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THE RIGHT TO BE FORGOTTEN

(EVALUATION OF THE RIGHT TO BE FORGOTTEN SPECIFIC TO SEARCH ENGINES)

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ABSTRACT

This booklet has been prepared in order to clarify the exercise of the right to be forgotten in the eyes of search engines, within the framework of the Decision of the Personal Data Protection Board dated 23/06/2020 and numbered 2020/481, regarding the requests of individuals to remove their names and surnames and the results of searches made through search engines from the index. In the study, firstly, explanations about the right to be forgotten and its development and the place of the right to be forgotten in international and national law are given. Subsequently, the remedies regarding the right to be forgotten of the data subject are explained in detail.

INTRODUCTION

Thanks to the developing technology today, data can be easily recorded and stored for many years. However, the fact that every moment of a person's life, especially the negative events in the past or the ideas that he has changed over time, is kept in various media forever and can be easily accessed by anyone who wishes, can negatively affect the lives of those concerned. In this context, in today's technology, where all kinds of personal data are recorded and it is very difficult to remove them due to fast and wide sharing once recorded, it is important for the individual to continue his life freely that the data of the data subject cannot be tracked by third parties.

In this sense, by restricting (partially) access to the personal data of the individual by third parties; the "Right to be Forgotten" comes to the fore as an aspect of the right to protect personal data in order to ensure a dignified life, to prevent exclusion from society, and to make a new start independently of the past.

In the literature, in line with judicial decisions, doctrine and the views of international institutions, the right to be forgotten is defined as "*the ability of an individual to request that the information that has been legally disseminated in the past and of an accurate quality is removed from access or not brought to the agenda due to the passage of time*". In other words, the right to be forgotten generally refers to the right of individuals to request the prevention of access to their personal data. Thus, the right to be forgotten provides an appropriate tool to meet individuals' requests to reduce access to news, comments, and content that may adversely affect their reputations.

I. DEVELOPMENT OF THE RIGHT TO BE FORGOTTEN

1.1. The Right to Be Forgotten in International Law

It is seen that the definition of the right to be forgotten is not included in the regulations made by the United Nations and the Council of Europe on the protection of personal data. However, there are decisions or reports that include the right to be forgotten within the scope of some rights such as respect for private life, privacy, protection of fame and reputation, and protection of personal data.

In terms of the European Union, in the European Union Directive (Directive) No. 95/46/EC on the Protection of Individuals Regarding the Processing of Personal Data and the Free Movement of Such Data, the request for the blocking or deletion of data stored incompatible with legitimate purposes or incomplete / inaccurate is granted to the data subject, however, there is no regulation in the text regarding the “Right to be Forgotten”.

The first case in which the request for the right to be forgotten was brought before the judicial authorities was decided by the Court of Justice of the European Union (CJEU) on 13.05.2014, between the Spanish Data Protection Authority and Mario Costeja Gonzalez; La Vanguardia Ediciones SL is the case against Google and Google Spain. Since the right to be forgotten came to the fore in many countries in Europe after the said decision, this decision is considered as the most important judicial decision regarding the right to be forgotten.[1]

The subject of this case is regarding the removal of the information, which appeared in two different dated pages of the newspaper La Vanguardia as a result of Costeja Gonzales writing his name on the search engine Google, and that the person had to sell his property because he could not pay his social security debts, from the newspaper pages and Google and Google Spain search results. Gonzales based this demand on the grounds that the procedure regarding him was concluded years ago and that these reports are now completely irrelevant.

1 Court of Justice of the European Union, 13.05.2014, K.131-12.

In the evaluation made by the Spanish Data Protection Authority; while the complaint about La Vanguardia was refused on the grounds that it is mandatory to advertise within the framework of national legislation and that many people have an interest in accessing this information, it was decided that Google would remove the relevant links on the grounds that search engine operators are subject to data protection legislation. Thereupon, Google appealed, and the Spanish Supreme National Court brought the case to the CJEU to express its opinion on the matter.

In summary, in the decision of the CJEU in 2014; it has been stated that if the results of the search made on the search engine are "invalid, incomplete, completely irrelevant or later become irrelevant", the personal data in question that exceeds the purpose of uploading to the internet environment and the information in the related result list should be deleted by the search engines. In addition, it has been evaluated that the right to privacy of the person's private life is above the economic interest of the search engine and the right of the public to access information on the search made on behalf of the person in question, it is emphasized that this rule will not be applied only if the public has a superior interest in learning the information, and the data is insufficient and irrelevant in terms of the purpose of processing, deletion may be requested for reasons such as exceeding this purpose, not updating and not keeping it longer than necessary.

The decision on the right to be forgotten by the CJEU was taken in accordance with the relevant provisions of the Directive. In the Decision; Considering that search engines also process personal data due to their activities and they have a serious power, control ability and a decisive role in the dissemination of data according to both the content and the purpose, it has been concluded that they should be considered as data controllers.

In the following process, a new regulation study has been initiated by the European Union to meet the needs arising in the field of personal data protection, and as a result, the European General Data Protection Regulation, prepared by the European Parliament, the European Council and the European Commission, came into force on 25 May 2018, repealing the Directive. The right to be forgotten is not defined separately in Article 17 of the European General Data Protection Regulation, titled “Right to Deletion (Right to be Forgotten)”, but is evaluated within the scope of the “deletion” obligation. In the aforementioned regulation, the exceptions to the right (legal obligation, fulfilment of a task performed in the public interest, public interest in the field of public health, archiving for the public benefit, scientific or historical research purposes, statistical purposes, making, exercising or defending legal claims etc.) are included by referring to the situation that the data processing conditions should have disappeared in terms of the use of this right.

1.2. The Right to Be Forgotten in National Law

Although there is no legal regulation that conceptually includes this right under the title of "Right to be Forgotten" in our country, it is possible to say that there are tools in our law to realize this right. First of all, it is stated that the right to demand the protection of personal data in Article 20 of the Constitution includes the right of the person to be informed about the personal data about himself, to access this data, to learn whether it is used for its purposes, as well as to request the correction or deletion of these. In this context, the Constitution, the Turkish Civil Code No. 4721, the Law on the Protection of Personal Data No. 6698, the Judicial Registry Law No. 5352, and the Law No. 5651 on Regulation of Broadcasts Made on the Internet and Fighting Against Crimes Committed Through These Broadcasts contain various tools for the establishment of the right to be forgotten.

However, there are some judicial decisions in national law that include the right to be forgotten, although not specific to search engines.[2]

2 The right to be forgotten has been the subject of judicial decisions even before the law came into force. Regarding the request for the removal of the content of a news item in the internet news archive, in the decision of the Constitutional Court dated 03.03.2016 and application number 2013/5653, it has been put forward as a legal issue that "preventing an individual's behaviour that was reported in the past and not alleged to be untrue" is no longer remembered. The request to prevent the access to personal data in internet news archives and to ensure that people's actions are forgotten is defined as the right to be forgotten. In addition, in the decision, "As of the date of application, it is clear that the news in question relates to an event about fourteen years ago and thus loses its currency. In terms of statistical and scientific purposes, there is no reason that makes it necessary to easily access this information on the internet for the reasons stated above. In this context, it is clear that the easy accessibility of the news published on the internet about the applicant, who does not have a political or media personality in terms of public interest, damaged the applicant's reputation." is included and by determining the criteria for how the right to be forgotten should be handled, it was decided that the news violated the right of the person to protect the honour and reputation guaranteed in Article 17 of the Constitution.

Another decision is the Decision of the Supreme Court of Appeals General Assembly, dated 17.06.2015 and numbered E:2014/4-56, K:2015/1679, regarding the name of the plaintiff to be included in a book without pseudonyms. The right to be forgotten in the aforementioned decision is expressed as the right to request that the negative events in the digital memory be forgotten after a while, and that personal data that they do not want others to know is deleted and that their dissemination is prevented, unless there is a superior public interest. It has been stated that the individual's ability to shape his future by getting rid of the negative effects in his past is indisputable, as well as for the benefit of the individual, as well as the increase in the quality of the society, and it has been emphasized that the right to be forgotten is not only beneficial to the individual but also to the society. However, when we look at the definitions of the right to be forgotten in the decision, although this right is regulated for digital data, considering the characteristics of the right and its relation with human rights; it has been stated that it should be accepted not only for personal data in the digital environment, but also for personal data kept in an easily accessible place for the public.

Regarding the right to be forgotten, in the decision of the 19th Penal Chamber of the Supreme Court of Appeals, dated 05.06.2017 and numbered E:2016/15510, K:2017/5325, which was given after the Law came into force; the news on a website loses its timeliness, so the fact that the news meets the "reality and accuracy" criteria at that time does not matter anymore, accessing the aforementioned news at any time may lead to a misperception for the society, keeping the news on the air does not contribute to the progress and development of the society, information on criminal backgrounds is not of interest to the public because the people who make up the content of the news are not politicians elected or appointed with the aim of representing and serving the society, nor are they from artists or intellectuals who produce works for the purpose of expressing themselves to the society and enlightening the society, the right to be forgotten is superior to the freedom of expression and press, and the right to be forgotten is discussed within the right to protect personal data, even though the law is not referred to in the decision.

1.2.1. The Right to Be Forgotten Under the Law No. 6698

Article 4 of the Law No. 6698 on the Protection of Personal Data (Law), which regulates the general principles regarding the processing of personal data, Article 7, which regulates the erasure, destruction or anonymization of personal data and Article 11, which regulates the rights of the data subject, including the right to request the deletion or destruction of personal data constitute the basis for the means of fulfilling the right to be forgotten. In addition to these, Article 8 of the Regulation on the Erasure, Destruction and Anonymization of Personal Data includes regulations on the subject.

In this context, since the establishment of the right in question in terms of our domestic law is possible through the aforementioned regulations, it has been evaluated that the requests of the data subjects for this right can be fulfilled without the need to define the right to be forgotten as a separate right, and that through the said provisions, it can contribute to the realization of the purpose targeted by the Law.

Therefore, when the right to be forgotten is considered as a top concept that includes many rights, in order to establish this right and fulfil its requirements; there are many tools that are determined according to the concrete case, such as “erasure”, “destruction or anonymization” and “removal from index”.

In this framework, the complaints of the data subjects regarding the erasure of their data from the sources in which they are published are evaluated with the provisions of the third paragraph of Article 20 of the Constitution within the framework of the regulations in the 4th, 7th and 11th articles of the Law No. 6698 and in Article 8 of the Regulation on the Erasure, Destruction or Anonymization of Personal Data.

However, considering the control power of search engines over the data today, in terms of requests regarding the use of the right to be forgotten the status of search engines before the Law, and in this context, whether they are obliged to remove the links in the results when the name and surname of the data subject are entered into the search engine, it was necessary to determine the procedures and principles on how to use them.

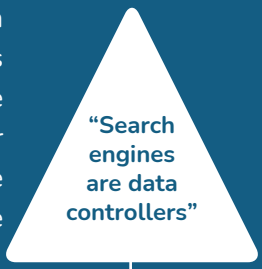
1.2.2. Decision of the Personal Data Protection Board dated 23/06/2020 and numbered 2020/481

Considering that the search engines have a decisive role in the dissemination of data, with the Personal Data Protection Board with the Decision dated 23/06/2020 and numbered 2020/481 on the subject of technical regulation in a way that the names and surnames of the data subjects and the results of the searches they will make through the search engines will not be indexed, some procedures and principles have been determined. In this context, with the said Resolution, it has been decided that;

- "Right to Be Forgotten" subject to the applications submitted to the Authority has been evaluated by considering it as a top concept within the framework of the provision of the third paragraph of Article 20 of the Constitution, the regulations in the Articles 4, 7 and 11 of the Law No. 6698 and Article 8 of The Regulation on the Erasure, Destruction or Anonymization of the Personal Data,

- The right to request that the results related to the person not be achieved in searches made by the name and surname of the search engines included in the applications made to our Authority, is defined as a request to be removed from the index,

- In this context, considering that search engines determine the purposes and means of processing the data collected by third parties on the internet, they are accepted as data controller within the scope of the definition in Article 3 of the Law,



- Considering that the operator of the search engine automatically, regularly and systematically finds the information published on the Internet, then organizes personal data in the form of a list of search results, stores it on its servers, discloses it in certain situations and presents it to its users, activities of the search engines are evaluated as ‘personal data processing’ within the scope of Article 3 of the Law,

- Based on the procedures and periods specified in the provisions of the Law on the right of application and complaint, the data subjects should first apply to the search engines regarding their requests to remove the search results from the index, if the data controller search engines refuse such requests or do not respond to the applicant, then they can complain to the Board,

- The form of the application to be made by the data subjects and the information and documents to be requested will be determined by the search engines,

- In the evaluation of whether the data subject has a right to be removed from the index in the results shown by a search by his name and surname through the search engines, conducting a balance test between the fundamental rights and freedoms of the data subject and the interests that the public will obtain from the information in question, observing which of the competing interests outweigh, it is important to take into account the explanations given in the annex while making this evaluation, but the criteria to be taken into consideration in the evaluation process of complaints about this issue will not be limited to these, additional criteria may be brought up by the Board in each specific case,

- It is also possible for the data subjects to apply directly to the judiciary while applying to the Board if their requests for the removal of the results shown as a result of the searches made with their own names and surnames through the search engines are rejected by the data controller search engines or if their requests are not answered,

- Ensuring that necessary actions are taken to ensure that the procedures and principles in this decision are notified to the search engine operator companies and that the necessary actions are taken to ensure that the communication channels are used by the citizens of our country in order to ensure that the right to be forgotten is exercised by the data subjects through their websites.

Requests regarding the establishment of the right to be forgotten by the data subjects can be made within the scope of data processing conditions, or they can also be claimed regarding the contents processed and disseminated by third parties without the condition of data processing. At the same time, it is possible to exercise this right only by the person whose personal data is processed, and not by third parties who are not the data subject.

On the other hand, it is possible for the data subjects to request from the search engines to remove the links related to their personal data from the search results **under certain conditions**, such as the cases where the data is incorrect, unsuitable, irrelevant or disproportionate for the purpose of data processing. In this context, since the right to be forgotten is not an absolute right that can be asserted by the data subjects under any circumstance, but an exceptional right, it is decided by evaluating within the framework of the criteria specific to each concrete case.

Another issue that should be emphasized in terms of the decision taken within the scope of the right to be forgotten regarding the removal of search results from the index is that the access to the data on the internet within the framework of this right is not completely blocked. The action taken within the scope of the right to be forgotten can be characterized as 'partial' unlinking from search results, mainly in order to prevent the dissemination of personal data. In other words, within the scope of the right to be forgotten, the content of the data accessed from the internet is not removed, and the said information is not completely destructed on the internet. In this context, it

is possible to access the relevant content in the results that appear when the search engines are searched with different words related to the subject. Therefore, the fact that a search result is partially unlinked at the request of the data subject does not mean that the published content will not be accessed in any way, and the aforementioned data can be accessed through searches made with different combinations or directly from the source.

On the other hand, as a result of the evaluations made by the Board, search engines are obliged to remove the results that are published by third parties on the internet and that contain information about the data subjects and that come up with the searches made with the names and surnames of the data subjects. While fulfilling this obligation, it is out of question that the data subjects are primarily directed to the source website by the search engines.

In accordance with the aforementioned Board Decision, information has been given to search engines, which are frequently used in our country, in order to inform the parties of what needs to be done by the search engines. Following the aforementioned informations, steps were taken by the search engines to enable the data subjects to electronically submit their requests within the scope of the right to be forgotten.

Kişisel bilgileri kaldırmak için talep formu

Gizlilik nedeniyle kendinizle ilgili bazı kişisel bilgilerin kaldırılmasını talep etme hakkınız olabilir.

Bu form, ülkenizde Google Arama'da adınızı içeren sorgular için belirli sonuçların kaldırılmasını talep etmek içindir. Google LLC, Google Arama tarafından gösterilen sonuçların belirlenmesi bağlamında gerçekleştirilen kişisel verilerin işlenmesinden ve bu form aracılığıyla gönderilen liste dışı bırakma taleplerinin ele alınmasından sorumlu denetleyicidir.

Kişisel bilgilerin başka bir Google ürününden kaldırılmasını talep etmek istiyorsanız lütfen ilgili ürünün formunu kullanarak talebinizi gönderin. Söz konusu formu Google'dan İçerik Kaldırma sayfamızda bulabilirsiniz. Örneğin, Blogger'dan kişisel bilgilerin kaldırılmasını talep etmek istiyorsanız lütfen talebinizi ilgili Blogger formunu kullanarak gönderin.

Talepte bulunduğunuzda ilgili kişinin gizlilik hakları ile, bilgiye erişimi olan kamunun hakları ve başkalarının bu bilgileri dağıtma hakkı arasında bir denge sağlarız. Örneğin, mali dolandırıcılık, mesleki uygulama hatası, cezai hüküm veya resmi görevlilerin kamusal alandaki davranışları hakkındaki bazı bilgileri kaldırmayı reddedebiliriz.

* zorunlu alan

Bilgileriniz

İkamet edilen ülke *

Birini seçin

Tam yasal adınız *

Sizin adınız (yasal olarak temsil etme hakkına sahip olduğunuz başka birisinin adına istekte bulunuyor olsanız bile lütfen bu bölümde kendi adınızı belirtin). Başka birisini temsil ediyorsanız o kişi adına işlem yapmak için yasal yetkiniz olmalıdır.

İletişim e-posta adresi *

kubraayillmaz@hotmail.com

However, with regard to the requests of the data subjects for the removal of their data from the source websites (newspaper, magazine archive, blog, etc.) within the scope of the right to be forgotten by the Board, considering whether the relevant content violates privacy or personal rights or constitutes a crime within the scope of subparagraph (c) of the first paragraph of Article 28 of the Law (Personal data are processed with artistic, historical, literary or scientific purposes, or within the scope of freedom of expression provided that national defence, national security, public security, public order, economic security, right to privacy or personal rights are not violated or the process doesn't constitute a crime.), which regulates the personal data processing activities that are exempted from the Law, an evaluation is made at the point of whether it will be handled in terms of freedom of expression.

In this evaluation, the relevant applications are separately finalized by the Board by examining which right should be given priority by evaluating the relevant content within the scope of criteria such as carrying public interest and benefit, being real and up-to-date, and the balance between its essence and form.

1.2.3 Criteria to be taken into account by the Personal Data Protection Board in the Evaluation of the Names and Surnames of Persons and the Exclusion of Search Engines from the Index

In the evaluation specified in the Decision of the Personal Data Protection Board dated 23/06/2020 and numbered 2020/481 regarding the removal of the results from the searches made via search engines from the index with the names and surnames of the persons and the criteria to be taken into account and to be examined on each concrete case are included in the annex of the Decision. These criteria are;

- The data subject plays an important role in public life
- The subject of the search results is a child
- The accuracy of the content of the information
- Relevance of knowledge to one's working life
- The information has the nature of insulting, humiliating, slander about the data subject
- The information is a special categories of personal data
- Up-to-dateness of information
- Information causing prejudice about the person
- Information posing a risk to the person
- The state of publishing the information by the person himself
- Content's coverage of data processed within the scope of journalistic activity
- Legal obligation to publish the information
- The information is related to a criminal offense

The said criteria are defined as the criteria to be taken into account primarily in the evaluation process of the complaints about the right to be forgotten by the Personal Data Protection Board. However, they can be updated if needed. In addition, it would be appropriate to evaluate the applications made to them by data controllers based on these criteria. The criteria to be considered in the evaluation of the related complaints are explained in detail below.

The data subject plays an important role in public life

It is a fact that there is more public interest in accessing the data of individuals who have a role in public life compared to other individuals. In this sense, it is important to evaluate whether the person has a distinguishable role in public life when making an evaluation regarding the removal of the results of searches made through the names and surnames of the data subjects.

Compared to the fundamental rights and freedoms of the data subject, it can be difficult to define the role that a person should have in order to be able to say that the society has a superior interest in accessing the information obtained from the search results. However, it is accepted that politicians, senior public administrators, businessmen, famous artists and sportsmen, religious leaders and people who perform certain professions play a role in public life. In addition, people who are frequently featured in the media due to their statements or actions can also be evaluated within this scope.

Providing access to the results obtained through searches to be made with the names of people who play a role in public life, may also include some data that requires that the said search results be made available to the public in terms of their professional lives. Therefore, considering that as a result of the disclosure of this information, the society can be protected from the practices of professionals who perform some professions, the applications of the data subjects who have an important role in public life in this context are less likely to be accepted.

In addition, applications for data related to the private life of the data subject are more likely to be removed from search results. Data of this nature may be removed from search results, even about people who have a role in public life.

The subject of the search results is a child

If the data subject is underage at the time of publication of his data, the request to remove the link to the search results based on the data in question is likely to be accepted. As a matter of fact, the principle of "the best interests of the child" should be taken into consideration in the evaluation of such demands regarding minors, in other words, children.

The accuracy of the content of the information

The fact that the information is correct means that it is true. At this point, attention should be paid to the difference between interpreting the truth and sharing the truth. The fact that the information is inaccurate or misleading increases the likelihood of the applications on this subject being accepted, while the fact that the information is accurate and based on facts reduces the likelihood of the applications being accepted. If the published information does not reflect the truth and this creates an inaccurate and misleading impression about the data subject, it is more likely that unlinking requests regarding the information in question will be deemed appropriate.

It should be emphasized that if the data subject claims that there is false information about himself, he is expected to prove this claim.

On the other hand, if there is a dispute about the accuracy of the information (for example, when there is an ongoing trial or police investigation against the data subject), it is also possible not to take any action in this regard until the process is completed.

Relevance of knowledge to one's working life

While all data about a person is personal data, not all data about that person is private. In general, the fact that the information is related to the business life of the data subject makes it difficult to accept the request to remove the link of this information from search engines, while the fact that it is related to private life is considered an important factor in accepting this request.

Information about the private life of a person who does not play a role in public life is information that does not concern the public. From this point of view, considering that there is no benefit for the public to access this information, it can be evaluated that it is not necessary to include this information in the search results. However, as mentioned above, in certain cases, public figures also have the right to request that information about their private lives not be disclosed.

However, two things should be noted here. Whether the person is already doing the same job and whether the data published about the job of the data subject contains more information than necessary should also be considered in the evaluation of this criterion.

The information has the nature of insulting, humiliating, slander about the data subject

In the event that the applications to the data controller are refused to remove the links of the content that contains insults, hate speech, insulting or humiliating statements about the person in the results listed in the search engine, it is more appropriate to resolve the applications through the courts instead of filing a complaint with the Personal Data Protection Board.

The information is a special categories of personal data

Special categories of personal data (sensitive data) are considered as data that may cause the person to become a victim or be exposed to discrimination if learned. In this context, the requests of the data subject to remove the links of sensitive information (information about sexual life, religious belief, health, etc.) from search engines are more likely to be accepted than for non-private personal data. It may be necessary to evaluate separately whether the interest of the society in accessing this information outweighs the rights of the data subject.

In addition, although they are not sensitive personal data, the possibility of accepting such requests regarding personal identifying information (address, telephone number, password, etc.), financial information, for which the privacy of the individual comes to the fore, is also considered high.

Up-to-dateness of information

The elapsed time may cause the data to lose its up-to-date feature or the relevance of the content to the subject may decrease. This situation may break the link with the purpose of processing personal data. Therefore, the elapsed time is a factor that increases the likelihood of de-index requests being accepted.

However, as with other criteria, the elapsed time is not an absolute rule. For example, data on politicians or public figures, or historical and scientific data, will have a limited effect of time.

Information causing prejudice about the person

If the data subject claims that the information obtained as a result of the search causes prejudice against him/her, the provable nature of the claim will increase the probability of his/her request to remove the link from the search results be accepted.

Information posing a risk to the person

If the information obtained as a result of the search makes the person vulnerable to risks such as identity theft or being tracked, the probability of removing the said information from the search engine lists may increase.

The state of publishing the information by the person himself

If it is possible for them to remove the information published by the data subject or with his or her explicit consent, the probability of the request to be removed from the search results decreases.

If the data subject has given his explicit consent to the publication of his personal data, but has not been given the opportunity to withdraw his explicit consent afterwards, or if his request not to process his personal data has been rejected, this issue should also be considered in the request of the data subject to remove the link from the search results.

Content's coverage of data processed within the scope of journalistic activity

The source of the information and the purpose of its publication are also an important factor that should be taken into account in the process of evaluating the requests for removal of links from the search results directed to them.

Indeed, freedom of expression is the cornerstone of pluralistic and constitutional democracies. Freedom of expression in general terms is defined as the opportunity and freedom to reach thoughts and information, not to be condemned for ideas and thoughts, and to express them through legitimate methods.

Freedom of the press is a fundamental right and freedom that manifests itself in the form of the right to express and disseminate opinions and thoughts in written and visual form, through the press and broadcasting, to all local and foreign interlocutors. The concept of freedom of the press should be evaluated as a whole with the concept of freedom of expression in order for the society to access information and express their own thoughts after filtering them through interpretation.

In this context, the important role of the internet in social life, which facilitates the dissemination of news and ideas and their reach to the public, cannot be denied. Creating an archive on the Internet serves to a great extent for the storage and accessibility of news and news. Archives of this nature provide resources for history education and research activities, especially since they are directly accessible to the public and generally free of charge. On the other hand, one consequence of the "observer" role of the press, which is the first function of the press in a democratic society, is to make archives accessible to the public.

For this reason, a balance should be established between the right to demand the protection of honour and dignity, which is protected in the Constitution, and the freedom of the press and, in connection with this freedom, the freedom of expression, within the framework of certain criteria.

In this context, while it is important to ensure that the public has access to search results, the limits set for the protection of the private and family lives of others should not be exceeded. In these cases, it may also be possible to remove search results for journalistic content. Therefore, the necessity of establishing a balance between ensuring public access to search results for each complaint and freedom of the press, which is a reflection of freedom of expression, will come to the fore.

Legal obligation to publish the information

If there is an obligation to publish personal data by a public institution or organizations authorized by it due to a legal obligation, and this obligation remains valid, this will be seen as a negative factor in the evaluation of the request of the data subject to remove the results obtained as a result of the searches they will make over their names and surnames and search engines. However, it should not be forgotten that the subject should be evaluated separately in each case.

The information is related to a criminal offense

Search results for information about a crime that the data subject committed a long time ago are more likely to be removed than a crime that occurred a short time ago. It will also be more likely to remove search results for a light crime information than for a relatively serious crime. However, this criterion should not be perceived as a definite rule and should be carefully examined and handled for each concrete case.

II. RIGHTS OF THE DATA SUBJECTS

2.1. Request of the Data Subject to the Data Controller

It is obligatory to follow the methods specified in the Law in order to fulfil the requests of the data subject to remove the results obtained from the search engines with their name and surname from the index.

In this context, before filing a complaint with the Authority within the framework of the right to be forgotten, it is obligatory for the data subject to apply to the data controller who processes their personal data, pursuant to Article 13 of the Law titled "Request to the Data Controller".

Article 13 of the Law:

(1) The data subject shall make the requests relating to the implementation of this law to the data controller in writing or by other means to be determined by the board.

(2) The data controller shall conclude demands in the request within the shortest time by taking into account the nature of the demand and at the latest within thirty days and free of charge. However if the action requires an extra cost, fees may be charged in the tariff determined by the board.

(3) The data controller shall act on the request or refuse it together with justified grounds and communicate its response to the data subject in writing or by electronic means. In case the demand in the request is accepted, it shall be fulfilled by the data controller. If the request is made due to fault of the data controller, the fee is refunded to data subject.

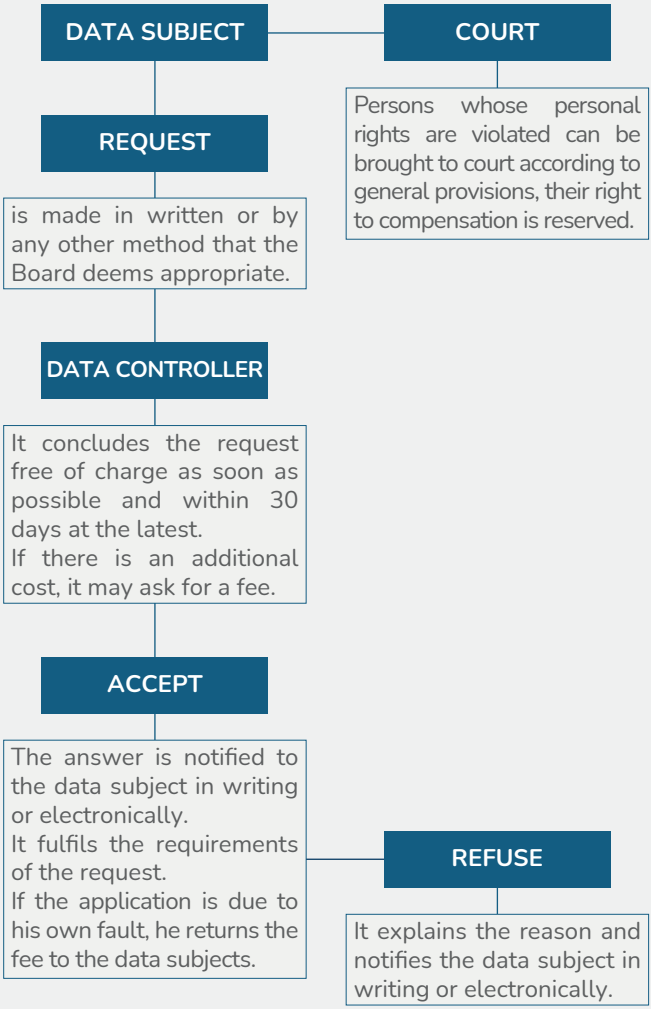
In this framework, the application methods of the data subject to the data controller are determined in Article 5, titled “Request Procedure”, of the Communiqué (Communiqué on the Procedures and Principles of Application to the Data Controller) prepared based on the aforementioned article. Accordingly, the data subject can submit his/her requests within the scope of the rights specified in Article 11 of the Law, in writing or by registered electronic mail address, secure electronic signature, mobile signature or the electronic mail address previously notified to the data controller by the data controller and registered in the data controller’s system or by using a software or application developed for the purpose of application, to the data controller. At the same time, in the application made to the data controller, the name, surname and if the application is written, the signature is the identification number, nationality for foreigners, passport number or identification number, if any, place of residence or workplace address for notification, e-mail address for notification, telephone and fax number, if any, and the subject of the request. Therefore, within the scope of the provisions of the legislation, within the scope of the requests of the persons regarding the right to be forgotten, they should primarily apply to the search engines.

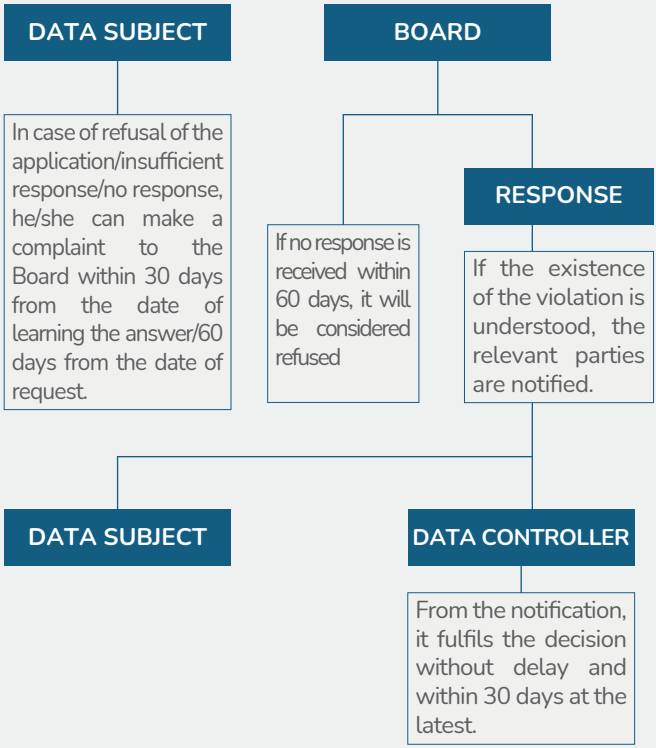
2.2. Complaint to the Personal Data Protection Board

The data subject will be able to make a complaint to the Board after fulfilling the application requirement to the data controller. Pursuant to Article 14 of the Law titled "Complaint to the Board", in cases where the request is refused by the data controller, the response is found insufficient or the data subject is not answered, the data subject may lodge a complaint with the Board within thirty days as of he or she learns about the response of the data controller, or within sixty days as of the request date, in any case.

> Article 14 of the law:
>
> (1) 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 within thirty days as of he or she learns about the response of the data controller, or within sixty days as of the request date, in any case.
>
> (2) A complaint shall not be lodged before exhausting the remedy of the request to the data controller pursuant to article 13.
>
> (3) The right to compensation, under the general provisions, of those whose personal rights are violated, is reserved.

The method to be followed within the framework of the requests of the data subject for their right to be forgotten is also shown in the chart below. On the other hand, the public announcement regarding the application of the data subjects to the data controllers and the procedural conditions of the complaints they will submit to the Board can also be accessed from the link KİŞİSEL VERİLERİ KORUMA KURUMU | KVKK | Kurumumuza Yapılan Şikayetlerin Usul Şartlarına İlişkin Kamuoyu Duyurusu.


DATA SUBJECT
COURT
Persons whose personal rights are violated can be brought to court according to general provisions, their right to compensation is reserved.
REQUEST
is made in written or by any other method that the Board deems appropriate.
DATA CONTROLLER
It concludes the request free of charge as soon as possible and within 30 days at the latest.
If there is an additional cost, it may ask for a fee.
ACCEPT
The answer is notified to the data subject in writing or electronically.
It fulfils the requirements of the request.
If the application is due to his own fault, he returns the fee to the data subjects.
REFUSE
It explains the reason and notifies the data subject in writing or electronically.


DATA SUBJECT
In case of refusal of the application/insufficient response/no response, he/she can make a complaint to the Board within 30 days from the date of learning the answer/60 days from the date of request.
BOARD
If no response is received within 60 days, it will be considered refused
RESPONSE
If the existence of the violation is understood, the relevant parties are notified.
DATA SUBJECT
DATA CONTROLLER
From the notification, it fulfils the decision without delay and within 30 days at the latest.

III. RESOURCES USED WHEN PREPARING THE BOOKLET

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