



MONTHLY BULLETIN

March, 2019

Our monthly law bulletin contains practical information for companies, amendments in our legislation, current case law and sectoral regulations.

We wish that the Monthly Bulletins March 2019 prepared by Gürpınar Law Firm will be beneficial to you.

I. Announcements

March 2019	Consumer Price Index	Domestic Producer Price Index
Monthly	1,03	1,58
At the end of the year	2,27	2,14
Annual change	19,71	29,64
Annual average change	18,70	31,17

II. Amendments

Regulation on Prevention of Major Industrial Accidents and Mitigation of Their Effects

The Regulation has been published in 02.03.2019 dated and 30702 numbered the Official Gazette. It has been prepared within the framework of compliance with European Union legislation, taking into account the Council Directive 2012/18/EU dated 4/7/2012. The Regulation will be carried out jointly by the Minister of

Family, Labor and Social Services, the Minister of Environment and Urbanization and the Minister of the Interior. The previous regulation published in 30/12/2013 dated the Official Gazette is repealed. It is possible to list the important topics from the regulation as follows:

- **The business manager is obliged to take all necessary measures in the Regulation in order to prevent major accidents and to limit the effects of such a major accident to the extent that it causes the least harm to the human and environment.** It entered into force on the date it was published.
- The major accident scenario document should be prepared by the manager of the lower and upper level organizations in scope of the Regulation to determine the risks of major industrial accidents and to assess the risks that may arise from these hazards. The effective date is 01.07.2020.
- **Manager of the lower level organization; prepares the major accident prevention policy document (MAPD) taking into account the information requested in the Communiqué on MAPD and the safety management system specified in the annex to the Regulation.** It entered into force on the date it was published.
- **The manager of a higher-level organization shall prepare a safety report and keep it in the organization, taking into account the matters specified in the Communiqué on the safety report, provided that it contains the information specified in the annex to the Regulation.** It entered into force on the date it was published.

- **Safety report, MAPD and major accident scenario document prepared by the operator are reviewed and updated according to the status changes listed in the Regulation.** It entered into force on the date it was published.
- **The manager of high-level organization prepares the internal emergency response plan,** taking into account the information specified in the Regulation and the issues specified in the Communiqué on the internal emergency response plan, and maintains it in the organization. The effective date is 01.07.2020.
- **The manager shall review the internal emergency response plan at intervals not exceeding three years,** apply and update it if necessary, and carry out the necessary work to ensure that emergency service units participate in adequate exercise. It entered into force on the date it was published.
- The manager of the lower and upper level organization informs the public via the website and updates this information if necessary. If the company does not have a website, it makes necessary information through the website of the Chamber of Industry and Commerce that the company enlisted. The effective date is 01.07.2020.



Communiqué on the Principles and Procedures of in the Fulfillment of the Liability for Enlightenment by the Personal Data Protection Authority

The Communiqué has been published in the 10/03/2018 dated Official Gazette and

entered into force on the date of publication. The purpose of this Communiqué is to determine the procedures and principles to be followed under the scope of the enlightenment obligation to be fulfilled by the data controller or authorized persons in accordance with Article 10 of the Law No. 6698 on the Protection of Personal Data.

Article 4 of the Communiqué stipulates that in the course of the acquisition of personal data, data controllers or authorized persons shall inform the related person. It is clearly stated that the information to be made by the data responsible or authorized persons should include, as a minimum, the following topics:

- a) the identity of the data controller and its representative,
- b) The purpose for which personal data will be processed,
- c) To whom and for what purpose personal data can be transferred,
- d) The method and the legal reason for collecting personal data
- e) Other rights of the related person in Article 11 of the Law

The procedures and principles to be followed during the fulfillment of the enlightenment obligation by the data controller or authorized person are regulated in Article 5 of the Communiqué.



Communiqué on Procedures and Principles of Application to Data Controller

The Communiqué has been published in the 10/03/2018 dated Official Gazette and entered into force on the date of

publication. The executive authority of the provisions of this Communiqué has been given to the Chairman of the Board of Protection of Personal Data. The Communiqué has been prepared to determine the principles and procedures related to the application to the data controller. Important topics from the Communiqué can be listed as follows:

- Real persons who have personal data processed have the right to apply to the data controller. The person can benefit from this right, if the application is made in Turkish.
- The person can make application in the following ways: by means of a written or the registered electronic e-mail (KEP) address, by electronic signature, by a mobile signature, by using the e-mail address previously reported to the data controller or through an appropriate software.
- Mandatory elements in the application file: a) Name, surname; and signature if application is in written b) Identification number for citizens of the Republic of Turkey; for foreigners, passport number or identification number if available c) Place of residence or workplace address to notification, d) E-mail address, telephone and fax number if any, e) Demand.
- In written applications, the date of application is the date of the notification of the documents to the data controller or representative. In other way of applications; the date on which the application reaches the data controller is the date of application.
- **The data controller is obliged to take all necessary administrative and technical measures in order to conclude the applications in**

accordance with the effective, law and honesty rules.

- The data controller accepts or rejects the application.
- The data controller shall notify the related person in writing or electronically.
- The mandatory elements that the answer letter should include: a) Information of the data controller or his/her representative, b) Applicant's; name and surname; identification number for citizens of the Republic of Turkey; for foreigners, passport number or identification number if available; place of residence or workplace address to notification; e-mail address, telephone and fax number if any, c) Demand d) Explanation of the data controller for the application.
- **The data controller shall conclude the claims in the application free of charge within the shortest period of time and within thirty days at the latest.** However, if the transaction requires an additional cost, the fee referred to in Article 7 may be charged.

III. Decisions

Violation of the Right to Access to the Court on the Basis of the Report without the Possibility of Evaluating the Applicant's Damage during the statute of Limitations: Decision numbered 2016/1253 and dated 21.03.2019 of the Constitutional Court

Subject of the Application: In the case filed for the compensation of damages caused by physical disability, the medical report could not be evaluated during the

statutes of limitations. The applicant's claim is violation of the right to access to the court.

Conclusion: The Military High Administrative Court dismissed the case opened with a request for pecuniary and non-pecuniary damages, due to the statute of limitations by the decision dated 09.12.2015.

The applicant said that he had learned about the all harm he suffered with the medical report issued on 07.11.2014. He therefore contended that the court's refusal of the proceeding because of the period for administrative application is passed, based on the report dated 18.04.2014, violated the Articles 2, 10, 13 and 36 of the Constitution.

Justification: The Constitutional Court, in its assessment of the individual application, stated that the limitations **preventing the person from applying to the court or making the decision of the court meaningless could violate the right of access to court.**

For this reason, **the courts should avoid rigid formism in order to prevent harm to the fairness of the proceedings while implementing the rules of procedure.** Excessive flexibility should also be avoided, which may lead to the elimination of procedural requirements prescribed by law.

It was decided that the Court's interpretation of the statute of limitations of proceedings had been a strict interpretation of the applicant's right of access to the court and the applicant's right of access to court was violated.



Gözde Gürpınar
Lawyer, Founding Partner
Gürpınar Law Firm
gozde@gurpinarlaw.com



Nureddin Türk
Legal Intern, Editör
Gürpınar Law Firm
nureddin@gurpinarlaw.com

This monthly bulletin has been prepared for informational purposes only; it has not been prepared for advertising purposes or with the intention of creating an attorney-client relationship. None of the information contained in this monthly bulletin shall constitute legal advice.

©GürpınarLawFirm2018
P:+90 216 510 53 28 F:+90 216 510 53 29 www.gurpinarlaw.com
