

We are glad to share February issue of our Law Bulletin which includes recent legal developments and news globally and in Türkiye.

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The Scope and Legal Limits of the Employer's Right to Demand Drug Testing from Employees

As well known, requesting drug tests from employees necessitates the establishment of a delicate balance between the employer's obligation to ensure occupational health and safety and the employee's right to privacy and the protection of personal data. Since drug testing directly reveals an individual's health data, it is subject to both the scope of Constitutional protection and the regime of special categories of personal data under the Personal Data Protection Law Nr. 6698 ("PDP Law"). [\(Page 2\)](#)

Additional Time and Court of Cassation Practice in the Dismissal of a Case under Article 158 of the Turkish Code of Obligations

In substantive law, time limits are divided into statutes of limitation and prescriptions. These periods constitute fundamental institutions that serve to ensure legal certainty and stability within the legal system. By virtue of these time limits, the debtor is protected from being subjected to the threat of indefinite litigation, and the resolution of disputes within a reasonable timeframe is aimed. However, the strict and formal application of these time limits may, in some cases, lead to the extinction of substantive rights without examining their merits. [\(Page 10\)](#)

An Analysis of the Constitutional Court's Decision, dated November 6, 2025 and bearing the Basis Number 2023/174 and the Decision Number 2025/224, Concerning the On-Site Inspection Authority of the Competition Board Set Out under Article 15 of Law Nr. 4054 on the Protection of Competition

Article 15, titled "On-Site Inspection", of Law Nr. 4054 on the Protection of Competition grants the Competition Board the authority to conduct on-site inspections at the premises of undertakings and associations of undertakings where it deems necessary for the fulfilment of the duties entrusted to the same under the Law. [\(Page 16\)](#)

Disinheritance and the Assessment of Reserved Portion Rights

Certain conditions must be met for a legal heir to be disinherited through a will. The testator must be competent at the time the will is made; in other words, they must possess testamentary capacity and be at least fifteen years of age. In cases of incapacity, the will may be subject to annulment. Another requirement is that the disinheritance must be based on just cause. The law provides specific frameworks regarding what may constitute justifiable grounds for disinheritance. This article examines the grounds for disinheritance. [\(Page 7\)](#)

Assessment of the Criminal Liability of Financial Advisors in Light of Court of Cassation Decisions

Under tax criminal law, the offense of issuing false invoices holds significant importance both for the protection of the economic order and for ensuring fiscal discipline. Set out under Article 359 of the Tax Procedure Law Nr. 213 (TPL), this offense often appears in practice in the forms of complicity, instigation, or aiding and abetting. The act of issuing false invoices is frequently not carried out by a single perpetrator, but within a division of labor established among company partners, representatives, accountants, and third parties. [\(Page 14\)](#)

The Written Form Requirement in the Transfer of Share Certificates under the Provisions on the Assignment of Receivables and A Review of the Decision, bearing the Basis Number 2024/390 and the Decision Number 2025/691, of the 21st Civil Chamber of the Regional Court of Justice of Ankara

Although there is no explicit statutory regulation regarding the transfer of shares that are not represented by share certificates (so-called "uncertificated shares"), it is accepted in judicial precedents and in legal doctrine that such transfers are to be effected in accordance with the provisions governing the assignment of receivables. [\(Page 19\)](#)

Recent News

Significant Decision from the Constitutional Court on Unquantified Claims! [\(Page 13\)](#)

Communiqué on Competition Board Approval in Mergers and Acquisitions Updated! [\(Page 13\)](#)

Regulation Amending the Price Tag Regulation Promulgated in the Official Journal! [\(Page 22\)](#)

Significant Changes in Judicial Districts! [\(Page 22\)](#)

Competition Board Initiates Labor Market Investigation into Banks (February 24, 2026)! [\(Page 22\)](#)

THE SCOPE AND LEGAL LIMITS OF THE EMPLOYER'S RIGHT TO DEMAND DRUG TESTING FROM EMPLOYEES



I. INTRODUCTION

As well known, requesting drug tests from employees necessitates the establishment of a delicate balance between the employer's obligation to ensure occupational health and safety and the employee's right to privacy and the protection of personal data. Since drug testing directly reveals an individual's health data, it is subject to both the scope of Constitutional protection and the regime of special categories of personal data under the Personal Data Protection Law Nr. 6698 ("PDP Law").

In this study, I have examined this subject within the framework of the Constitution, the Personal Data Protection Law ("PDP Law"), Labor Law Nr. 4857, Occupational Health and Safety Law Nr. 6331, as well as the precedents of the Court of Cassation and the jurisprudence of the Personal Data Protection Board (the "Board").

II. LEGAL FRAMEWORK GOVERNING THE EMPLOYER'S RIGHT TO REQUEST DRUG TESTS

2.1. ARTICLE 20 OF THE CONSTITUTION – PRIVACY AND PROTECTION OF PERSONAL DATA

As per Article 20 of the Constitution:

"Everyone has the right to demand respect for her/his private and family life."

"Everyone has the right to request the protection of personal data concerning her/him."

The said article stipulates that personal data may only be processed in cases provided for by law or with the explicit consent of the individual. According to this regulation, since drug testing contains data regarding an individual's physical and psychological health status, it must be considered a direct interference with the sphere of private life. Therefore; the interference:

- *Must have a legal basis (or be prescribed by law),*
- *Must pursue a legitimate aim,*
- *Must be proportionate and necessary.*

Routine drug testing practices that are general and abstract in nature and directed at all employees carry the risk of violating the principle of proportionality.

In numerous decisions (TCC, App. Nr: 2013/1223; App. Nr: 2014/18001), the Constitutional Court has emphasized that the protection of personal data is an integral part of the right to respect for private life. [1] [2]

Since drug testing involves:

- *The collection of biological samples from the individual,*
- *The determination of their health status,*
- *The detection of potential addiction status,*

it must be considered a severe interference.

Therefore, such interference must satisfy the following conditions;

1. *It must have a legal basis,*
2. *It must pursue a legitimate aim,*
3. *It must be proportionate and necessary.*

2.2. STATUTORY REGULATION UNDER THE PERSONAL DATA PROTECTION LAW (PDP LAW)

2.2.1. Sensitive Personal Data (Art. 6 of PDP Law)

Article 6/1 of PDP Law sets out as follows: *"Health data constitutes sensitive personal data."*

Pursuant to this regulation, drug testing results must be directly acknowledged as health data.

2.2.2. Conditions for Processing Health Data

As well known, pursuant to Article 6/2 of the PDP Law, sensitive personal data may not, as a rule, be processed without explicit consent.

However, Article 6/3 of the PDP Law provides an exception to this requirement.

Article 6/3 of PDP Law sets out as follows;

The processing of sensitive personal data is prohibited. However, the processing of such data may only be possible if

a) The data subject grants explicit consent thereto,

b) It is clearly stipulated in the laws,

c) It is mandatory for the protection of the life or physical integrity of a person who is unable to express their consent due to actual impossibility or whose consent is not legally recognized.

ç) It relates to personal data made public by the data subject and is in accordance with their will to make it public,

d) It is mandatory for the establishment, exercise, or protection of a right,

e) It is necessary for the purposes of protecting public health, preventive medicine, medical diagnosis, treatment and care services, or the planning, management, and financing of healthcare services, provided that it is carried out by persons under the non-disclosure obligation or authorized institutions and organizations.

f) It is mandatory for the fulfillment of statutory obligations in the fields of employment, occupational health and safety, social security, social services, and social assistance,

h) It is directed towards current or former members and associates, or persons who are in regular contact with foundations, associations, and other non-profit organizations or entities established for political, philosophical, religious, or trade-union purposes; provided that it is in accordance with the related applicable regulations to which they are subject and their purposes, limited to their field of activity, and not disclosed to third parties.

(4) In the processing of sensitive personal data, it is mandatory to take adequate measures determined by the Board.

Health data may be processed for the purposes of protecting public health and for medical purposes by persons under the non-disclosure obligation."

Accordingly:

- The test must be conducted through an occupational physician.

- The employer must not have direct access to health data.

- The principle of data minimization must be applied.

2.2.3. Evaluation in Light of the Personal Data Protection Board Decisions

The Board emphasizes the following principles regarding the processing of employees' data:

2.2.3.1. Validity of Explicit Consent

In the Board's decision dated 31.05.2019 and numbered 2019/165, it was stated that the requirement for explicit consent to be based on "free will" within an employment relationship is controversial, as an employee's consent cannot always be deemed to be freely given in the presence of the employer [3]. Therefore, a general

provision in an employment contract stating "I hereby consent to drug testing" may not be sufficient on its own.

2.2.3.2. Proportionality and Purpose-Limitation

In the Board's decision dated 25.03.2019 and numbered 2019/78, it was emphasized that employers may only process employee data in a manner that is proportionate and directly relevant to the execution of the work [4].

In line with this approach, a routine drug testing practice applied generally to all employees carries the risk of violating the principle of proportionality.

2.3. LABOR LAW AND OCCUPATIONAL HEALTH AND SAFETY ASPECTS

2.3.1. Occupational Health and Safety Law Nr. 6331

Pursuant to Article 4 of the Occupational Health and Safety Law, the employer is obliged to ensure the occupational health and safety of employees.

Article 4 of the Law Nr. 6331 reads as follows:

"ARTICLE 4 – (1) The employer is obliged to ensure the occupational health and safety of employees, and accordingly;

"a) The employer shall take any and all necessary measures for the prevention of occupational risks, including the provision of training and information; organize the necessary framework; provide the required tools and equipment; adapt health and safety measures to changing conditions; and undertake efforts to improve existing conditions.

b) The employer shall monitor and supervise compliance with the occupational health and safety measures implemented in the workplace and ensure that any non-compliance is remedied.

c) The employer shall conduct a risk assessment or have it conducted.

c) The employer shall, when assigning tasks to an employee, take into account the employee's suitability for the job in terms of health and safety.

d) The employer shall take the necessary measures to ensure that employees who have not received adequate information

and instructions do not enter areas where there is a serious and specific danger.

(2) The engagement of external experts or service providers outside the workplace shall not relieve the employer of its responsibilities.

(3) The obligations of employees in the field of occupational health and safety shall not affect the employer's responsibilities.

(4) The employer shall not pass on the costs of occupational health and safety measures to the employees."

Health surveillance is set out under Article 15 of Law Nr. 6331.

Article 15 of Law Nr. 6331 reads as follows;

"ARTICLE 15 – (1) The employer shall:

(a) ensure that employees are subject to health surveillance, taking into account the health and safety risks to which they will be exposed in the workplace.

b) The employer shall ensure that employees undergo medical examinations in the following cases:

1) Upon commencement of employment.

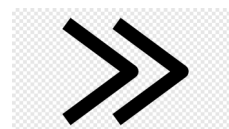
2) When changing jobs or positions.

3) Upon return to work following a workplace accident, occupational disease, or repeated absences due to health reasons, if requested by the employee.

4) During the course of employment, at regular intervals determined by the Ministry, taking into account the nature of the work, the employee's characteristics, and the workplace's hazard classification.

(2) Employees who will work in jobs classified as hazardous or highly hazardous shall not be allowed to commence work without a medical report confirming their fitness for the specific job.[7]

(3) (Amended first sentence: 10/9/2014-6552/art.17) Medical reports required under this Law shall be obtained from the occupational physician.



For workplaces with fewer than 50 employees or classified as low-risk, such reports may also be obtained from ÇASMER (Employee Health Training Center), family physicians, or other public health service providers. Any objections to the reports shall be submitted to referee hospitals designated by the Ministry of Health, and the decisions rendered are final.[8][9]

(4) The costs arising from health surveillance, as well as any additional expenses resulting from such surveillance, shall be borne by the employer and may not be passed on to the employee.

(5) The health information of employees undergoing medical examinations shall be kept confidential in order to protect their privacy and reputation.”

As can be seen, employers are required to conduct health surveillance of their employees. However, such surveillance:

- must be based on a risk assessment,
- must be relevant to the nature of the work, and
- must be proportionate.

Drug testing is more firmly grounded in law when applied to employees engaged in high-risk or hazardous work, such as driving, machine operation, aviation, and security services. However, requesting tests from employees outside these categories may require the fulfillment of additional conditions.

On the other hand; as per article 28 of Occupational Health and Safety Law Nr. 6331;

- It is prohibited for employees to come to the workplace under the influence of alcohol or drugs, as well as to consume alcoholic beverages or drugs while at work.

- The employer has the authority to determine under what circumstances, at what times, and under which conditions alcoholic beverages may be consumed in areas considered extensions of the workplace.

However, the prohibition on alcohol consumption does not apply to the following categories of employees:

- Those working in establishments where alcohol is produced, who are assigned to

monitor or inspect production as part of their duties.

- Those who, due to the nature of their work, are required to consume alcohol in workplaces where alcoholic beverages are sold or consumed, whether in closed containers or openly.

- Those who, as part of their job responsibilities, are required to drink alcohol together with customers.

In light of these provisions, as a general rule, an employee’s consumption of alcohol outside the workplace does not constitute grounds for termination. However, reporting to work intoxicated enables the employer to terminate the employment contract for just cause.

For alcohol consumed outside the workplace to constitute a valid reason for termination, the level of intoxication must be sufficient to impair the employee’s will and behavior, ultimately preventing the fulfillment of the employee’s work obligations. In contrast, an employee arriving at the workplace under the influence of drugs allows the employer to terminate the employment contract for just cause, regardless of the substance’s effects.

Moreover, the use of alcohol or drugs in the workplace also constitutes grounds for termination for just cause. This issue will be addressed in more detail below.

2.3.2. Assessment in Light of Court of Cessation Decisions

In various decisions of the 9th Civil Chamber of the Court of Cessation (Decision, bearing the Basis number 2008/18614 and the Decision number 2010/14204, of the 9th Civil Chamber, and the Decision, bearing the Basis number 2015/24607 and the Decision number 2017/13319, of

the 22nd Civil Chamber), working under the influence of or using drugs in the workplace has been recognized as a valid ground for termination for just cause. [5] [6]

Likewise;

The Decision, dated 21.04.2008 and bearing the Basis number 2007/31257 and the Decision number 2008/9580, of the 9th Civil Chamber of the Court of Cessation reads as follows;

“If an employee breaches the obligations arising from the employment contract due to alcohol consumption, and such conduct is not attributable to alcohol addiction, the employee’s behavior constitutes grounds for dismissal. Where the employee suffers from alcohol dependence that may be medically classified as a disease, the principles governing termination due to incapacity arising from illness shall apply. Under the Labor Law, it is prohibited for employees to report to work intoxicated or under the influence of drugs, and to consume alcohol or drugs at the workplace. For the establishment of just cause, it is not necessary that the employee be an alcoholic or drug-dependent; the mere occurrence of any of the aforementioned circumstances is sufficient.” [7]

The Decision, dated 12.12.2005 and bearing the Basis number 2005/36147 and the Decision number 2005/39144, of the 9th Civil Chamber of the Court of Cessation reads as follows;

“... while it is prohibited for employees to arrive at the workplace under the influence of drugs, merely arriving at work having consumed alcohol outside the workplace is not prohibited.

However, if off-duty alcohol consumption results in intoxication, reporting to work in an intoxicated state is prohibited. Therefore, an employee who has consumed alcohol but does not exhibit signs of intoxication cannot be dismissed for just cause under Article 25/II-d of the Labor Law.

If the amount of alcohol consumed off-duty does not affect the employee’s judgment, behavior, or ability to perform their work normally, mere alcohol consumption is insufficient grounds for termination. By contrast, consuming alcohol within the workplace constitutes a sufficient basis for dismissal, even if it does not result in visible intoxication.” [8]



As can be seen, under Article 25/II of Labor Law Nr. 4857, the presence of an employee in the workplace while intoxicated or under the influence of drugs immediately entitles the employer to terminate the employment contract for just cause.

Case law of the Court of Cessation requires that:

- *the employer's suspicion be concrete and serious, and*
- *the incident be supported by objective evidence.*

"Based on witness statements and the plaintiff's own testimony recorded at the Public Prosecutor's Office, it was established that the employee arrived at the workplace under the influence of alcohol.

Pursuant to Articles 25/II-d and 84/1 of Labor Law No. 4857, reporting to work intoxicated, despite prior warnings, entitles the employer to terminate the employment contract for just cause.

The employer exercised the statutory right of termination upon the employee's voluntary arrival at the workplace in an intoxicated state. Therefore, in the case of justifiable dismissal, the claims for severance and notice pay should have been rejected; establishing a judgment in favor of the employee based on an erroneous rationale constitutes a legal error necessitating reversal." (The Decision, dated 21.06.2010 and bearing the Basis number E.2008/29926 and the Decision number 2010/19573, of the 9th Civil Chamber of the Court of Cessation) [9]

Moreover, the Court of Cessation has emphasized in numerous decisions that the employer must adhere to the principle of proportionality when exercising the right to supervise and monitor employees. (The Decision, bearing the Basis number 2014/17359 and the Decision number 2016/9609, of the 9th Civil Chamber of the Court of Cessation). [10]

We consider that this approach is also applicable in the context of drug testing.

III. LEGAL LIMITS OF THE EMPLOYER'S RIGHT TO REQUEST DRUG TESTING FROM EMPLOYEES

3.1. The Right to Request Testing Based on Concrete Suspicion (Labor Law, Art. 25)

As is well known, under Article 25/II of Labor Law Nr. 4857, the provision granting the employer the right to immediate termination for just cause is particularly significant for our subject, especially with regard to the following clauses.

Article 25/II-d of Labor Law reads as follows;

"The employee committing an offense at the workplace punishable by imprisonment of more than seven days, the sentence for which is not suspended."

Although drug use alone does not fall within the scope of this provision, it may be applied if there is an act at the workplace that constitutes a criminal offense.

Article 25/II-e of Labor Law reads as follows;

"The employee abusing the employer's trust or engaging in conduct inconsistent with honesty and loyalty..."

The use of drugs in the workplace may invoke this provision, particularly when the nature of the work—such as driving, operating machinery, hazardous tasks, or healthcare—necessitates a high degree of trust, which would be compromised.

Article 25/II-f of Labor Law reads as follows;

"The employee endangering the safety of the work due to their own volition or negligence..."

In particular, under Occupational Health and Safety Law Nr. 6331, the use of drugs that endangers workplace safety should be regarded as justifiable grounds for termination under this provision.

As noted above, under Article 19 of Occupational Health and Safety Law Nr. 6331, employees are obliged to comply with occupational health and safety regulations. Working under the influence of drugs, when it seriously endangers workplace safety, should constitute grounds for dismissal from the employer's perspective.

As previously noted, the Court of Cessation evaluates cases on a factual basis. The main criteria considered include:

- *The nature of the work*
- *Whether drugs were used in the workplace*

- *Whether a safety risk was created*

- *Whether drugs were brought into the workplace*

Accordingly, we consider that an employer may lawfully request a drug test only if:

- *There are reasonable and objective indications that the employee is under the influence of drugs,*

- *Observed behavior at the workplace endangers safety, and*

- *The conduct in question is repeated.*

Accordingly, we argue that such a test request should not be general or indiscriminate, but rather individual, based on specific disciplinary proceedings, and grounded in the circumstances of the concrete case.

3.2. Special Statutory Regulations

In certain sectors, such as aviation, maritime transport, public transportation, and security services, special statutory regulations may impose mandatory testing requirements.

Where statutory regulation exists:

- *The legal basis for processing personal data under the Personal Data Protection Law (PDP Law) is established, and*

- *Explicit consent may not be required.*

We consider that, under such specific statutory regulations, the employer is entitled to request drug testing from employees.

3.3. Within the legal framework outlined above, drug testing:

- *constitutes sensitive personal data, as it involves health-related information,*

- *requires, as a rule, explicit consent,*

- *is subject to the principles of proportionality and necessity, and*

- *poses a legal risk if applied in a general or abstract manner.*

However, we consider that under Article 25 of Labor Law, if there is concrete suspicion and a specific statutory regulation exists on the matter, the employer may be entitled to request drug testing.

IV. CONCLUSION

Drug testing constitutes sensitive personal data under Article 6 of Personal Data Protection Law Nr. 6698, as it involves information concerning the employee's health.

Health data cannot, as a general rule, be processed without the explicit consent of the data subject. However, paragraph 3 of the same article provides that personal data concerning health and sexual life may be processed by persons bound by confidentiality or by authorized institutions and organizations for the purposes of protecting public health, preventive medicine, medical diagnosis, treatment and care services, and the planning and management of health services.

Pursuant to Article 20 of the Constitution, everyone has the right to demand the protection of their personal data. Furthermore, under Article 13 of the Constitution, fundamental rights and freedoms may only be restricted by law and in accordance with the principle of proportionality.

Accordingly, the employer's implementation of a general, routine, and abstract drug testing policy for all employees raises significant legal concerns regarding the right to privacy, the protection of personal data, and the principle of proportionality.

Under Articles 24 and 25 of Labor Law Nr. 4857, which set out termination for just cause, and pursuant to Occupational Health and Safety Law Nr. 6331, the employer is obliged to ensure workplace health and safety, implement necessary measures, and prevent risks.

It is particularly evident that, in hazardous and highly hazardous workplaces, an employee being under the influence of drugs can create a serious and imminent risk to occupational health and safety.

Within this framework, it is assessed that, in the presence of reasonable and objective suspicion, the inherently high-risk nature of the work, and adherence to the principle of proportionality, directing the employee to undergo drug testing as part of the employer's occupational health and safety obligations may be considered legally permissible.

However, it cannot be asserted that the employer has an unrestricted and direct

right to demand drug testing. Such testing may only be considered legally permissible when the following conditions are simultaneously met:

- The work inherently involves a high level of risk,
- There exists concrete and reasonable suspicion,
- The principles of proportionality and necessity are observed,
- The processing is based on the exceptional conditions foreseen in Article 6 of Personal Data Protection Law (PDP Law), and
- Health data is processed exclusively through authorized healthcare personnel.

On the other hand, in certain sectors, such as aviation, maritime transport, public transportation, and energy—areas involving public safety and high risk—if a specific statutory regulation establishes a clear and special normative basis, drug testing may be conducted in accordance with the procedures and principles stipulated under the relevant regulation.

In workplaces where no explicit obligation exists under the applicable regulations, the employer's unilateral internal policies imposing general and mandatory testing will not suffice for legal certainty.

Nevertheless, should a clear and specific statutory regulation be enacted in the future, testing could unquestionably be implemented in accordance with the conditions prescribed therein.

In our view, the implementation of routine and mandatory drug testing for all employees is not legally permissible. However, within the scope of occupational health and safety obligations, and taking into account the nature of the work and the specific circumstances of the case, a test request based on reasonable suspicion and in accordance with the principle of proportionality may be legally defensible. In this context, refusal to undergo such a test could, under Article 25 of Labor Law, constitute justifiable grounds for termination.

In conclusion, the legality of drug testing depends not on a general or abstract authority, but on concrete risks, statutory grounds and the principles of proportionality.

The balance between the employer's obligations and the employee's fundamental rights must be assessed on a case-by-case basis.

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2. Constitutional Court, Application Nr: 2014/18001
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4. The Decision, dated 25.03.2019 and numbered 2019/78, of the Personal Data Protection Board
5. The Decision, bearing the Basis number 2008/18614 and the Decision number 2010/14204, of the 9th Civil Chamber of the Court of Cessation
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DISINHERITANCE AND THE ASSESSMENT OF RESERVED PORTION RIGHTS

1. INTRODUCTION

Certain conditions must be met for a legal heir to be disinherited through a will. The testator must be competent at the time the will is made; in other words, they must possess testamentary capacity and be at least fifteen years of age. In cases of incapacity, the will may be subject to annulment. Another requirement is that the disinheritance must be based on just cause.

The law provides specific frameworks regarding what may constitute justifiable grounds for disinheritance. This article examines the grounds for disinheritance, the means by which a legal heir contesting their exclusion from the inheritance may raise objections, and the circumstances under which the reserved portion is protected. Furthermore, it evaluates whether, in the context of an annulment action of a will, the court may determine and review the reserved portion and perform a reduction assessment in accordance with the principle of claim dependence.

2. TESTAMENTARY CAPACITY

In order to make a will, the testator must meet certain requirements, which are stipulated under Article 502 of the Turkish Civil Code. Two conditions are prescribed for testamentary capacity. First, the testator must possess the capacity to discern, and second, they must have reached the age of fifteen.

However, merely satisfying these conditions does not render a will automatically valid. In cases of incapacity as described above, or where one of the circumstances, as listed under Article 557 of the Turkish Civil Code, exists, an action for annulment of the will may be initiated. [1]

3. TESTATOR'S POWER OF DISPOSITION

The testator's power to dispose of their estate is not unlimited. Spouses, descendants, and parents of the testator are entitled to reserved portions, over which the testator has no discretion. The sole exception to this rule is disinheritance. In the event that a person is disinherited, the right to a reserved portion does not arise. [2]



4. ASSESSMENT OF GROUNDS FOR DISINHERITANCE

For a legal heir to be disinherited by the testator, there must be a valid cause. Article 510 of the Turkish Civil Code sets out the grounds for disinheritance. According to this provision, two situations may give rise to disinheritance: first, the heir committing a grave offense against the testator or the testator's close relatives; and second, the heir's substantial failure to fulfill their family law obligations toward the testator or members of the testator's family.

Upon examination of this article, it is noted that in the first of the two situations, a conviction is not required for the serious offense allegedly committed by the legal heir. The assessment is conducted based on the available evidence. The severity of the offense is evaluated in accordance with the principles of civil law.

In the second scenario, the legal heir must have substantially failed to fulfill the family-law obligations owed to the testator or members of the testator's family. It is necessary to evaluate the scope and content of these obligations arising from family law.

Article 322 of the Turkish Civil Code should be taken as the basis in this regard. According to this provision: *"Parents and children are obliged to assist one another, show respect and understanding, and safeguard the honor of the family, in*

a manner consistent with the peace and integrity of the family."

These two provisions should not be interpreted separately. If the articles are construed independently, the first scenario is tied to stringent conditions, whereas the second scenario's broader interpretive scope may lead to inequitable outcomes. Accordingly, when assessing the grounds for disinheritance, the heir's conduct must be evaluated based on both subjective and objective criteria. Objectively, the act must significantly disrupt family ties, and subjectively, it must be assessed whether the family relationship has in fact been severed as a result of this conduct.

Following a full assessment, if a legal heir is formally disinherited, the excluded individual is not entitled to the reserved portion and may not initiate a reduction action. This reserved portion is added to the portion of the estate over which the testator may freely dispose. Unless the testator has stated otherwise, the reserved portion is treated as if the disinherited person were deceased and passes to their descendants. If there are no descendants, it passes to the other legal heirs.

5. ANNULMENT OF THE WILL

Pursuant to Article 557 of the Turkish Civil Code, an action may be brought before the court to annul a will that has not been executed in accordance with the prescribed formalities.

As a result of the litigation, the will may be annulled either wholly or partially. In the event of total annulment, the legal heir is entitled not only to their reserved portion but to the entirety of their statutory share of the estate.

In addition to the provisions regarding the annulment of the will and reduction, an assessment should also be made as to whether disinheritance is tied to a specific cause.

According to Article 512 of the Turkish Civil Code: *“Disinheritance is valid only if the testator specifies the reason for exclusion in the testamentary disposition. Should the disinherited heir raise an objection, the burden of proving the existence of the stated reason rests upon the heir or the legatee who benefits from the disinheritance.”*

If the reason cannot be proven or was not indicated in the testamentary disposition, the disposition is executed to the extent of the heir’s reserved portion; however, if the testator made the disposition under a manifest error regarding the reason for disinheritance, the exclusion shall be deemed invalid.”

A legal heir who is subject to disinheritance may challenge the will if the grounds for disinheritance described above do not reflect the truth.

In the event of such a challenge, the burden of proving the validity of the disinheritance rests on the heir or legatee who benefits from the disinheritance. In other words, the other legal heirs must demonstrate that the stated grounds for disinheritance are accurate.

Disinheritance is valid only if the reason for exclusion is explicitly indicated in the will.

If the cause of disinheritance is not specified or cannot be proven, the disposition shall be executed excluding only the heir’s reserved portion, leaving the remainder of the estate to the heir.

5. DETERMINATION OF THE RESERVED PORTION AND REDUCTION REVIEW IN WILL ANNULMENT ACTIONS UNDER THE PRINCIPLE OF CLAIM DEPENDENCE

As a general rule, the principle of claim dependence applies in reduction actions. If the will does not contain a testamentary intention to disinherit, and an action

to annul the will is filed on other grounds, the court shall not determine the reserved portion or conduct a reduction review in the will annulment proceedings.

The Decision, dated 20.11.2018 and bearing the Basis number 2017/3-1017 and the Decision number 2018/1750, of the General Assembly of Civil Chambers

“It has been understood that the court ruled to dismiss the request for annulment of the will, and that upon examination of the complaint, it is understood that the subject matter of the case was “the annulment of the will registered under the journal number 12561 by the 2nd Notary Public of Zonguldak on 05.07.2005, and the registration of the immovable property subject to the will in the names of all heirs.”, and that the relief sought was “the annulment of the will and the registration of the immovable property subject to the will in the names of all heirs.”, and un the paragraph titled “Explanations,” the only statement included was: “...the will exceeds the disposable portion.

It is contrary to law. Therefore, it must be annulled.”, and that during the preliminary hearing, no statement regarding a reduction request was made; in other words, it is apparent that the obligation to specify the claim was not fulfilled, and that the appeal petition against the initial decision dismissing the case does not contain a request concerning the reduction of the testamentary disposition, even though the appellants had claimed the reduction of the dispositions mortis causa, and that no decision has been rendered regarding these requests in the appealed judgment.

Considering all these factors collectively, it is clear that the plaintiff’s request is limited to the annulment of the will, and the mention of the disposable portion under the complaint is intended only to indicate that the will violates legal requirements due to exceeding the disposable portion, and in light of this, the local court’s decision, rendered in writing, may not be deemed erroneous.” [3]

If the will contains an intention to disinherit, and in the annulment action a challenge is raised claiming that the grounds for disinheritance are unfounded, Article 512 of the Turkish Civil Code must be examined. According to this provision:

“If the existence of the reason cannot be proven or the reason for disinheritance is

not specified in the testamentary disposition, the disposition shall be executed excluding only the heir’s reserved portion; however, if the testator made the disposition under a manifest error regarding the reason for disinheritance, the disinheritance shall be deemed invalid.”

Pursuant to this provision, in a will annulment action, the court is tasked with examining and determining the heir’s reserved portion and conducting a reduction review.

At this point, any argument suggesting that the determination of the reserved portion and the reduction review may not be carried out under the principle of claim dependence is not valid.

The Decision, bearing the Basis number 2023/53 and the Decision number 2024/464 and dated 25.09.2024, of the General Assembly of Civil Chambers

“50. The term “tenkis”, literally meaning reduction, diminution, or decrease (Turkish Legal Dictionary, Turkish Law Institute, Ankara 2021, Vol. 1, pp. 574, 1092), finds its place within the institution of the reduction (tenkis) action, which is set out under Articles 560 et seq. of Law Nr. 4721.

This action, which may be described as an innovative legal remedy, allows for the reduction of inter vivos or mortis causa transfers that violate the reserved portion of an heir to the statutory limit.

As noted in the recent decision of the General Assembly of Civil Chambers, this action is, of course, subject to the general principles relating to claim dependence.



51. However, the situation differs when the testamentary disposition subject to annulment contains a provision for disinheritance, and an objection is raised claiming that the disinheritance is unfounded. In such a case, Article 512 of Law Nr. 4721 becomes applicable.

Accordingly, if the existence of the grounds for disinheritance cannot be proven, or if the reason for disinheritance is not specified in the disposition, **the law provides that “the disposition shall be executed excluding only the heir’s reserved portion.”**

By this provision, the legislature assigns the court, which acknowledges that the disinheritance is unwarranted, the duty to determine the heir’s reserved portion and to conduct a reduction review.

This provision constitutes an exception to the principle of claim dependence, as indicated in paragraph two of Article 26 of Law Nr. 6100. [4]

6. CONCLUSION

As a general rule, the principle of claim dependence applies in actions for the annulment of a will.

However, where the will contains an express intention to disinherit a legal heir, the court is required, as an exception to this principle, to examine and determine the reserved portion and conduct a reduction review.

Although the testator’s testamentary intent is generally upheld, the reserved portion rights arising from inheritance law must be strictly protected.

Therefore, the testator’s grounds for disinheriting a legal heir must comply with the conditions prescribed by law. Not every reason can independently constitute a valid ground for disinheritance.

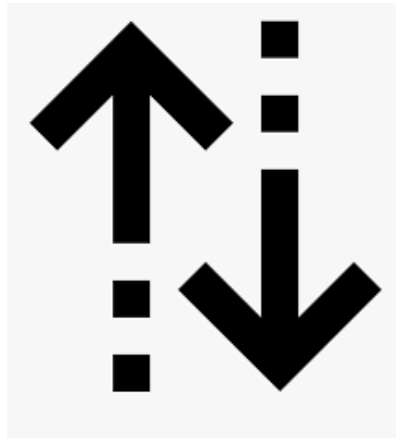
In an action for annulment of a will, if the objection is based on the absence of a valid ground for disinheritance or on the claim that the asserted ground does not reflect reality, the court’s ruling will, even if the will is not entirely annulled, affect only the portion of the heir’s inheritance exceeding the reserved portion.

At this point, when an action for annulment of a will is filed on the grounds that the alleged reason for disinheritance does not reflect reality, the court is required

not only to examine the annulment of the will but also to determine the reserved portion of the legal heir targeted for disinheritance and to conduct a reduction review.

Consequently, if the heir targeted for disinheritance initiates an action for the annulment of the will, the court, pursuant to the principle of claim dependence, is required to examine not only the annulment of the will but also, additionally, to determine the reserved portion of the legal heir subject to disinheritance and to conduct a reduction review.

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3. The Decision, bearing the Basis number 2017/3-1017 and the Decision number 2018/1750 and dated 20.11.2018, of the General Assembly of Civil Chambers
4. The Decision, bearing the Basis number 2023/53 and the Decision number 2024/464 and dated 25.09.2024, of the General Assembly of Civil Chambers

THE TESTATOR’S GROUNDS FOR DISINHERITING A LEGAL HEIR MUST COMPLY WITH THE CONDITIONS PRESCRIBED BY LAW. NOT EVERY REASON CAN INDEPENDENTLY CONSTITUTE A VALID GROUND FOR DISINHERITANCE.

ADDITIONAL TIME AND COURT OF CASSATION PRACTICE IN THE DISMISSAL OF A CASE UNDER ARTICLE 158 OF THE TURKISH CODE OF OBLIGATIONS



1. Introduction

In substantive law, time limits are divided into statutes of limitation and prescriptions. These periods constitute fundamental institutions that serve to ensure legal certainty and stability within the legal system. By virtue of these time limits, the debtor is protected from being subjected to the threat of indefinite litigation, and the resolution of disputes within a reasonable timeframe is aimed.

However, the strict and formal application of these time limits may, in some cases, lead to the extinction of substantive rights without examining their merits. In particular, the dismissal of a case solely on procedural grounds, coupled with the expiration of a statute of limitations or prescription during this process, poses a serious issue regarding the right to seek legal remedies.

Article 158 of the Turkish Code of Obligations provides an exceptional protective mechanism for such situations. According to the provision, if a case is dismissed for the reasons set out under the article and, during this period, the statute of limitations or prescription has expired, the creditor may assert their right again within an additional sixty-day period.

With this article, the legislator aims to prevent a procedural dismissal from definitively extinguishing a substantive right.

In this article, the provision of Article 158 of the Turkish Code of Obligations will be examined; first, the scope of its application will be analyzed, and subsequently, the provision will be evaluated in light of the decisions of the Court of Cassation.

2. Scope of Application of Article 158 of the Turkish Code of Obligations

Pursuant to Article 158, entitled "Additional Time in Case of Dismissal", of the Turkish Code of Obligations; *"If a claim or defense is dismissed due to the court lacking jurisdiction or competence, a correctable error, or being filed prematurely, and in the meantime the statute of limitations or prescription has expired, the creditor may exercise their rights within an additional sixty-day period."* This provision shall apply when a case is filed before an incompetent or unauthorized court, when it is dismissed due to a correctable procedural defect, or when it is dismissed on procedural grounds for being filed prematurely.

Accordingly, for the provision to be applicable, it is first necessary that a case has been filed and dismissed, or that a defense raised within a pending case has been rejected. The provision applies not only when a case is initiated, but also when a defense is asserted in an existing case. What is important here is that the claim has been brought before a judicial authority.

Moreover, for the provision to be applicable, the case must have been dismissed not on the merits, but for one of the limited reasons set out under the said article. These reasons include the court's lack of competence, lack of jurisdiction, the occurrence of a correctable error, or the premature filing of the case. Since these reasons are limited in number, dismissals based on the merits of the case, failure of proof, lack of capacity to sue, or other reasons not specified in the article cannot be considered within the scope of Article

158 of the Turkish Code of Obligations. Furthermore, for the provision to be applicable, the statute of limitations or prescription must have expired at the time the dismissal decision is rendered. The crucial point here is that the time limit must have expired during the course of the dismissal process.

When all the aforementioned conditions are met, the case must be refiled or the defense must be asserted again within the sixty-day period prescribed by the article. This period provides an exceptional and limited opportunity, and if it is exceeded, reliance on Article 158 of the Turkish Code of Obligations is not possible.

3. Dismissal of a Case Due to a Correctable Error

Article 158 of the Turkish Code of Obligations encompasses several scenarios. Specifically, the provision applies when a case is filed before an incompetent or unauthorized court, when it is dismissed due to a correctable procedural defect, or when it is dismissed on procedural grounds for being filed prematurely. The dismissal due to a correctable defect refers to the rejection of a case because certain elements required at the time of filing were incomplete. The most significant example of this is the absence of required conditions of action. [1]

If the plaintiff files a case without fulfilling the conditions of action prescribed in Article 114 of the Code of Civil Procedure, two scenarios may arise. If the missing condition of action is capable of being completed subsequently, the court may grant the plaintiff a period to remedy the deficiency; if the deficiency is corrected within this period, the proceedings continue. Conversely, if the plaintiff fails to remedy the deficiency within the granted period, the case is dismissed on procedural grounds. In such a situation, provided that the other conditions are also met, Article 158 of the Turkish Code of Obligations becomes applicable. An examination of the Court of Cassation's decisions concerning the application of Article 158 of the Turkish Code of Obligations shows that the concept of a correctable error has not been interpreted narrowly.



In various decisions, it has been held that the sixty-day additional period can be applied in cases such as: the dismissal of a case because it was not filed by the authorized company auditors with active litigation capacity (*the Decision, dated 02.06.1975, and bearing the Basis number 5185 and the Decision number 3636, of the 11th Civil Chamber of the Court of Cassation*); the case being considered as not filed due to failure to remedy deficiencies in the petition (*the Decision, bearing the Basis number 2015/3454 and the Decision number 2015/5769 and dated 25.05.2015, of the 14th Civil Chamber of the Court of Cassation*); the finalization of a case filed without payment of fees (*the Decision, bearing the Basis number 2011/7947 and the Decision number 2011/8288 and dated 13.07.2011, the 4th Civil Chamber of the Court of Cassation*); and the dismissal of a counterclaim for not being filed within the response period (*the Decision, dated 11.04.1983, and bearing the Basis number 1983/3638 and the Decision number 1983/3538, the 3rd Civil Chamber of the Court of Cassation*). The fact that the additional period may be applied even in cases of lack of active litigation capacity is significant, as it demonstrates a broad interpretation of the concept of a “correctable error”. [2]

When these decisions are evaluated together, it is understood that the concept of a “correctable error” is not interpreted narrowly as being limited solely to formal deficiencies; rather, it is construed to include procedural defects that prevent consideration of the merits of the case but can subsequently be remedied.

At the same time, it is accepted as a decisive criterion that the error must not relate to the merits, and that the merits of the case become examinable once the deficiency is corrected.

Accordingly, the purpose of Article 158 of the Turkish Code of Obligations is to prevent the extinction of substantive rights due to procedural deficiencies; this provision serves as an exceptional safeguard protecting the right to seek legal remedies. Within this framework, in cases where a lawsuit is dismissed due to a correctable procedural defect, the sixty-day additional period granted to the creditor—when the statute of limitations or prescription has expired—constitutes an important supplementary protective mechanism, allowing the assertion of substantive rights.

4. Application of Article 158 of the Turkish Code of Obligations in Light of Court of Cassation Decisions

The conditions for the application of Article 158, and particularly the scope of procedural deficiencies that are correctable, are concretized through Court of Cassation decisions. An examination of these decisions shows that the purpose of the provision is to prevent the loss of rights arising from procedural reasons, and therefore, it is emphasized that courts must assess whether the additional period should be applied.

Indeed, under its decision, dated 13.09.2018 and bearing the Basis number 2018/4346 and the Decision number 2018/8508, the 3rd Civil Chamber of the Court of Cassation stated that, following the dismissal of an annulment objection case on jurisdictional grounds, although the plaintiff filed subsequent actions before different authorities and the last action was filed after the prescription period had expired, it was procedurally and legally incorrect for the court to examine the merits without first determining whether the sixty-day additional period under Article 158 of the Turkish Code of Obligations had been applied. The Chamber annulled the decision, emphasizing that it must first be established whether the case was filed within the additional period. This ruling demonstrates that, following dismissals on grounds of jurisdiction or competence, Article 158 must be considered *ex officio*.

Likewise, under the decision, dated 07.12.2020 and bearing the Basis number 2016/18207 and the Decision number 2020/8130, of the (now-closed) 14th Civil Chamber of the Court of Cassation, it was held that a case refiled within the sixty-day period following a procedural dismissal due to the lack of capacity to sue falls under the scope of Article 158 of the Turkish Code of Obligations.

The decision stated that, when a case is terminated due to a correctable procedural defect without examining the merits, and the period expires during this process, granting an additional period to the creditor is a natural consequence of the provision’s purpose. Under its decision, dated 25.01.2024 and bearing the Basis number 2023/16578 and the Decision number 2024/1424, the 9th Civil Chamber of the Court of Cassation clearly articulated the purpose of applying Article 158 of the Turkish Code of Obligations.

The Chamber emphasized that, within the legal system, the provision grants the creditor a sixty-day additional period in order to prevent potential hardships arising from the expiration of the statute of limitations or prescription due to procedural dismissal of a case. In the present case, it was determined that the annulment action filed following the employee's objection to debt enforcement proceedings was dismissed on procedural grounds due to the absence of the mediation prerequisite; after the decision became final, the plaintiff applied to the mediator and, following the preparation of the mediation report, refiled the case. The Court of Cassation noted that the new case was filed within the sixty-day period prescribed by Article 158 of the Turkish Code of Obligations, calculated from the finalization of the previous dismissal decision, and found it erroneous for the Regional Court of Justice to have dismissed the case instead of examining the merits. This ruling is significant as it demonstrates that procedural dismissals due to the absence of the mediation prerequisite must also be considered within the scope of Article 158, provided that the other conditions are met.

Similarly, under its decision dated 24.10.2019 and bearing the Basis number 2019/7815 and the Decision number 2019/19996, the 22nd Civil Chamber of the Court of Cassation interpreted the concept of a "correctable error" broadly. In the present case, the action concerning employment receivables was dismissed on procedural grounds due to lack of legal interest, on the basis that it could not be filed as an unquantified claim action; following the affirmation of the dismissal decision, the plaintiff refiled the case within the sixty-day period prescribed by Article 158 of the Turkish Code of Obligations. The Chamber held that a dismissal based on lack of legal interest constitutes a correctable procedural defect and therefore must be assessed within the scope of Article 158.

Accordingly, it was stated that, in a case refiled within the additional period, the statute of limitations must be assessed with reference to the date of the initial action; any assessment to the contrary was deemed a ground for reversal. The decision constitutes an important precedent reinforcing the protective function of Article 158 of the Turkish Code of Obligations with respect to the right to seek legal remedies, as it emphasizes that dismissals based on lack of legal interest do

not give rise to *res judicata* and that the additional period may be relied upon in a subsequently filed action based on the same claims. When these decisions are evaluated together, it becomes apparent that the Court of Cassation has adopted the following principles in the application of Article 158 of the Turkish Code of Obligations:

- The dismissal must be procedural in nature and must not relate to the merits of the case.
- The ground for dismissal must be capable of being remedied.
- The statute of limitations or prescription must have expired during the dismissal process.
- The new action must be filed within sixty days from the finalization of the dismissal decision.
- The court must examine *ex officio* whether the conditions for the application of the additional period are satisfied.

As can be seen, the practice of the Court of Cassation tends to interpret Article 158 of the Turkish Code of Obligations not in a narrow and formalistic manner, but in line with its purpose of safeguarding the right to seek legal remedies. In particular, it is consistently recognized that, where a case is terminated due to a remediable procedural defect, the creditor should be provided with the opportunity to assert their substantive right.

5. Conclusion

Article 158 of the Turkish Code of Obligations constitutes an exceptional protective mechanism aimed at preventing the loss of rights that may arise when a case is dismissed on procedural grounds and the statute of limitations or prescription expires during this process.

For the provision to be applicable, the case or the defense must have been dismissed on grounds of lack of jurisdiction or competence, the presence of a correctable procedural error, or the premature filing of the action. In addition, the statute of limitations or prescription must have expired during the dismissal process, and the creditor must refile the action within sixty days from the finalization of the dismissal decision. This period does not create a new right; rather, it constitutes a complementary opportunity enabling the assertion of an existing right.

In particular, the concept of a "correctable error" constitutes a decisive

and, at the same time, controversial area in practice. The case law of the Court of Cassation demonstrates that this concept is not interpreted in a narrow or formalistic manner, but rather broadly so as to encompass procedural deficiencies that prevent examination of the merits and are capable of being remedied subsequently. The recognition that the additional period may be applied in cases such as deficiencies in causes of action, failure to pay court fees, lack of capacity to sue, lack of the mediation prerequisite, or lack of legal interest strengthens the provision's function of safeguarding the right to seek legal remedies.

Furthermore, Court of Cassation decisions indicate that the application of Article 158 must be assessed *ex officio* by the judge, and whether the additional period should be applied must be examined meticulously in light of the specific circumstances of each case. This approach is significant in preventing unjust outcomes that may arise due to procedural deficiencies.

In conclusion, Article 158 of the Turkish Code of Obligations constitutes an important safeguard that balances the formalism of procedural law and aims to protect substantive rights. In practice, interpreting the provision in accordance with its purpose—by accurately identifying the nature of the dismissal and assessing, on a case-by-case basis, whether the deficiency is remediable—plays a decisive role in preventing the loss of rights.

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SIGNIFICANT DECISION FROM THE CONSTITUTIONAL COURT ON UNQUANTIFIED CLAIMS

Under the Application numbered 2022/34110 and filed by Mustafa Yıldırım, the Constitutional Court held that the dismissal of a supplementary lawsuit following an unquantified claim case due to pending proceedings constituted a violation of the right of access to the court under Article 36 of the Constitution.

The Constitutional Court decision dated 14.10.2025 was promulgated in the Official Journal on 11.02.2026.

Summary of the Case

The applicant, an employee, filed an unquantified claim lawsuit for overtime pay based on an amount of TRY 100.00.-. During the proceedings, the expert report determined that the actual claim amounted to TRY 15,688.14.-. However, since no request to increase the claim was made, the court issued a final judgment only for the initial amount of TRY 100.00.-.

The applicant filed a supplementary lawsuit for the remaining claim determined under the expert report, amounting to TRY 15,000.00.-. The court of first instance dismissed the supplementary lawsuit due to pending proceedings, noting that the initial case had been filed as an unquantified claim, and that no request to increase the claim had been made during the investigation stage, and the Regional Court of Justice upheld this decision.

Legal Assessment of the Constitutional Court

Emphasizing that for the concept of pending proceedings to apply, the previous case must still be ongoing, the Constitutional Court determined, in this present case, that the initial case had become final in terms of its amount, and the second case was filed after this finalization.

Accordingly, the Court concluded that the condition of pending proceedings did not apply. The Court further assessed the final judgment requirement as a procedural cause of action and concluded that the amount of TRY 100.00.-, awarded in the initial case, and the amount of TRY 15,000.00.-, claimed under the second case, did not fall within the same subject matter. Therefore, the conditions related to a final judgment were not met in the present case.

The Constitutional Court regarded the dismissal of the lawsuit due to the pending proceedings requirement as a misapplication of the law and ruled that the applicant's right of access to the court had been violated.

Source: <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2022/34110>

COMMUNIQUE ON COMPETITION BOARD APPROVAL IN MERGERS AND ACQUISITIONS UPDATED

Communiqué numbered 2026/2, amending the Communiqué numbered 2010/4 which sets out mergers and acquisitions subject to Competition Board approval, entered into force after having been promulgated in the Official Journal dated February 11, 2026 and bearing the issue number 33165.

Under the new regulation, the turnover thresholds used as the basis for notification have been increased, provisions specific to undertakings operating in the field of technology have been revised, certain key concepts have been updated, and the substantive review criteria for transactions have been set out in more detail.

Source: <https://www.rekabet.gov.tr/tr/Guncel/birlesme-ve-devralma-mevzuati-guncellendi-f454d2c51e07f11193f50050568585c9>

ASSESSMENT OF THE CRIMINAL LIABILITY OF FINANCIAL ADVISORS IN LIGHT OF COURT OF CESSATION DECISIONS

INTRODUCTION

Under tax criminal law, the offense of issuing false invoices holds significant importance both for the protection of the economic order and for ensuring fiscal discipline. Set out under Article 359 of the Tax Procedure Law Nr. 213 (TPL), this offense often appears in practice in the forms of complicity, instigation, or aiding and abetting. The act of issuing false invoices is frequently not carried out by a single perpetrator, but within a division of labor established among company partners, representatives, accountants, and third parties. Therefore, rather than the material elements of the offense, the application of complicity provisions and the standard of evidence become decisive.

In this study, the reversal decisions, bearing the Basis number 2016/9306 and the Decision number 2020/944, and bearing the Basis number 2021/43596 and the Decision number 2023/5766, of the 11th Criminal Chamber of the Court of Cessation, will be examined. The two reversal decisions under review establish significant principles regarding complicity, statutes of limitation, and the application of more favorable law in the offense of issuing false invoices. [1]

THE LEGAL NATURE OF THE OFFENSE OF ISSUING FALSE INVOICES AND THE PROBLEM OF COMPLICITY

Under Article 359/b of the Tax Procedure Law (TPL), the offense of issuing false invoices constitutes an act aimed at misleading the tax system by producing a seemingly lawful commercial document. In this offense, the following elements are sought:

- The issuance of a document based on a non-existent goods or services relationship,
- The deliberate and intentional preparation of the document in a manner that makes it capable of producing tax law consequences.

However, in practice, the individual who physically issues the document may differ from the one who organizationally directs its preparation. At this point, the provisions on complicity, as set out under Arti-



cles 37–39 of the Turkish Penal Code Nr. 5237, take effect. The main point of dispute regarding complicity is whether a person can be automatically considered the perpetrator or an aider of the offense by virtue of being a company partner, having representative authority, or engaging in accounting activities. In the first reversal decision under review, the Chamber explicitly answers this question in the negative.

FIRST REVERSAL DECISION: INVESTIGATION OF THE FACTUAL REALITY AND DETERMINATION OF COMPLICITY

In the first decision, the Chamber stated that in response to the allegations that the defendants issued or were complicit in the issuance of the invoices in question, the following measures should be taken: Submission of the original invoices, Hearing the taxpayers who used the invoices as witnesses, Obtaining an expert report in cases of signature denial, Hearing as witnesses the individuals mentioned in the defenses, Concretizing the professional scope of the accountant's (Certified Public Accountant – CPA) activities.

In doctrine, the complicity of financial advisors in the offense of issuing false documents is associated not merely with carrying out technical procedures, but with situations in which they demonstrate concrete contribution and intent as perpetrators, instigators, or aiders. In this context, the Court of Cessation jurisprudence emphasizes that the relationship

between the taxpayer and the CPA must be clearly established and beyond doubt when determining the CPA's complicity [2]. Indeed, under the relevant decisions, the Chamber annulled the conviction rulings due to insufficient investigation in this regard.

These deficiencies constitute a violation of the criminal procedure's objective of "attaining the factual truth." In criminal proceedings, the court may not rely solely on technical reports in the file; it is obliged to collect direct evidence and examine such evidence. In particular, regarding a defendant in the position of an accountant, the Chamber emphasized that a clear link must be established between the professional services provided under Law Nr. 3568 and complicity in the offense.

The mere submission of tax returns by the accountant does not, by itself, constitute complicity in the offense of issuing false invoices. An opposite approach would result in a shift toward strict liability instead of fault-based liability, which is incompatible with the principles of contemporary criminal law. This decision demonstrates that the existence of the intent of complicity must be assessed together with the following elements:

- Actual contribution,
- Conscious and deliberate conduct,
- A shared purpose aimed at the commission of the offense.

The decision specifically states that a conviction may not be established without examining whether the accountant defendant acted merely by submitting tax returns or by consciously contributing to the organization of false invoices. This approach aligns with the doctrinal view that, for complicity, intent and actual contribution must be concretely established, and that criminal liability cannot be based solely on a professional relationship or formal authority. The decision is based on the principle of “investigation of the factual truth” within the framework of the Code of Criminal Procedure. In particular, it emphasizes that:

- Evidence must be evaluated in accordance with the principle of directness,
- Signature examinations should be conducted by an expert,
- Witness statements should be taken in accordance with the principle of face-to-face examination.

In this respect, the decision also indirectly indicates that, in tax criminal proceedings, technical reports (such as tax technical reports) cannot, by themselves, be considered sufficient for a conviction.

STANDARD OF EVIDENCE AND THE LIMITS OF TAX TECHNICAL REPORTS

Tax technical reports, frequently used in tax offenses, contain technical and financial analyses. However, in criminal proceedings, these reports do not possess binding evidentiary value. The criminal judge exercises free discretion in evaluating the report. In the first reversal decision, the Chamber did not consider it sufficient to reach a conclusion of complicity solely based on the content of the report. This approach reflects the presumption of innocence and the principle of “*in dubio pro reo*”. Criminal liability must be based on certainty leaving no room for doubt, rather than on assumptions. At this point, the Chamber’s approach clearly highlights the distinction between the tax inspection process and criminal proceedings. While presumptions may carry more weight in tax law, in criminal law, the proof of subjective elements is mandatory.

SECOND REVERSAL DECISION: STATUTE OF LIMITATIONS AND THE ISSUE OF MORE FAVORABLE LAW

The second decision relates to the ruling issued following the previous reversal. At this stage, three main issues arise:

- Statute of limitations,
- Interruption of the statute of limitations in cases of complicity,
- Determination of the more favorable law following the amendment under Law Nr. 7394.

THE LINK BETWEEN STATUTE OF LIMITATIONS AND COMPLICITY

The Office of the Chief Public Prosecutor of the Court of Cessation argued that the ordinary statute of limitations had expired with respect to one of the defendants. However, the Chamber held that, regarding the defendant who was acquitted but alleged to have committed the offense in complicity, the proceedings interrupted the statute of limitations for the other defendants. This approach is based on the understanding that, in offenses committed in complicity, the interruption of the statute of limitations may produce collective effects. Thus, the complicity relationship generates consequences not only in terms of substantive liability but also within procedural law.

PRINCIPLE OF MORE FAVORABLE LAW (ART. 7/2 OF TPC)

The most noteworthy aspect of the decision is its emphasis on the need to evaluate the amendments made to Article 359 of the Tax Procedure Law (TPL) by Law Nr. 7394, which entered into force on 15.04.2022. The Chamber explicitly emphasized the obligation to:

- Compare the former and new regulations,
- Determine the provision that is more favorable to the defendant,
- Demonstrate the application under both laws with justifications.

This approach demonstrates that the principle of more favorable law must be applied in a substantive and controllable manner, rather than merely formally.

This situation illustrates the two stages of review by the Court of Cessation:

- Examination of the sufficiency of evidence and procedural safeguards,
- Review of whether the legal norms have been correctly applied.

CONCLUSION

When the two reversal decisions under review are evaluated together, the following conclusions can be drawn:

The first decision focuses primarily on uncovering the factual truth, while the second decision emphasizes the correct application of procedural law. The Court of Cessation’s approach is consistent with the rule of law and the principle of personal criminal responsibility, as it establishes that complicity must be determined based on concrete contribution and intent, rather than abstract duties or professional relationships. However, the issue of interruption of the statute of limitations in cases of complicity remains open to debate in doctrinal literature.

The question of the extent to which the proceedings conducted against an acquitted defendant interrupt the statute of limitations for other defendants is significant, given the individual nature of the statute of limitations.

In addition, the emphasis that the examination of the more favorable law must be carried out comparatively for both regulations, with a reasoned and concrete calculation of the sentence, and that tax technical reports serve as supportive evidence rather than as direct technical evidence for conviction, can be regarded as an important practical reminder for implementation.

In conclusion, the above-mentioned two decisions of the 11th Criminal Chamber of the Court of Cessation can be regarded as jurisprudence of substantial depth in tax criminal law, both in terms of substantive criminal law and criminal procedure, with the potential to guide practice.

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2. Yaşar Ayyıldız ve Serdar Şahin, “Yargıtay İçtihatlarında Serbest Muhasebeci Mali Müşavirlerin Sahte Belge Düzenleme Suçuna İştiraki (Complicity of Certified Public Accountants in the Offense of Issuing False Documents in the Jurisprudence of the Court of Cessation),” *Journal of Finance, Economics, and Social Research* 8, Issue: 4 (2023): 929–942

AN ANALYSIS OF THE CONSTITUTIONAL COURT'S DECISION, DATED NOVEMBER 6, 2025 AND BEARING THE BASIS NUMBER 2023/174 AND THE DECISION NUMBER 2025/224, CONCERNING THE ON-SITE INSPECTION AUTHORITY OF THE COMPETITION BOARD SET OUT UNDER ARTICLE 15 OF LAW NR. 4054 ON THE PROTECTION OF COMPETITION



1. Introduction

Article 15, titled “On-Site Inspection”, of Law Nr. 4054 on the Protection of Competition grants the Competition Board the authority to conduct on-site inspections at the premises of undertakings and associations of undertakings where it deems necessary for the fulfilment of the duties entrusted to the same under the Law.

Pursuant to this provision, the Board is authorized to examine the books and documents of undertakings or associations of undertakings, as well as any data and documents kept in physical or electronic form and within information systems, and to take their copies and physical samples, and to request written or oral explanations on specific matters, and to conduct on-site inspections of the assets of undertakings.

The inspections are carried out by experts serving within the Competition Authority, who act upon presentation of their authorization documents indicating the subject matter and purpose of the inspection, as well as the administrative fines that may be imposed in case any false or misleading information is provided.

Undertakings, for their part, are obliged to provide copies of the requested information and documents. In cases where the on-site inspection is actually obstructed or where there is a likelihood that it might be obstructed, the Law provides that the inspection shall be carried out upon a decision of the judge of criminal court of peace.

Accordingly, the Law, as a rule, grants the Board the authority to conduct on-site inspections of the assets of undertakings by its own decision, without the need for any prior judicial authorization or approval. In addition, the Board is also vested with the power to impose administrative fines in cases where the inspection is hindered or obstructed.

On the other hand, Article 21 of the Constitution guarantees the inviolability of domicile and stipulates that, except for reasons such as national security, public order, the prevention of crime, the protection of public health and morals, or the protection of the rights and freedoms of others, no dwelling may be entered, searched, or have its property seized without a duly issued judicial warrant.

In cases where delay would be prejudicial, such measures may be carried out upon the written order of the competent authority; however, this order must be submitted for the approval of a judge within twenty-four hours, and the judge must render a decision within forty-eight hours; otherwise, the seizure shall automatically become null and void.

Although the provision in question bears the heading “inviolability of domicile,” when assessed within the framework of the regime of fundamental rights and freedoms, it is accepted that this safeguard is not limited solely to private residences, and that workplaces may also benefit from constitutional protection within the scope of inviolability.

The on-site inspection authority, which had previously been brought before the Constitutional Court under the “Ford Otosan” decision, has this time been referred to the Court through objections raised by the 13th Chamber of the Council of State and the 11th Administrative Court of Ankara in actions brought against the administrative fines imposed by the Board.

2. Analysis of the Decision

Under its decision, dated November 6, 2025 and bearing the Basis number 2023/174 and the Decision number

2025/224, and pursuant to the provision, published in the Official Journal on February 17, 2026, the Constitutional Court concluded, by a majority vote, that the on-site inspection authority, as set out under Article 15 of Law Nr. 4054 on the Protection of Competition, is not contrary to the Constitution.

As noted above, the decision is significant in that it follows the jurisprudence established by the Constitutional Court in 2023, in response to an individual application by Ford Otomotiv Sanayi A.Ş.—commonly referred to in practice as the “Ford Otosan decision”—and considers the same statutory provision this time within the scope of a concrete judicial review.

Under the decision on the aforementioned individual application, the Court had noted that the manner in which on-site inspections are carried out could give rise to issues with respect to the right to inviolability of domicile, guaranteed under Article 21 of the Constitution, and that inspections conducted without a judicial warrant might not be consistent with constitutional safeguards. The courts that lodged the objections were the 13th Chamber of the Council of State and the 11th Administrative Court of Ankara. In these applications, the constitutional compliance of two separate provisions, set out under Article 15 of Law Nr. 4054 on the Protection of Competition, was contested. The first of these is the first paragraph granting the Competition Board the authority to conduct on-site inspections at the premises of undertakings and associations of undertakings “where it deems necessary.”

The second is the third paragraph providing that, in the event that the inspection is obstructed or there is a likelihood of obstruction, the on-site inspection may be conducted upon a decision of the judge of criminal court of peace. The Court assessed these two provisions separately, conducting a procedural review with respect to the third paragraph and a substantive review with respect to the first paragraph.

The Constitutional Court determined that the cases subject to the objections did not arise from actions based on a judicial decision under the third paragraph of Article 15, but rather from administrative fines imposed under Article 16. Accordingly, it concluded that the third paragraph was not applicable in the concrete disputes, and the applications were dismissed on procedural grounds for lack of jurisdiction.

The Court examined the first paragraph within the framework of the principle of the rule of law, as set out under Article 2 of the Constitution, and the duties assigned to the State under Article 167 to protect competition and ensure the orderly functioning of markets. The decision notes that the on-site inspection authority serves the purpose of establishing a competitive order entrusted to the State under Article 167 of the Constitution.

With regard to the principle of the rule of law, the decision emphasizes that legal norms must be clear and foreseeable, noting that the phrase “where it deems necessary” does not grant the Board unlimited or arbitrary authority; rather, its powers are limited to the scope of duties set out under the Law and to the purpose of detecting competition infringements.

Furthermore, the Court highlighted that on-site inspections are carried out by authorized experts upon presentation of their authorization documents, and that any physical intervention or use of force is only permissible pursuant to a decision of the judge of criminal court of peace.

Within this framework, the Court emphasized that the Authority does not possess inherent powers to use force. The Court further noted that competition infringements may arise in highly diverse and unpredictable ways, and therefore it is not possible for the legislature to set out every eventuality in detail.

Whether an on-site inspection is to be conducted must be determined based on the circumstances of the specific case, and this is regarded as an extension of the discretion granted to the legislative body.

In conclusion, the Constitutional Court held that the phrase contained in the first paragraph of Article 15 is not ambiguous and does not violate the principle of the rule of law, ruling that the provision is in compliance with Articles 2 and 167 of the Constitution. Another notable aspect of

the decision is that the Court did not carry out its review within the framework of the regime of limitations for fundamental rights and freedoms, set out under Article 13 of the Constitution, nor within the context of the right to inviolability of domicile, guaranteed under Article 21. In addition, there was no explicit reference to the previous individual application decision.

3. Dissenting Opinions

As noted above, the decision was adopted by a majority vote. The dissenting opinions primarily refer to the Ford Otosan decision and its content, asserting that the contested provision should be examined within the framework of the right to inviolability of domicile, guaranteed under Article 21 of the Constitution. According to the dissenting opinions, the Board-authorized officials are granted the authority to enter portions of workplaces that have the character of a dwelling, without a judicial warrant, and to examine and take samples of records and data located there. However, this authority is not limited solely to situations where delay would be prejudicial; rather, it is structured as a general and continuous power.

The judicial decision comes into play only if the parties concerned do not consent to the inspection, meaning that the constitutional safeguard is made conditional on an exceptional circumstance. In addition, it is emphasized that there is no clearly provided mechanism for judicial review in constitutional terms following the procedure. For these reasons, the dissenting opinions concluded that the provision is inconsistent with the guarantees, set out

under Articles 13 and 21 of the Constitution, and it should be annulled.

In another dissenting opinion, it was stated that the phrase “where it deems necessary” leaves the authority to interfere with fundamental rights entirely to the discretion of the authority. The opinion notes that this phrase does not define situations where delay would be prejudicial, lacks objective criteria, and does not clearly specify in which cases a judicial award must be sought. This ambiguity was argued to be inconsistent with the principles of legality, clarity, and prevention of arbitrariness, set out under Articles 2 and 13 of the Constitution.

Furthermore, the dissenting opinions note that the provision allowing recourse to the judge of criminal court of peace in cases where the on-site inspection is obstructed or there is a likelihood of obstruction is applicable in concrete disputes and forms an integral part of the regime governing the inviolability of domicile. According to the dissenting opinions, both the phrase “where it deems necessary” and the provision regarding judicial award do not limit the interference solely to situations where delay would be prejudicial, and they make judicial review conditional upon an exceptional circumstance.

In this respect, the dissenting opinions argued that the provision does not adequately safeguard the inviolability of domicile, guaranteed under Article 21 of the Constitution. They further concluded that the provisions in question are also inconsistent with Articles 13 and 21 of the Constitution in terms of the principles of legality and proportionality.



The dissenting opinion argued that the majority's departure from this jurisprudence constitutes a regression in terms of the protection of fundamental rights and creates a contradiction with the Court's previous decisions.

Consequently, it was assessed that the majority's approach is inconsistent both with the principle of reasoned decisions and with the Constitution's function of safeguarding fundamental rights and freedoms.

4. Conclusion

In my view, the observations set out in the dissenting opinions provide a strong and coherent framework with respect to constitutional safeguards. Indeed, the on-site inspection authority granted to the authority directly touches upon the domain of fundamental rights by its very nature.

A power of such breadth and involving practical intervention cannot be considered in isolation from constitutional rights and freedoms.

In particular, considering that workplaces are also among the spaces protected under Article 21 of the Constitution, evaluating the on-site inspection authority independently of the guarantee of inviolability of domicile is not consistent with the constitutional system.

The scope of the intervention, the procedure for its implementation, and the stage at which judicial review comes into play are directly related to the essence of this constitutional safeguard.

Furthermore, taking into account the Constitutional Court's assessment regarding the inviolability of domicile under the Ford Otosan decision, adopting a completely independent approach from this jurisprudence in the context of concrete judicial review raises questions in terms of legal predictability and consistency of case law.

While methodological differences are possible in constitutional review, examining a power that directly affects fundamental rights in isolation from previous jurisprudence does not appear convincing with regard to the integrity of the constitutional safeguard system.

Within this framework, it can be argued that the dissenting opinions—asserting that the provision concerning on-site inspection authority should be assessed in

light of the principles of the rule of law, legality, and proportionality, as well as the guarantee of inviolability of domicile—rest on a stronger foundation in terms of the protection of constitutional rights.

The interpretation of administrative powers that have the potential to interfere with fundamental rights independently of constitutional safeguards and established jurisprudence is not consistent with a rights-centered understanding of the Constitution.

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References:

1. The Decision, dated 06/11/2025 and bearing the Basis number 2023/174 and the Decision number 2025/224, of the Constitutional Court <https://www.resmigazete.gov.tr/eskiler/2026/02/20260217-7.pdf>
2. Constitutional Court Application, dated 23/3/2023, of Ford Otomotiv Sanayi Anonim Şirketi (App. Nr: 2019/40991)

UNDERTAKINGS, FOR THEIR PART, ARE OBLIGED TO PROVIDE COPIES OF THE REQUESTED INFORMATION AND DOCUMENTS. IN CASES WHERE THE ON-SITE INSPECTION IS ACTUALLY OBSTRUCTED OR WHERE THERE IS A LIKELIHOOD THAT IT MIGHT BE OBSTRUCTED, THE LAW PROVIDES THAT THE INSPECTION SHALL BE CARRIED OUT UPON A DECISION OF THE JUDGE OF CRIMINAL COURT OF PEACE.

THE WRITTEN FORM REQUIREMENT IN THE TRANSFER OF SHARE CERTIFICATES UNDER THE PROVISIONS ON THE ASSIGNMENT OF RECEIVABLES AND A REVIEW OF THE DECISION, BEARING THE BASIS NUMBER 2024/390 AND THE DECISION NUMBER 2025/691, OF THE 21ST CIVIL CHAMBER OF THE REGIONAL COURT OF JUSTICE OF ANKARA



1. INTRODUCTION

Article 490 of the Turkish Commercial Code Nr. 6102 sets out the transfer of registered shares in incorporated companies. Accordingly, unless otherwise provided by law or by the articles of association, registered shares may be transferred without being subject to any restriction. Therefore, unless provided otherwise, registered shares may be transferred through the assignment of receivables pursuant to Articles 183 et seq. of the Turkish Code of Obligations.

Although there is no explicit statutory regulation regarding the transfer of shares that are not represented by share certificates (so-called “uncertificated shares”), it is accepted in judicial precedents and in legal doctrine that such transfers are to be effected in accordance with the provisions governing the assignment of receivables. The validity of an assignment of receivables is subject to the requirement that it be made in writing.

Under the decision, dated 19.06.2025 and bearing the Basis number 2024/390 and the Decision number 2025/691, the 21st Civil Chamber of the Regional Court of Justice of Ankara which will be examined in this article, the court ruled as follows with respect to the transfer of share certificates in an incorporated company in accordance with the provisions governing the assignment of receivables:

- In the absence of a written assignment declaration, the transfer shall be deemed null and void, and

- The fact that the transfer is based on a resolution of the board of directors and recorded in the share ledger does not satisfy the validity requirement, and

- The plaintiff’s prolonged silence does not constitute a violation of the principle of good faith under the circumstances of the case, and

- Any subsequent transfers following a null share transfer shall likewise be invalid. [1]

2. TRANSFER OF SHARES IN INCORPORATED COMPANIES UNDER THE PROVISIONS ON THE ASSIGNMENT OF RECEIVABLES

The assignment of receivables is the transfer by a creditor of their right to claim from the debtor to a third party, without requiring the debtor’s consent. In order for an assignment of receivables to produce legal effects, there must be a concurrence of will between the assignor and the assignee, and the written form requirement must be satisfied.

Pursuant to Article 184 of the Turkish Code of Obligations, an assignment of receivables shall not be valid unless it is made in writing.

Accordingly, in the transfer of share certificates in incorporated companies under the provisions on the assignment of receivables, it is mandatory to have a written assignment declaration that clearly indicates that the share has been transferred.

In incorporated companies, registered shares may take the form of certificated or uncertificated shares. The transfer of certificated registered shares is set out under Article 490 of the Turkish Commercial Code Nr. 6102.

“Principle on the transfer of registered shares and share certificates

ARTICLE 490 – (1) *Unless otherwise provided by law or in the articles of association, registered shares may be transferred without being subject to any restriction.*

(2) A transfer by legal transaction may also be effected through the delivery to the assignee of a certificated registered share that has been endorsed.”

Pursuant to this article, there are no restrictions on the transfer of registered shares. Paragraph 2 provides that a transfer may be effected through endorsement and delivery of the share.

Although not explicitly set out under the article, it is also possible for the transfer to be carried out in accordance with the provisions on the assignment of receivables, set forth under Articles 183 et seq. of the Turkish Code of Obligations.

This is because the law does not contain any provision limiting the transfer of shares through a written assignment agreement.

As for the transfer of uncertificated shares, there is no explicit provision under the Turkish Commercial Code Nr. 6102. However, based on the principle of transferability of shares, the transfer of uncertificated shares is possible.

Indeed, both judicial precedents and legal doctrine indicate that uncertificated shares may be transferred in accordance with the provisions on the assignment of receivables under Articles 183 et seq. of the Turkish Code of Obligations.

The decision, bearing the Basis number 2014/801 and the Decision number 2014/891 and dated 12.11.2014, of the General Assembly of Civil Chambers of the Court of Cessation reads as follows:

“With respect to the transfer of the share, it is well established that, pursuant to Articles 416 and 417 of the Turkish Commercial Code Nr. 6762, effective on the date of the lawsuit, the transfer of registered share certificates requires either a written assignment declaration or a full endorsement on the back of the certificate, in addition to the transfer and hand-over of possession of the certificate. Failure to comply with these conditions renders the transfer invalid.

The fact that the incorporated company has not yet issued share certificates, and that even a temporary certificate has not been issued, does not constitute an obstacle to the transfer of shares in the incorporated company. There is no provision under the Turkish Commercial Code Nr. 6762 regarding the transfer of uncertificated shares in an incorporated company. Pursuant to the principle of transferability of shares, uncertificated shares may be freely transferred in the same manner as certificated shares, and such transfer is deemed to be carried out in accordance with the provisions on the assignment of receivables under Articles 162 et seq. of the Turkish Code of Obligations Nr. 818 (corresponding to Articles 183 et seq. of the Turkish Code of Obligations Ne. 6098). (Hayri Domanıç, Anonim Şirketler Hukuku ve Uygulaması (Turkish Corporate Law and Practice), İstanbul 1988, p. 1325; Hasan Pulaşlı, Commentary on Company Law, Ankara 2011, Vol. II, p.1261).” [2]. In this decision, it is explicitly stated that both certificated registered shares and uncertificated shares may be transferred in accordance with the provisions on the assignment of receivables.

In a transfer of shares carried out in accordance with the provisions on the assignment of receivables, the concurrence of will between the parties and the existence of a written assignment declaration are essential requirements. For the transfer to produce legal effects vis-à-vis the company, it must also be recorded in the share ledger [3]. However, this entry is presumptive in nature, and the contrary may be proven. Indeed, both judicial precedent and legal doctrine hold that entries in the share ledger are declaratory rather than constitutive [4]. Accordingly, share transfers based on a resolution of the board of directors and recorded in the share ledger will not become valid if the written form requirement is not satisfied.

3. LAWSUIT UNDER THE DECISION OF THE REGIONAL COURT OF JUSTICE

Under the respective dispute, the plaintiff claimed that the registered shares held in their name in the incorporated company were transferred to third parties without their knowledge or consent, requesting a declaration of invalidity of the said share transfers, the registration of the shares in their name, and the collection of dividend rights. According to the case file, the transfer of the plaintiff's shares was based on a resolution of the board of directors dated 15.12.2013.

The resolution of the board of directors was signed by the spouse of the plaintiff, who was the chairman of the board at the -then time, and the plaintiff's shares were transferred to the plaintiff's sons. However, there exists no written assignment agreement between the parties concerning the share transfer, nor is there a written assignment declaration bearing the plaintiff's signature indicating that the shares were transferred.

The court of first instance found that of the 200,000 shares of the defendant company, 199,975 shares, which belonged to the plaintiff, were transferred to the plaintiff's son without the plaintiff's knowledge. However, the court held that it would not be in accordance with the ordinary course of events for the plaintiff, who was a controlling shareholder, to have been unaware of the company's operations during the nearly eight-year period between 15.12.2013, when the share transfer was approved by the board of directors of the defendant company, and 03.06.2021, the date on which the present lawsuit was filed, and concluded that the matters registered and announced in the trade registry would also be binding on the plaintiff.

The court held that the plaintiff's decision to remain silent for such a long period and to file the lawsuit only eight years later was contrary to the principle of good faith under Article 2 of the Turkish Civil Code and accordingly dismissed the claim. The plaintiff subsequently filed an appeal against the decision.

4. THE DECISION, BEARING THE BASIS NUMBER 2024/390 AND THE DECISION NUMBER 2025/691, OF THE 21ST CIVIL CHAMBER OF THE REGIONAL COURT OF JUSTICE OF ANKARA

The chamber determined that the shares under the case were uncertificated shares. As explained above, the transfer of uncertificated shares is subject to the provisions on the assignment of receivables.

The existence of a written assignment declaration is a prerequisite for the transfer of shares to produce legal effects. Indeed, the Chamber stated in its decision as follows: *"Since the assignment of receivables is a dispositive transaction, it results in the transfer of the uncertificated share to the assignee. Formally, the transfer of a fully paid uncertificated share occurs when a written assignment decla-*

ration indicating that the share has been transferred is delivered to the assignee. In this case, registered shares may also be transferred in accordance with the provisions on the assignment of receivables under Articles 183 et seq. of the Turkish Code of Obligations. Pursuant to Article 184 of the Code, it is sufficient for the assignment of a receivable to be made in writing."

The Chamber found that there was no written share transfer agreement regarding the transfer of the plaintiff's shares, and that there was not any written assignment declaration by the plaintiff, and that the board resolution relied upon for the transfer bore only the signature of the chairman of the board, who was the plaintiff's spouse, and that the plaintiff had not authorized their spouse to transfer the shares, and that there was no information or document under the case file indicating that the plaintiff subsequently consented to the transfer.

The Chamber reversed the judgment of the court of first instance and partially accepted the plaintiff's claim by and through its decision, bearing the Basis number 2024/390 and the Decision number 2025/691 and dated 19.06.2025, which reads as follows:

"Accordingly, there was neither a written assignment declaration evidencing the transfer of the 199,975 shares belonging to the plaintiff delivered to the assignee, nor any document / power of attorney under the case file indicating that the plaintiff had authorized their deceased spouse ... in this regard, and in this case, the transfer of the plaintiff's shares by the deceased ... for and on behalf of the plaintiff without authorization does not produce any legal effect, and the 199,975 shares belonging to the plaintiff were not validly transferred in accordance with Articles 183 et seq. of the Turkish Code of Obligations, and although the court considered that the transfers were carried out in 2013 and that the present lawsuit was filed in 2021, and therefore argued that the plaintiff had not acted in good faith under Article 2 of the Turkish Civil Code, it should be noted that there is no information or document under the case file indicating that the plaintiff subsequently accepted or consented to the invalid share transfer, and in view of this, the plaintiff's assertion of the claim despite the elapsed time cannot be regarded as an abuse of rights."

As a result, it is understood that the 199,975 shares belonging to the plaintiff were not transferred in compliance with the formal requirements prescribed by law, meaning that the transfer was not made in writing, and that any transfer carried out in disregard of the formal requirement is null and void and produces no legal effect, and that it is therefore of no legal consequence, and that it cannot be said that the 199,975 shares belonging to the plaintiff were validly transferred to the non-litigant ... and the defendant ..., and that all subsequent transfers carried out based on the invalid resolution of the board of directors, dated 12/12/2013, are also null and void, and accordingly, instead of issuing a judgment establishing that the plaintiff is the owner of 199,975 shares in the defendant company and ordering the cancellation of 199,975 out of the 200,000 shares registered in the defendant company in the name of the defendant and their registration in the share ledger in the plaintiff's name, the court issued a judgment in writing, which is contrary to procedure and law."

5. ANALYSIS OF THE DECISION

5.1. Written Assignment Declaration is an Essential Requirement in the Transfer of Shares under the Provisions on the Assignment of Receivables.

As explained above and under the Chamber's decision, both certificated registered shares and uncertificated shares may be transferred in accordance with the provisions on the assignment of receivables under Articles 183 et seq. of the Turkish Code of Obligations.

For the transfer to produce legal effects, the existence of a written assignment declaration is required. The chamber held that failure to comply with the written form requirement renders the transfer void.

5.2. Reliance on the Board of Directors' Resolution and Entry in the Share Ledger does not Render the Transfer Valid.

The chamber stated, under its decision, that the entry of the transfer in the share ledger is not constitutive. Another point emphasized under the decision is that a resolution of the board of directors that does not bear the signature of the transferring shareholder cannot substitute for a dispositive act. Accordingly, the approval of the transfer by the board of directors or the recording of the transfer in the

share ledger does not render the transfer valid in the absence of a written assignment declaration.

5.3. Subsequent Transfers Based on an Invalid Transfer are also Void.

As a legal consequence of voidness determination, any subsequent transfers based on an invalid transfer will also be invalid, since ownership and shareholder status never passed to the assignee.

The Chamber determined that the initial transfer based on the resolution of the board of directors, dated 12.12.2013, was invalid, and consequently concluded that all subsequent transfers carried out relying on this transfer were also null and void.

5.4. The Plaintiff's Prolonged Silence Does Not Contravene the Principle of Good Faith.

The court of first instance found that the plaintiff's silence for nearly eight years was contrary to the principle of good faith under Article 2 of the Turkish Civil Code; however, the Chamber did not uphold this assessment. The chamber noted under its decision that there is no information or document under the case file indicating that the plaintiff had accepted or consented to the transfer.

It should be noted that a legal act that does not meet the constitutive requirements cannot, as a general rule, produce legal effects.

However, a claim for voidness determination that is made in a manner contrary to the principle of good faith is not protected by the legal order, since such conduct would constitute an abuse of rights. In this present case, if the plaintiff had authorized a transfer that did not satisfy the formal requirements, subsequently asserting that the transfer was invalid would not be consistent with the principle of good faith.

The Chamber held that the plaintiff's prolonged silence did not imply that the plaintiff had consented to the transfer and was not contrary to the principle of good faith.

6. CONCLUSION

The decision, bearing the Basis number 2024/390 and the Decision number 2025/691 and dated 19.06.2025, of the

21st Civil Chamber of the Regional Court of Justice of Ankara clearly demonstrates that the provisions on the assignment of receivables apply to the transfer of uncertificated shares in incorporated companies and that compliance with the written form requirement is constitutive.

The decision holds that, pursuant to Article 184 of the Turkish Code of Obligations, a share transfer carried out without a written assignment declaration is invalid, and that a resolution of the board of directors or an entry in the share ledger cannot substitute for the written assignment declaration.

The transfer of shares occurs not through the will of the company's organs, but through the shareholder's written dispositive act, and until the written form requirement is fulfilled, shareholder status does not pass to the assignee.

Furthermore, the decision emphasizes that any subsequent transfers carried out based on a transfer that violates the formal requirements will also produce no legal effect, and that if the initial transaction is invalid, all subsequent dispositions dependent on the same are likewise null and void. In addition, the decision notes that the shareholder's prolonged silence, by itself, does not constitute a violation of the principle of good faith.

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References:

1. The Decision, bearing the Basis number 2024/390 and the Decision number 2025/691 and dated 19.06.2025, of the 21st Civil Chamber of the Regional Court of Justice of Ankara
2. The Decision, bearing the Basis number 2014/801 and the Decision number 2014/891 and dated 12.11.2014, of the General Assembly of Civil Chambers of the Court of Cessation
3. The Decision, bearing the Basis number 2014/15601 and the Decision number 2015/11180 and dated 27.10.2015, of the 11th Civil Chamber of the Court of Cessation
4. Gönen Eriş, Ticari İşletme ve Şirketler (Commercial Enterprises and Companies), 3rd Edition, p. 2569

REGULATION AMENDING THE PRICE TAG REGULATION PROMULGATED IN THE OFFICIAL JOURNAL

Upon the Regulation on Amendments to the Price Tag Regulation, promulgated in the Official Journal, the collection of additional charges under any name or reference whatsoever, including service fees, table fees, cover charges, or similar, in restaurants has been prohibited. The relevant regulation is as follows:

“ARTICLE 1- Paragraph six of Article 8 of the Price Tag Regulation, published in the Official Journal dated 28/06/2014 and bearing the issue number 29044, has been amended as follows:

“(6) If any charge is collected under any name or reference other than the prices shown in the tariff and price list, it must be indicated in the tariff and price list. However, in establishments providing food and beverage services such as restaurants, cafes, and patisseries, and without prejudice to the provisions of Article 51 of Labor Law Nr. 4857 dated 22/05/2003, no additional payment may be requested from the consumer under any name or reference whatsoever, including service fees, table charges, cover charges, or similar.”

ARTICLE 2- This Regulation shall enter into effect on the date of promulgation.

ARTICLE 3- The provisions of this Regulation shall be executed by the Minister of Trade.”

Source: <https://www.resmigazete.gov.tr/eskiler/2026/01/20260130-2.htm>

SIGNIFICANT CHANGES IN JUDICIAL DISTRICTS

As per the Council of Judges and Prosecutors Decision, numbered 282 and dated February 18, 2026, promulgated in the Official Journal on February 20, 2026, a significant change has been made regarding the judicial districts of the Commercial Courts of First Instance.

Pursuant to the new regulation, it has been adopted that the judicial districts of the Commercial Courts of First Instance of Bakırköy, Anatolian Side of Istanbul and Küçükçekmece be removed from the jurisdiction of their respective high criminal courts, and the judicial district of the Commercial Courts of First Instance of Istanbul be determined as “the administrative boundaries of the Province of Istanbul, and that

The decision is to be implemented as of the date of suspension of activities of the Commercial Courts of First Instance of Bakırköy, Anatolian Side of Istanbul and Küçükçekmece, and all files pending in the suspended courts are to be transferred to the Commercial Courts of First Instance of Istanbul.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/02/20260220-1.pdf>

COMPETITION BOARD INITIATES LABOR MARKET INVESTIGATION INTO BANKS (FEBRUARY 24, 2026)

The Competition Board has initiated an investigation against 26 companies operating in the fields of banking, insurance, and information technologies on suspicion of violating competition in the labor market.

During the preliminary investigation conducted by the Competition Board, allegations were examined that some undertakings may have engaged in no-poach agreements and shared sensitive information affecting competition in the labor market. Based on the findings and assessments, the Board considered the suspicions of potential competition restriction to be serious and sufficient, and decided to file a formal investigation.

Under the scope of the Decision numbered 26-03/75-M and dated January 29, 2026, proceedings were initiated under Article 41 of Law Nr. 4054 on the Protection of Competition to determine whether Article 4 of the said Law had been violated.

During the investigation initiated by the Board, it will be thoroughly examined whether the relevant companies engaged in practices that restrict competition in the labor market. If a violation is determined as a result of this process, various sanctions, including administrative fines, may be imposed.

Source: <https://www.rekabet.gov.tr/tr/Guncel/is-gucu-piyasasina-yonelik-rekabet-ihlal-4db1ff759011f11193f60050568585c9>



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