



***MONTHLY BULLETIN***  
***MAY, 2019***

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

We wish that our Monthly Bulletins will be beneficial to you.

## I. Announcements

### **TAKBIS System for Lawyers to Query Information on Land Registry and Cadastre**

The Union of Turkish Bar Association has signed a protocol with General Directorate of Land Registry and Cadastre. Through this protocol, lawyers will be able to make queries on registered lands of their clients via TAKPAS.

## II. Amendments

### **The Regulation on the Amendment of the Customs Regulation**

The Regulation on the Amendment of the Customs Regulation has been published in the Official Gazette dated 24 May 2019 and numbered 30783. **With the amendments, the customs legislation has been harmonized with the Paperless Customs Project and arrangements have been made regarding the electronic processing of export transactions.** Related regulations can be listed as follows:

- The customs declaration for export shall be signed by the declarant by electronic signature. All transactions carried out by the customs administration on this declaration shall be executed by electronic signature.

Sharing the declaration with the exporter and keeping it by the customs administration will also be done in the electronic environment. The effective date is 24.07.2019.

- The attached documents shall not be submitted to the customs administration on paper except those required to be approved on paper due to the obligations arising from international regulations or the circumstances to be determined by the Ministry. The customs administration can request the originals of the documents attached to the declaration. The effective date is 24.07.2019.
- **Except for documents that are not available in electronic form, the attachments to customs declaration for export shall not be kept on paper by the customs administration.** The effective date is 24.07.2019.
- Products under the scope of additional customs duties and additional financial obligations can enter the free circulation with a Certificate of Origin (CO). In case the goods come from the European Union with the A.TR Movement Certificate, CO shall not be required except in cases determined by the Ministry. The effective date is 24.07.2019.

The Communiqué on Application of the Resolution regarding Collection of Additional Financial Obligations on the Import of Certain Goods Entered Into Force Through the Resolution of Council of Ministers numbered 2017/10926 and the Communiqué regarding Rules and Procedures with regard to the Application of Additional Import Custom Taxes has been annulled. The procedures of the documents registered in the customs declaration regarding the documents in these two communiqués shall be concluded in accordance with the provisions of this

Regulation. This amendment entered into force on the date it was published.

By enabling electronic transactions, this Regulation has provided easiness and fastness in customs procedures.



### **The Regulation on Personal Protective Equipment**

The Regulation on Personal Protective Equipment was published in the Official Gazette dated 01.05.2019 and numbered 30761. **In the regulation prepared by the Ministry for the purpose of compliance with the related regulation of the European Union, the health and safety conditions and the free circulation procedures of the personal protective equipment (PPE) used by the workers are determined.** It is possible to sort the important headings from the relevant arrangement as follows:

- According to Article 5 of the Regulation, only the personal protective equipment which does not endanger human health, life and property safety, animal and plant life and health shall be provided in the market. Equipment shall be in conformity with the Regulation. The annex of the Regulation includes the basic health and safety requirements.
- In accordance with Article 9 of the Regulation, the manufacturer shall draw up the EU Declaration of Conformity and affix the CE marking to the equipment in case it is proved to comply with the essential health and safety requirements. The CE marking must be affixed to each PPE in such a way that it can be easily seen, read and not deleted.

The health and safety conditions of PPE is directly related to workers's health and

safety. This regulation has provided compliance with the significant regulations of the European Union. The Regulation entered into force on the date it was published, and the previous Regulation on PPE has been annulled.

### **III. Decisions**

#### **Official attorney fees is the lawyer's right: The Constitutional Court Decision No. 2019/18, Dated 10.04.2019**

In the decision of the Constitutional Court published in the Official Gazette on 16 May 2019, "... if people wish to benefit from the legal assistance of the lawyer on their own will, they must pay the amount or value to this assistance. As a matter of fact, benefiting from the legal knowledge and experience of lawyers is one of the legitimate ways and means to be used in the search for rights and defense." It is emphasized that the official legal fee is the natural result of and duty of legal assistance, which is the most important part of the right to defense, done by expert lawyers.

Importance of this decision is that **it was decided that the official attorney's fee, which is decided at the end of the trial, is the right of the lawyer not the client.**



**Decision on the termination with immediate effect when the employee's absence due to health reasons exceeds the six weeks to be added to the notice period:** Decision of Joint Civil Chambers of the Court of Cassation, dated 19.10.2018 and numbered 2018/10

**Summary:** If the employee's absences exceeding the waiting period due to health problems exceed six weeks added to the notice period, it is sufficient cause for immediate termination of the employment contract by the employer. Therefore, in case of immediate termination due to the health

reports received in accordance with Article 25 (1) (b) of the Labor Law, no defense statement from the worker is required.

**Reasoning:** The doctrine view contained in the decision is as follows: *The aim of obtaining defense statement before termination is to enable the employee to find out the reasons for termination and to reveal the truth about this issue, thus influencing the employer's thoughts on termination and to give up the termination. Therefore, there is no point in obtaining a defense statement from the worker in cases where it is not caused by, not related to, or cannot save or change on the worker.*

In the Decision of Joint Chambers is stated that, the defense from the employee before termination is not important for both the employee and the employer in case of the employee's absence exceeding the waiting period due to health reasons. The decision determines that in these situations, it was not necessary to obtain a defense from the worker.



### **Decision of Personal Data Protection Board about Facebook, Dated 11.04.2019 numbered 2019/104**

In 14 December 2018, Facebook announced that photo API bug has been experienced, and this bug allowed unauthorized access to 6.8 million Facebook users' -including 300.000 users from Turkey-personal data in September 2018. **The Personal Data Protection Board has made ex officio examination about the violation announced.**

The Board has found out that the API error occurred for twelve days, and Facebook has failed to intervene in the API error on time. The Board determined deficiencies in taking technical and administrative precautions. Additionally, the announcement of Facebook has been

perceived as an acceptance of such a violation.

The Board has fined Facebook 1,100,000 TRY fine for not taking the necessary precautions according to Article 12 of Law on the Protection of Personal Data (LPPD) and 550,000 TRY fine for not notifying the Personal Data Protection Authority in line with Article 12/5 of LPPD. The total fine equals approximately to 288.000 US Dollars.

This decision is one of the highest fine given by the Board by now. And also, it was the first time that the Board had mentioned the company name and the amount of the fine. Therefore, this decision can give ideas for upcoming investigations and fines.



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