Chapter 53
A Legal Framework for Healthcare:
Personal Data Protection for Health Law in Turkey

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ABSTRACT

This chapter provides a holistic general overview of the data protection regime in Turkey. Authors present the principal rights of data protection and transmission in health law and latent ethical concerns by specifying decisions of the Supreme Court in Turkey and the European Court of Human Rights on using personal data. The research describes data protection law for health care setting in Turkey. Primary and secondary data have been used for the study. The primary data includes the information collected with current national and international regulations or law. Secondary data include publications, books, journals, and empirical legal studies. Privacy and data protection regimes in health law show there are some obligations, principles, and procedures which shall be binding upon natural or legal persons who process health-related personal data.

INTRODUCTION

Every patient who needs to get a medical treatment should share health-related personal data with healthcare providers. Therefore, personal health data plays an important role to make health decisions and identify health threats during every encounter between patient and caregivers. In other words, health data can be defined as privacy and sensitive information which is protected by various health laws and

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regulations. In many cases, the data are an outcome of the confidential relationship between patients and their healthcare providers.

Health data usually consist of individual, personal health and other related information. The European Group on Ethics in Science and New Technologies (EGE), in the Opinion No 13 Ethical Issues of Health Care in Information Society defines "health data" as including "a wide range of information about an individual, which all touch upon an individual's private life (OECD, 2015).

Globally, almost all nations have own laws, regulations or rules in order to protect personal health data. Several countries state that difficulties negotiating data sharing arrangements among public authorities. Especially, legal regulations and a lack of interagency co-operation limit data sharing among public authorities in Turkey. In the same way, Norway, which has the strongest health information system with the greatest data availability, do not permit the Ministry of Health to share data with any other legal entity. On the other hand, in Singapore, there are a variety of challenges to negotiating data sharing arrangements with public agencies because of separate legal entities. In the same way, the different authorising legislation of Japan applying at the national level. However, at regional levels and for public corporations set barriers to data sharing arrangements among national authorities and limit data linkages. (OECD, 2015).

BACKGROUND

There is a variety of instruments that allow authorities to use the health data or to set the barriers data sharing across international borders. In Turkey, for example, the protection of personal data depends primarily on the Law on Personal Data Protection (LPDP). This legislation numbered 6698 published at the Official Gazette dated 7 April 2016 has entered into force at the date of its publication. On the other hand, the General Data Protection Regulation (GDPR) was passed in the European Parliament and the European Council on 27 April 2016 as a Regulation on "the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data" (Regulation, 2016/679), after 6698 numbered law in Turkey. Law on Personal Data in Turkey, hence, is largely based on the European Union Data Protection Directive (also known as Directive 95/46/EC) instead of GDPR (Akıncı, 2017, p. 2). GDPR whose provisions became directly applicable in all EU addresses the protection of fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data. Similarly, the LPDP presents set forth obligations, principles, and procedures for the privacy of personal data such as health-related data.

Until very recently, Turkey did not have specific legislation governing the protection of personal data. The situation has changed upon the enactment of the LPDP in 2016. This law has introduced solid principles of data protection in Turkey that are in line with compatible principles of European Union regulations (Republic of Turkey Prime Ministry Investment Support, 2017). In fact, a law on the protection of personal data was a step taken towards harmonizing the Turkish legislation with EU legislation. The LPDP was prepared based on Directive 95/46/EC on data protection. It is very similar to this Directive, however, it is not entirely the same and the differences in this law are deficiencies rather than improvements.

This chapter deals with general aspects of the Personal Data Protection for Health Law in terms of the principal rights of data protection in health law and latent ethical concerns by specifying decisions of Supreme Court in Turkey and the European Court of Human Rights (ECHR). Turkey has been linked