

RIGHTS OF THE DATA SUBJECT



Generally

The Law sets forth a number of remedies for the data subjects to convey their requests regarding the implementation of the Law and to protect their rights regarding their personal data. Thus, in order to exercise their rights regarding the protection of their personal data, the data subjects will not only be able to apply directly to the judiciary, but also to use other legal remedies brought by the Law. The first method of claiming rights brought by the law is the method of request to the data controller regulated in Article 13. The second is a complaint to the Personal Data Protection Board regulated in Articles 14 and 15.

a) Request to the Data Controller



According to the Article 11 of the Law, data subjects have the right to request to the data controller about him/her to learn whether his/her personal data are processed or not, to demand for information as to if his/her personal data have been processed, to request the rectification of the incomplete or inaccurate data, if any, to request the erasure or destruction of his/her personal data if it's against the Law, to request notification of the operations carried out in compliance with this to the third parties to whom his personal data has been transferred and to claim compensation for the damage arising from the unlawful processing of his/her personal data.

The law envisaged a gradual request procedure for applications within the scope of protection of personal data. It is obligatory for the data subjects to apply to the data controller in order to exercise their rights. A complaint cannot

be made to the Board before this remedy is exhausted.

The request of the data subject must be answered by the data controller as soon as possible and within 30 days at the latest, depending on the nature of the request. Persons whose requests are refused or who find the answer insufficient, or whose application is not answered in due time, will be able to use their right to complain to the Board.

In the law, the compensation rights of the persons whose personal rights are violated are reserved according to the general provisions. Since the request is obligatory and the complaint is optional, it will be possible for the person whose request is refused indirectly or explicitly, to file a complaint with the Board on the one hand and directly go to the judiciary on the other. However, it should be noted at this point that there is no obstacle for the data subjects to apply directly to the judicial organs for violations of their rights. In other words, there is no obligation to apply to the data controller



before the matter is referred to the judiciary. Applying directly to the data controller is an obligation that must be complied with before conveying the matter to the Board.



a.1. Rules Regarding Request and Response Method

There are two basic provisions in the Law regarding the form of requests to be made to the data controller. The first of these is the written request. Written request means an application made with a document containing a wet signature in accordance with the general provisions. In addition, documents signed with a secure electronic signature will also meet the written form requirement.

The Law authorizes the Personal Data Protection Board to determine other request methods other than the written request. Based on this, the Board has determined the method of requests to be made to the data controller with the Communiqué on the Procedures and Principles of Application to the Data Controller published in the Official Gazette dated 10.03.2018. Accordingly, data controllers are obliged to answer the requests, made by the



data subjects in writing or using the registered electronic mail (KEP) address, secure electronic signature, mobile signature or the e-mail address previously notified to the data controller by the data subject and registered in the data controller's system or by means of a software or application developed for request purposes, as soon as possible according to their qualifications and within thirty days at the latest, free of charge. As a rule, the data controller has to answer the requests addressed to him as soon as possible. However, this period is limited to a maximum of 30 days.

The data controller may accept the requests made to him or refuse them by explaining the reason. By obliging the refusal to be justified, it is aimed to protect the rights of the data subjects more effectively. Because the obligation to write a reasoned refusal decision makes it necessary for data controllers to show a legal justification for their refusal decisions.

If the data controller accepts the request addressed to him, he must fulfil the requirements

of the request directly and immediately. If the request is accepted but the requirements are not fulfilled, it should be assumed that the data controller refuses the request. Because the Law gives the right to apply to the Board only in cases where the data controller refuses the application of the data subject, if the answer given is insufficient or if he does not respond in a timely manner. This is an important issue in terms of enabling the data subject to file a complaint with the Board.

The law includes written notification or electronic notification provisions regarding the method to be followed for the data controller to notify his decision regarding the requests made to him. Therefore, when the data subject applies to the data controller either in writing or by other methods determined by the Board, the data controller gives his answer through the method applied by the data subject.

Particular attention should be paid to the case that the data controller to whom the request is made is a public institution or organization.

Because notifications to be made by public institutions and organizations are regulated by the Notification Law No. 7201. Considering that the Notification Law also allows for electronic notification, it will be possible for data controllers, who are public institutions and organizations, to make notifications both in writing and electronically, by complying with the relevant legislation.



a.2. Rules Regarding Cost of Request to Data Controller

Pursuant to Article 13 of the Law, although it is determined that the requests of the data subjects must be met by the data controllers free of charge, the Personal Data Protection Board has been authorized to determine the fee to be charged by the data controllers if the transaction to be carried out requires an additional cost.

With the Communiqué on the Procedures and Principles of Application to the Data Controller, prepared by the Board and published in the Official Gazette dated 10.03.2018; it is determined that if the request of the data subject is to be answered in writing, up to 10 pages will not be charged, a processing fee of 1 Turkish Lira may be charged for each page over 10 pages, and if the response to the request is given in a recording medium such as CD or flash memory, the fee that may be



requested by the data controller cannot exceed the cost of the recording medium in question.

If the data controller is wrong in the matter that is the subject of the request of the data subject regarding the implementation of the Personal Data Protection Law, the fee must be returned to the data subject.



b. Complaint to the Board

If the request is refused, the response is found insufficient or the request is not responded within the specified time period, the data subject may lodge a complaint with the Board.

b.1. Examination by Personal Data Protection Board

Pursuant to Article 15 of the Law, the Board has the authority to carry out an examination in case of violation. The Board may exercise this authority upon complaint or ex officio.

Ex officio examination: The fact that the Board is authorized ex officio to initiate an examination means that in case of a violation of which the Board is aware, it can initiate an examination by taking action on its own. In other words, there is no need to make a complaint to the Board in order to initiate an examination. This enables the Board to prevent violations of rights, even though the data subjects do not make any complaints or even are unaware of the violation. Therefore, the rights of the data subjects can be protected more effectively. Another consequence of the Board's ex officio authority to initiate an examination is that it has the authority to evaluate the notices received



and initiate an examination if necessary.

Examination upon complaint: In order for the data subjects to exercise their rights, they must first apply to the data controllers. In case the data controller refuses this request, the response given is insufficient or the request is not responded within the specified time period, the data subject has the right to file a complaint with the Board. With the complaint to be made, the issue is brought to the Board and a decision is made as a result of the Board's examination.

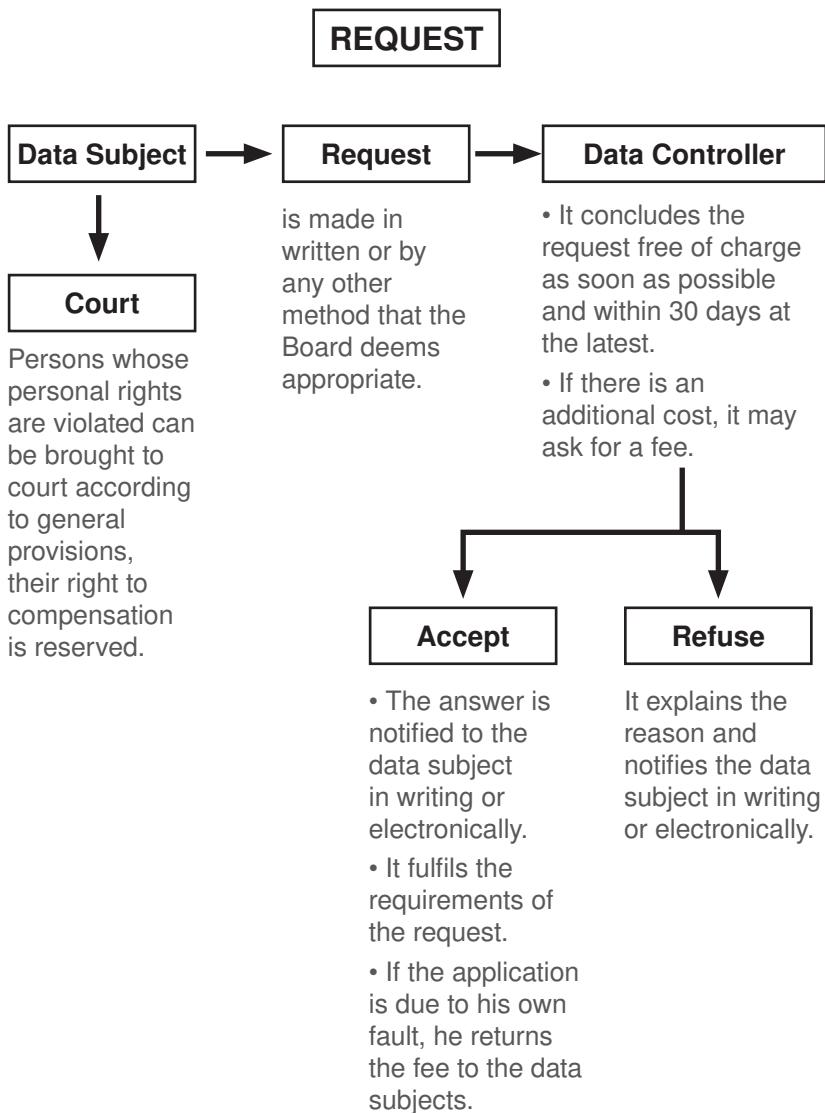


b.2. Conditions for Notifications and Complaints to the Board

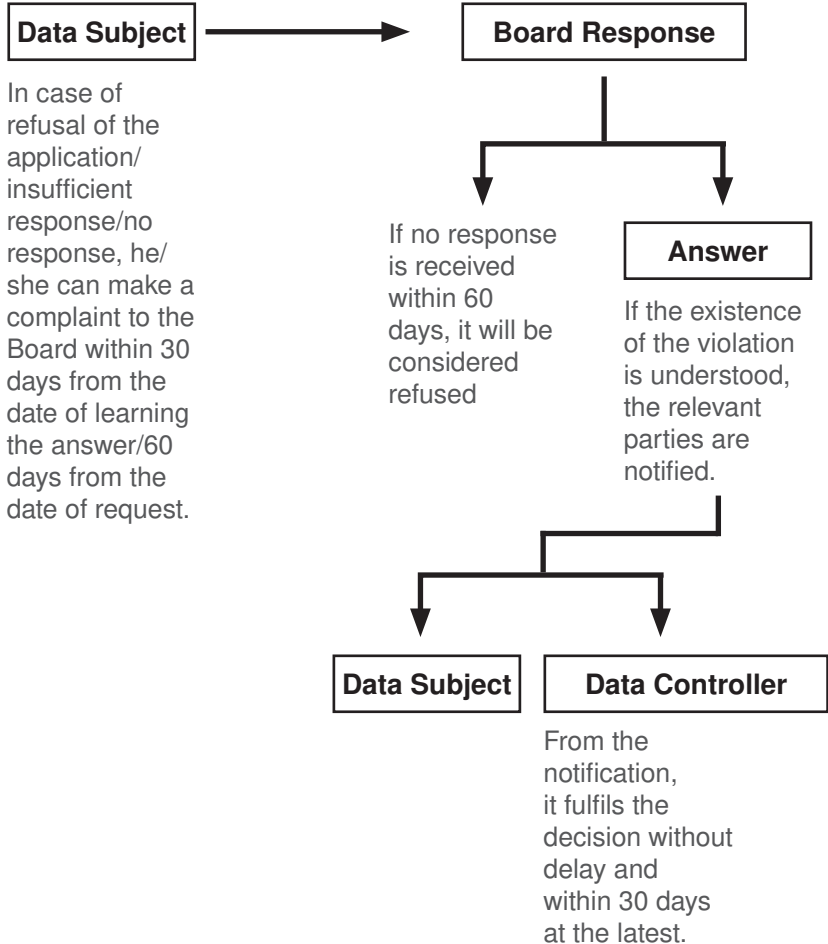
In order for the notices and complaints to be made to the Board to be processed, they must be submitted in accordance with the provisions specified in Article 6 of the Law No. 3071 on the Exercise of the Right to Petition. The first of the conditions specified within the scope of the aforementioned article is that the petition to be submitted includes a specific subject.

The second condition is that the petition is not related to the matters falling within the jurisdiction of the judicial authorities. For example, the right of the data subject to demand the compensation of the damage suffered from the data controller is in accordance with subparagraph (ğ) of paragraph 1 of Article 11 of the Law, and if the data controller does not fulfil this request, it may be possible for the data subject to file a complaint with the Board.





COMPLAINT



It is also possible for the data subject to apply to the judicial authorities within the framework of the general provisions for the compensation of their damages. Accordingly, petitions containing requests concerning the Turkish Penal Code will not be evaluated by the Authority within the scope of this article, since they fall within the jurisdiction of the judicial authorities.



The last condition to be complied with in complaint or denunciation petitions is that these petitions contain the name, surname, signature and business or residence address of the petitioner. Therefore, it will not be possible to make an anonymous report or complaint to the Board.

It is not possible for the data subjects to make a complaint about exercising their rights without making an application to the data controller. For this reason, one of the prerequisites for filing a complaint with the Board is accepted as making an application to the data controller.

In order to file a complaint after applying to the data controller, the data subject must comply with certain time limits. Accordingly, the data subject will be able to file a complaint with the Board within thirty days from the date on which he learns the response of the data controller. In any case, it is possible for the data subject to file a complaint with the Board within sixty days from the date of request to the data controller.



b.3. Authority and Obligations of the Board Regarding the Examination Process



The Board has the authority to request all necessary information and documents from data controllers while examining the requests received. The Board also has the authority to conduct on-site examinations. In this context, data controllers are obliged to enable on-site examination and to send the requested information and documents to the Board within fifteen days.

An exception has been introduced in the law regarding the obligations of data controllers to submit information and documents. Accordingly, the data controller is not allowed to present information and documents in the nature of state secrets to the Board.

Another authority granted to the Board by the Law is to decide to stop the processing

of data or the transfer of data abroad before the examination process is concluded, in case the operation may lead to damages that are difficult or impossible to recover and if it is clearly unlawful. Thanks to this authority, which is similar to the interim injunction institution in the judicial organs, it will be possible to prevent possible harm and violations of rights quickly.

It is foreseen that the Board will give a response to the data subject within sixty days. If the Board does not give a response to the applicant during that period, the request will be deemed refused. The mentioned sixty-day time limit is applied to the requests from the data subjects to the Board. No time limit is foreseen for the examinations initiated by the Board ex officio.



b.4. Finalization of the Review of the Board



The Board may make a decision upon a complaint or as a result of the examination initiated ex officio. However, if no response is given within sixty days from the date of the complaint, the request is deemed to have been refused. If the Board concludes that the right to protection of personal data has been violated as a result of its examination, it will decide that the unlawful violations it detects will be eliminated by the data controller and will notify the parties of this decision. The requirements of such a decision must be fulfilled without delay and within thirty days at the latest as of the notification date of the decision.

The Board also has the authority to take a resolution as a result of the examination. Resolutions are taken and published when it is determined that the violation under examination is widespread. Resolutions are extremely important legal texts to be complied

with for all concerned, as they will show the Board's approach to the event that is the subject of the decision and its attitude in subsequent examinations and complaints. In addition, resolutions are of utmost importance in terms of uniformizing the implementation of the legislation on the protection of personal data. Because, thanks to the resolutions, different interpretations of the legislation and different applications arising from them will be prevented.





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