could the European Union's Right to Be Forgotten Exist in the United States?*", Berkeley Technology Law Journal Annual Review* 30, n. 4, (2015): 1173-1210.
6. Ausloos, Jef. "The Right to be Forgotten - Worth Remembering?", *Computer Law and Security Report* 28, no.2 (2012): 143-152.
7. Ayözger, Çiğdem. *Kişisel Verilerin Korunması.*İstanbul:Beta Yayınevi, 2016.
8. Başaran Yavaşlar, Funda & Canyaş, Oytun. "Türkiye'de Vergi Şeffaflığı", *Vergi Dünyası Dergisi* 37 no. 443, (2018): 6-24.
9. Bennett, Steven C. "The Right to be Forgotten: Reconciling EU and US Perspectives", *Berkeley Journal of International Law* 30, no.1 (2012): 161-191.
10. Bode Leticia & Leta Jones, Meg. "Ready to Forget: American Attitudes Toward the Right to be Forgotten", 33 (2), *The Information Society* 33, no.2, (2017): 76-85.
11. Bunn, Anna. "The Curious Case of the Right to be Forgotten", *Computer Law&Security Review* 31, (2015): 336-350.
12. Çekin, Mesut Serdar. *AB Hukukuyla Mukayeseli Olarak 6698 Sayılı Kişisel Verilerin Korunması Kanunu.* İstanbul: Oniki Levha Yayınları, 2018.
13. Çelik, Yeşim. "Özel Hayatın Gizliliğinin Yansıması Olarak Kişisel Verilerin Korunması ve Bu Bağlamda Unutulma Hakkı", *Türkiye Adalet Akademisi Dergisi* 8 no.32 (2017): 391-410.
14. Değirmenci, Olgun. "Yargısal İçtihatların Ortaya Çıkardığı Bir Hak: Unutulma Hakkı (Çerçevesi ve Hak Üzerine Düşünceler", *Terazi Hukuk Dergisi* 13, n.144, (2018); 153-163.
15. Değirmenci, Olgun. "Teknik Açıdan İnternet Erişiminin Engellenmesi Türleri ve Türk Hukukunun Tercihi", *Terazi Dergisi* 13, no.143, *(*2018): 182-188.
16. Develioğlu, Hüseyin Murat. *6698 sayılı Kişisel Verilerin Korunması Kanunu ile Karşılaştırmalı Olarak Avrupa Birliği Genel Veri Koruma Tüzüğü uyarınca Kişisel Verilerin Korunması Hukuku* (İstanbul: Oniki Levha Yayınevi, 2017).
17. Dowdell, John W. "An American Right to Be Forgotten", *Tulsa Law Review* 52, no.2, (2017): 311-341.

18. Garzia-Murillo, Martha& MacInnes, Ian. "Cosi fan tutte: A Better Approach Than the Right to be Forgotten", *Telecommunications Policy* 42, (2018): 227-240.
19. Gomes de Andrade, Norberto Nuno, *"*Re-Proposing the Right to be Forgotten" In *The Ethics of Memory in a Digital Age* ed. Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic, 65. Hampshire: Palgrave Macmillan, 2014.
20. Gülener, Serdar. "Dijital Hafızadan Silinmeyi İstemek: Temel Bir İnsan Hakkı Olarak Unutulma Hakkı", *Türkiye Barolar Birliği Dergisi* 102, (2012): 219-239.
21. Haga, Yuriko "Right to be Forgotten: A New Privacy Right in the Era of Internet*"* in New Technology, Big Data and the Law, edited by Mark Fenwick, Nikolaus Forgo, 100. Springer, 2017.
22. Helvacıoğlu, Aslı Deniz & Stakheyeva, Hanna. "The Tale of Two Data Protection Regimes: The Analysis of the Recent Law Reform in Turkey in the Light of EU Novelties", *Computer Law &Security Review* 33 no.6, (2017): 811-824.
23. Karaçoban, Tuğçe Güneş. "Vergi Ödevlilerinin Kişisel Verilerinin Korunması ve Kişisel Verilerin Korunması Kanun Tasarısı"*, İstanbul Kültür Üniversitesi Hukuk Fakültesi Dergisi* 15, no.1-2*,* (2016): 801-824.
24. Kerr, Julia. "What Is a Search Engine: The Simple Question the Court of Justice of the European Union Forgot to Ask and What It Means for the Future of the Right to Be Forgotten", *Chi J Int'l L* 17, (2016): 217- 243.
25. Koops, Bert-Jaap, *Forgetting Footprints, Shunning Shadows. A Critical Analysis of the "Right to Be Forgotten in Big Data Practice, (*Tilburg Law School Research Paper, 2011), 8.
26. Korkmaz, İbrahim. *Kişisel Verilerin Ceza Hukuku Kapsamında Korunması.* Ankara:Seçkin Yayınevi, 2017.
27. Kuner, Christopher. *European Data Protection Law.* New York: Oxford University Press, 2007.
28. Kuner, Christopher."The European Union and the Search for an International Data Protection Framework"*, Groningen Journal of International Law* 2 no.2, (2014): 55-71.
29. Küzeci, Elif. *Kişisel Verilerin Korunması.* Ankara: Turhan Kitabevi, 2018.
30. Mantelero, Alessandro. "The EU Proposal for a General Data Protection Regulation and the roots of the 'right to be forgotte*n", Computer Law & Security Review* 29, no. 3, (2013): 229-235.
31. McNealy, Jasmine. "The Emerging Right to Be Forgotten: How a Proposal in Europe Could Affect the Sharing of Information"*, Insights on L & Soc'y* 12, (2012): 14-29.
32. Nair, Güney & Balta, Emine "Bilgi İletişim Teknolojileri Kullanımında Sınırları Aşan Bir Sosyal Sorun Alanı Olarak Unutulma Hakkı", *Cumhuriyet Üniversitesi Sosyal Bilimler Dergisi* 41, no.2, (2017): 113-126.
33. Olivares Olivares, Bernardo D. "The impact of GDPR on European Name&Shame tax defaulter lists"*, Computer Law&Security Review* 35 no.3, (2019): 241-250.
34. Perira, Angela Guimaraes; Vesnic-Alujevic, Luica; Ghezzi, Alessia, "The Ethics of Forgetting and Remembering in the Digital World through the Eye of the Media" In *The Ethics of Memory in a Digital Age* ed. By Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic, 9-28.
35. Roberts, Jeff John. "*The Right to Be Forgotten from Google? Forget It, Says US Crowd"*, Fortune, Mar. 12, 2015, https://fortune.com/2015/03/12/the-right-to-be-forgotten-from-google-forget-it-says-u-s-crowd.
36. Royston, Samuel W. "The Right to Be Forgotten: Comparing U.S. and European Approaches", *St Mary's Law Journal* 48, no.2, (2016): 253-275.

37. Sartor, Giovanni. "The Right to be Forgotten: Balancing Interests in the Flux of Time", *International Journal of Law and Information Technology,* (2016): 72-98.
38. Sözüer, Eren. "*İnsan Hakları Hukukunda Unutulma Hakkı"*, L.LM. Thesis, University of Istanbul, 2017.
39. Terwange, Cecile de, "The Right to be Forgotten and Informational Autonomy in the Digital Environment" In *The Ethics of Memory in a Digital Age* ed. By Alessia Ghezzi, Angela Guimaraes Perira, Luica Vesnic-Alujevic, 83. Hampshire: Palgrave Macmillan, 2014.
40. Weber, Rolf H. "The Right to Be Forgotten: More than a Pandora's Box*", J Intell Prop Info Tech & Elec Com L* 2, (2011): 120-130.
41. Yavuz, Can. "*Unutulma Hakkı",* LL.M. Thesis University of Yeditepe, 2016.