

METHODS FOR SEEKING REMEDIES FOR DATA SUBJECTS



1. In general

Personal Data Protection Law No. 6698 introduces a number of methods for data subjects to convey their requests regarding the implementation of the Law No. 6698 and to protect their rights regarding their personal data. Thus, in order to exercise their rights regarding the protection of their personal data, data subjects will not only be able to apply directly to the judiciary, but also to use other legal methods introduced by the Law No. 6698. The first method of claiming rights brought by the law is the method of application to the data controller laid down in Article 13. And the second is to file a complaint with the Personal Data Protection Board laid down in Articles 14 and 15.

a. Application To The Data Controller

According to Article 11 of the Law No. 6698, data subjects has the right to apply to the data controller to learn whether her/his personal data is processed or not, to request information if his/her personal data is processed, to request the rectification of the incomplete or inaccurate data, if any, to request the erasure or destruction of his personal data if it is unlawful, to request notification of the operations carried out in compliance with this to the third parties to whom her/his personal data has been transferred and to request compensation for the damage arising from the unlawful processing of his personal data.

The Law No. 6698 provides for a gradual application procedure for the requests relating to da personal data protection. It is obligatory for data subjects to apply to the data controller in order to exercise their rights. A complaint cannot be made to the Board before this process 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.

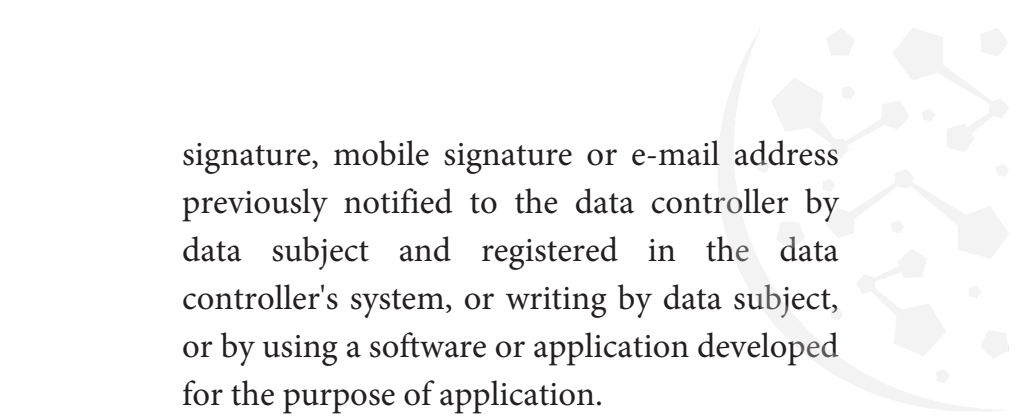
Data subjects whose applications are refused or who find the answer insufficient, or whose application is not answered within the prescribed time, may use their right to complain to the Board.

In the Law No. 6698, the compensation rights of the persons whose personal rights are violated are reserved according to the general provisions. Since it is mandatory to use the remedy of application and it is optional to use the remedy of complaint, it will be possible for data subjects, whose application is indirectly or explicitly rejected, to file a complaint with the Board on the one hand and directly go to court on the other. However, it should be noted at this point that there is no obstacle for 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 the matter is communicated to the Board.

a.1. Rules Regarding Application and Response Method

There are two basic provisions in the Law on the form of applications to be made to the data controller. The first of these is the written application. Written application 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.

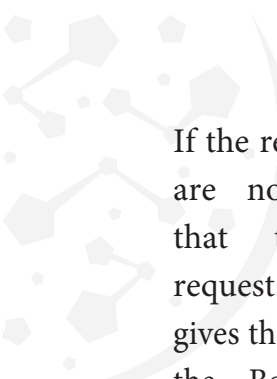
The Law No. 6698, authorizes the Personal Data Protection Board to determine other application methods other than the written application. Based on this, the Board has determined the method of applications to be made to the data controller with the Communiqué on the Procedures and Principles of Application to the Data Controller published in the Official Gazette dated 10.03.2018. Accordingly, data controllers must conclude the applications made free of charge as soon as possible and within thirty days at the latest, according to their qualifications by using the registered e-mail (KEP) address, secure electronic




signature, mobile signature or e-mail address previously notified to the data controller by data subject and registered in the data controller's system, or writing by data subject, or by using a software or application developed for the purpose of application.

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 directed to him or reject them by explaining the reason. By obliging the refusal to be justified, it is aimed to protect the rights of data subjects more effectively. Because the obligation to write a reasoned refusal decision makes it essential for data controllers to show a legal justification for their refusal decisions. If the data controller accepts the request addressed to him, he must fulfill 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 rejects the request. Because, the Law No. 6698, only gives the data subject the right to apply to the Board if the data controller rejects the application of the data subject, if the answer given is insufficient or if she/he does not respond in time. This is an important issue in terms of enabling data subject to file a complaint with the Board.



The Law No. 6698, includes written notification or electronic notification provisions regarding the method to be followed for the data controller to notify her/him decision regarding the applications made to her/him. Therefore, when data subject applies to the data controller either in writing or by other methods determined by the Board, the data controller gives her/him answer through the method applied by the data subject. Particular attention should be paid to the case that the data controller to whom the application has been 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 Application to Data Controller

Pursuant to Article 13 of the Law No. 6698, although it is determined by the data controllers that the requests of the data subjects must be met free of charge, the Personal Data Protection Board has been authorized to determine the fee to be charged by the data controllers if the operation to be carried out requires an additional cost.

Based on this, 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 has been determined that if the application of data subject will 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 application is given in a recording medium such as CD or flash

memory, the cost of the recording medium to be requested by the data controller cannot exceed the cost of the recording medium.

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



b. Complaint

Persons whose application to the data controller is rejected, 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.

b.1. Investigation of the Personal Data Protection Board

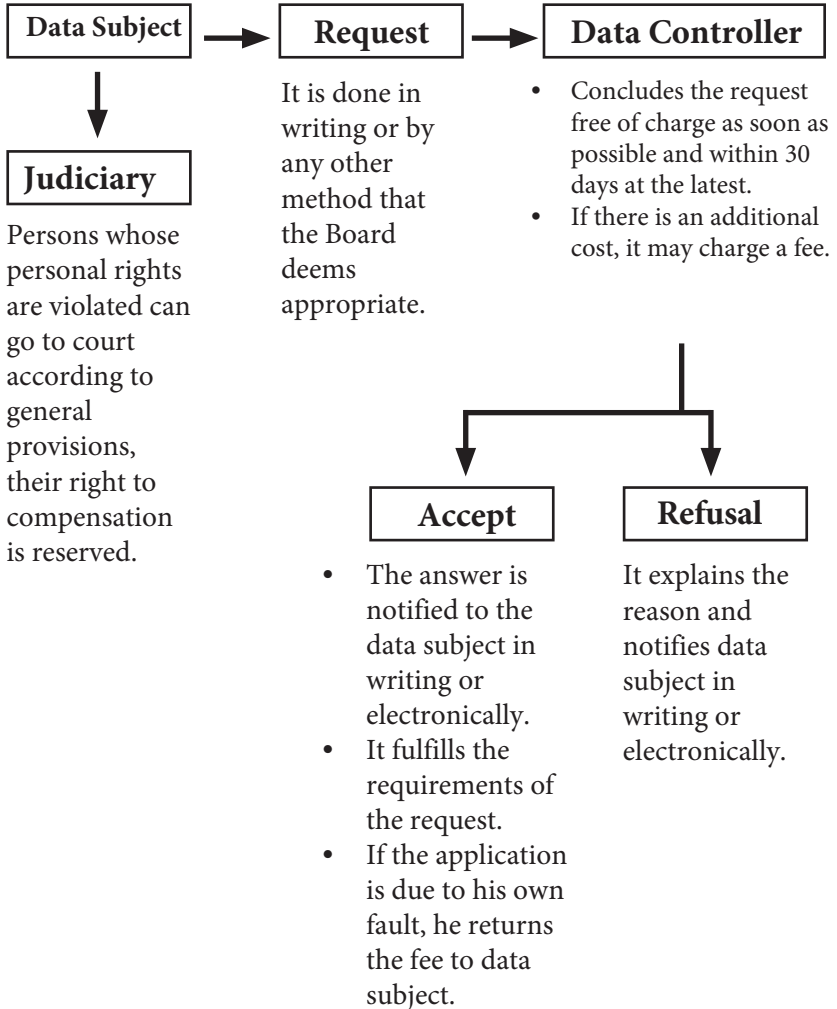
Pursuant to Article 15 of the Law No. 6698, the Board has the authority to conduct an investigation in case of violation. The Board may exercise this authority upon complaint or ex officio.

Ex officio Investigation: The Board's ex officio authority to initiate an investigation means that in the event of a violation that the Board is aware of, it can act spontaneously and initiate an investigation. In other words, there is no need to make a complaint to the Board in order to initiate an investigation.

This enables the Board to prevent violations of rights, even though the persons concerned do not complain or even know about the violation. Therefore, the rights of data subject can be protected more effectively. Another consequence of the Board's ex officio authority to initiate an investigation is that it has the authority to evaluate the notices received and initiate an investigation if necessary.

Investigation on Complaint: It is obligatory for the data subjects to apply to the data controllers in order to exercise their rights. In case the data controller rejects this application, her/his response is insufficient or does not respond in due time, the person concerned 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.

APPLICATION



Application

Data Subject

In case of rejection of the application/ insufficient response/no response, a complaint can be made to the Board within 30 days from the date of learning the answer/60 days from the date of application.

The Board

If it does not respond within 60 days, it will be considered REFUSAL

Response


If the existence of the violation is understood, the relevant parties are notified.

Data Subject

Data Controller

From the notification, it fulfills the decision without delay and within 30 days at the latest.

b.2. Conditions for Notices 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 field of duty of the judicial authorities. For example, the right of the data subject to request compensation from the data controller is required by subparagraph (ğ) of paragraph 1 of Article 11 of the Law No. 6698 and In case the data controller does not fulfill this request, it may be possible for the data subject to file a complaint with the Board. It is also possible for data subject to apply to the judicial authorities within

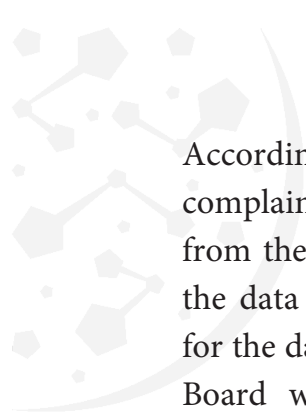
the framework of the general provisions for the compensation of their losses.

Accordingly, petitions containing requests concerning the Turkish Criminal 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 petitioner's name, surname, signature and work or residence addresses. Therefore, it will not be possible to make an anonymous report or complaint to the Board.

It is not possible for the persons concerned 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.




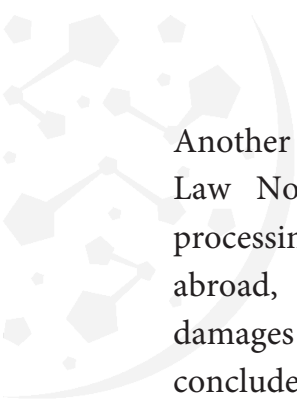
Accordingly, data subject will be able to file a complaint with the Board within thirty days from the date on which he learns the reply of the data controller. In any case, it is possible for the data subject to file a complaint with the Board within sixty days from the date of application to the data controller.



b.3. Authority and Obligations of the Board Regarding the Review 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 inspections. In this context, data controllers have the obligation to enable on-site inspection 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.




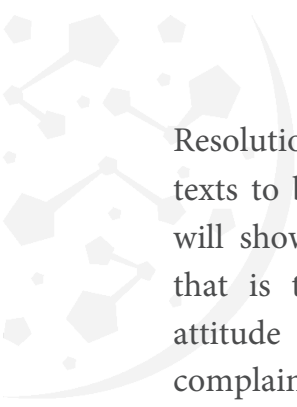
Another authority granted to the Board by the Law No. 6698 is to decide to stop the processing of data or the transfer of data abroad, in case irreparable or impossible damages arise before the review process is concluded and there is a clear violation of the Law No. 6698. By means of this authority, which is similar to the precautionary measure institution in the judicial organs, it will be possible to prevent possible damage and violations of rights quickly.

It is foreseen that the Board will give a reply to data subject within sixty days. If the Board does not give an answer to the applicant during that period, the request will be deemed denied. The mentioned sixty-day time limit is applied to the requests from 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 investigation initiated ex officio. However, if no response is received within sixty days from the date of the complaint, the request is deemed to have been rejected. 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 illegal violations that it has detected 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 review. Policy decisions are taken and published when it is determined that the violation underinvestigation is widespread.



Resolutions are extremely important legal texts to be followed by 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 investigations 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, by virtue of the principle decisions, different interpretations of the legislation and different applications arising from them will be prevented.



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