

# *Is It Possible to Process the Personal Data of the Debtor's Relatives for Debt Collection Purposes?*

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## **Abstract**

Can the execution office access to the personal data of the debtors' relatives for debt collection purposes, without an explicit consent, to find out if the debtor has inherited any property?

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As known, the practice of the Law on the Protection of Personal Data ("**LPPD**") numbered 6698 is vague due to the lack of court precedents on this subject. That being said, the legislation has started to be formed with the recently issued higher court decisions on the LPPD. Izmir Regional Court of Justice has given a decision on processing the personal data of a debtor's first degree relatives for debt collection purposes without obtaining the consents of the related persons.

Briefly summarizing the decision, the creditor makes an application to the enforcement office to examine the debtor's family register and to learn if the debtor's family is deceased and if he inherited a property from his family. It is stated in the decision that the family register, without a doubt, contains personal data and the explicit consent of the related person must be obtained to access the register records.

The decision initially examines whether it is possible to access and disclose the civil register records of the debtor's family, not the debtor himself, within the context of the execution file. The Turkish Constitution, the European Convention on Human Rights and the Civil Registration Services Law deems the civil register documents confidential and state that these document may be directly received from the civil register only by the judicial authorities. Parallel to that, as per Article 28/(d) of the LPPD "*in case of processing personal data by the judicial and execution authorities regarding an investigation, prosecution, adjudication or enforcement procedure*" the LPPD would not be applicable and in such case, it will not be required to obtain the explicit consents of the relevant persons. However, since the scope of the said provision does not refer to execution offices, the Izmir Regional Court decided that this provision cannot be applied to this case.

It is obvious that determining the debtor's parents by reaching the debtor's family register would be beneficial in the collection of the debt. However, the decision states that obtaining personal data in an unlawful manner would do more harm than benefit. Accordingly, without obtaining the explicit consents of the debtor's mother and father, the higher court has denied both the interrogation request on the debtor's family register and the request regarding the property registered in the name of the debtor which is inherited from his family.

We are of the view that the decision of Izmir Regional Court is very useful in terms of emphasizing the importance of explicit consent requirement by way of narrowly interpreting the exceptions of such requirement and making a harm – benefit balance test.

Looking through the European practice, it is seen that Article 28/(d) of the LPPD and Article 13 of the 95/46 Directive ("**Directive**") 'titled "Exemptions and Restrictions" draws parallels. The said article of the Directive stipulates that the European Union member countries can adopt necessary legal measures for the following purposes in order to restrict the rights and obligations related to principles of personal data processing, notification requirement etc.:

- national security;
- defence;
- public security;
- the prevention, interrogation, determination and pursuit of infringement of ethical rules regarding criminal acts or regulated professions;
- in relation to the said circumstances, the monitoring, interrogation or legislation function in association with the performance of an official authority's duty.

Given this context and within the scope of the Directive, it may be possible to access the civil registry records in the European Union member countries without an explicit consent for the purpose of a criminal investigation. That being said, we are of the view that it may not be possible to access the debtor's family register records without the explicit consent of the related persons in order to collect a receivable within the scope of the European Union legislation since such procedure may not be considered as a criminal one.

Along with the Directive, agenda of the European Union is busy with a new regulation on the protection of personal data- General Data Protection Regulation ("GDPR"). GDPR is anticipated to be enforced in 2018 by way of abolishing the Directive and it foresees a new rule in addition to Article 28 of the Directive explained above. According to Article 23 of the GDPR, the European Union member countries may adopt the necessary legal measures to restrict certain rights and liabilities related to the enforcement of the civil law related matters. Although it may not be possible to move forward without obtaining explicit consent on civil law related matters in the European Union countries within the scope of the Directive (i.e. as to whether the debtor has inherited any property), the GDPR may pave the way for accessing the family register records of the debtor through official authorities without obtaining an explicit consent. While this will be clarified in the following days with the enactment of the GDPR, under current circumstances it will not be possible to move forward without an explicit consent on civil law related matters within the scope of the LPPD and the recently developing court precedents.

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