ÖZGÜNLAW
PROTECTING YOUR INTERESTS

LAW BULLETIN

Issue: 19 June, 2026

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

All the content herein is for information purposes only and please contact us for further information.

Please note that the articles herein, originally written in Turkish, have been translated with the support of AI-based tools. All translations were reviewed and edited by human editors.

Editors:
Burcu Çelik Gökçen
Alperen Furkan Balat

Dreams of a Future With Another Person in Manifestation Lists and Personal Wish Notes: Evidence and Fault in Divorce Proceedings

The family is regarded as the fundamental unit of society, and the institution of marriage constitutes one of the most significant components of this structure protected by law. The Turkish Civil Code proceeds on the premise that marriage imposes reciprocal rights and obligations upon the spouses and accordingly regulates their duties to live together, to act in solidarity, to remain faithful to one another, and to preserve the family union. However, where the marital relationship becomes intolerable for the spouses due to various circumstances, the institution of divorce comes into play, providing them with the legal means to terminate the marital union. Under Turkish law, divorce is not merely an act based on the parties' mutual will; rather, it is a judicial process that requires the existence and proof of legally recognized grounds and the underlying facts supporting those grounds. *(Page 3)*

Offense of Facilitating Foreign-Based Sports Betting from Türkiye under Article 5/1-B of Law Nr. 7258

Technological advancements have led to the relocation of many economic and commercial activities to digital environments, while also enabling the organization of betting and games of chance via the internet. In this context, the ability of betting companies operating abroad to reach users located in Türkiye through their websites has significantly contributed to the proliferation of illegal betting activities in the digital sphere. In Turkish law, the primary regulation governing betting and games of chance based on sporting competitions is Law Nr. 7258 on the Regulation of Betting and Games of Chance in Football and Other Sports Competitions. The legislator provides that betting and gaming activities relating to sporting events may only be conducted through state-authorized entities and criminalizes betting activities carried out outside this framework under various offense types. *(Page 8)*

Sale Decisions in Companies under SDIF Trusteeship and Available Legal Remedies

Pursuant to Article 7 of Law Nr. 7539 on Amendments to Certain Laws and the first paragraph of Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws, where the appointment of a trustee to companies under Article 133 of the Code of Criminal Procedure or to assets under the tenth paragraph of Article 128 of the Code of Criminal Procedure is ordered, the Savings Deposit Insurance Fund (SDIF) may be appointed as trustee. This article examines the requirements that decisions taken by the SDIF regarding the sale of company assets must satisfy, the legal remedies available against such decisions and the competent judicial forum for resolving disputes arising therefrom. *(Page 15)*

Assessment of Requests for Access Blocking in Light of the Annulment of Article 9 of Law Nr. 5651 Concerning the Violation of Personal Rights

The conditions governing the removal of online content are set forth in Art. 8 and 9 of Law Nr. 5651, while the mechanisms of access blocking or content removal for the purpose of remedying violations of personal rights committed through the internet are set out under Art. 9 of the same Law. Pursuant to these provisions, the removal of online content or the blocking of access to the specific section of the website on which such content is published may be ordered on several grounds, including the violation of personal rights; the commission of a criminal offence; the infringement of the right to privacy; the infringement of rights protected under the Law Nr. 5846. *(Page 18)*

Appointment of a Trustee and the Assessment of Applications for Interim Injunctions in Actions for the Dissolution of Incorporated Companies on Just Grounds

Article 531 of the Turkish Commercial Code Nr. 6102 ("TCC") grants minority shareholders of incorporated companies the right to seek the dissolution of the company where just grounds exist. . This provision is intended to protect minority shareholders in situations where the majority abuses its managerial power, the minority is systematically excluded from the company's affairs, or the corporate relationship has otherwise become intolerable. In practice, however, actions for dissolution on just grounds are frequently accompanied by requests for interim legal protection through which the claimant shareholders seek judicial intervention in the management of the incorporated company. *(Page 21)*

Assessment of the Termination of the Employer Representatives' Employment Contracts and Job Security Provisions

It is important to clarify the circumstances under which employer representatives are entitled to benefit from job security and those under which they are excluded from such security. Whether employer representatives fall within the scope of job security, how the conditions governing termination should be applied to them, the legal relationship between the cessation of an employer representative's role and the termination of the employment contract, and the effect of employer representative status on the legal consequences arising from the termination of the employment contract, particularly reinstatement claims, give rise to significant disputes in practice. **(Page 24)**

Continued on the next page...

ÖZGÜNLAW
PROTECTING YOUR INTERESTS

LAW BULLETIN

Issue: 19 June, 2026

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

All the content herein is for information purposes only and please contact us for further information.

Please note that the articles herein, originally written in Turkish, have been translated with the support of AI-based tools. All translations were reviewed and edited by human editors.

Editors:
Burcu Çelik Gökçen
Alperen Furkan Balat

The Bank's Obligation to Declare a Cheque Dishonored in Case of Signature Discrepancy Upon Presentment

In practice, banks are observed to refrain from examining whether sufficient funds are available for payment at the time of presentment and from carrying out the "dishonor" procedure where the cheque is unpaid, on the grounds that the drawer's signature on the presented cheque does not correspond to the specimen signature held by the bank. This approach prevents the holder of the cheque from resorting to criminal remedies and results in the emergence of a de facto environment of impunity. This article examines the obligation of the drawee bank to verify whether sufficient funds are available for payment of a presented cheque and to carry out the "dishonor" procedure where the cheque is unpaid, even in cases where there is a discrepancy between the signature on the cheque and the specimen signature held by the bank. *(Page 28)*

The Legal Status of Saturdays in the Calculation of Annual Paid Leave

Annual paid leave is a period of rest to which an employee becomes entitled upon completing a certain period of service and during which the employee continues to receive remuneration. Pursuant to Art.53 of the Labor Law, employees are obligated to take annual paid leave for the minimum period prescribed according to their length of service. Annual paid leave constitutes a period during which the employment contract is suspended. During this period, the employee does not perform any work but continues to receive remuneration. In this respect, annual paid leave is not merely a period of "non-performance of work" but a statutory period of rest protected by law. However, the method of calculating the duration of annual paid leave and determining which days are to be included in that period have given rise to various disputes in practice. *(Page 32)*

2026 Competition Board Decisions and Key Developments

The year 2026, much like the preceding years, witnessed significant developments relating to the Competition Board's investigations, formal investigations, and commitment procedures across a wide range of sectors. The Board's decisions primarily focused on companies' market conduct, allegations of abuse of dominant position, anti-competitive agreements and practices, and the effective use of the commitment mechanism. The decisions adopted during this period demonstrate that the Competition Board has continued to address competition concerns not only through findings of infringement and the imposition of administrative monetary fines, but also by making effective use of instruments such as interim measures, settlement procedures, and commitments. Particular attention was paid to companies' positions in the markets in which they operate, their use of data, their commercial strategies, and the potential transfer or leveraging of their market power into adjacent markets. *(Page 35)*

Assessment of the Place of Commission of the Offence in relation to Illegal Betting Offences Committed on the Internet

Under the territoriality principle, the criminal law of the state in whose territory an offence is committed applies. The nationality of either the offender or the victim is of no relevance. It is generally accepted that a system based on territorial sovereignty offers the solution that is most consistent with justice and fairness, as it enables the re-establishment of the legal order, which is presumed to have been disturbed by the commission of the offence, through the application of the law of the place where the offence was committed. It also facilitates the collection of evidence and the conduct of other investigative measures. Turkish law likewise adopts a mixed system, under which the territoriality principle constitutes the general rule. Accordingly, Turkish criminal law applies to all offences committed within the territory of Türkiye, irrespective of the offender's nationality. *(Page 38)*

Recent News

Constitutional Court Finds Violation of the Right to Respect for Family Life due to Failure to Consider the Child's Best Interests in return to Habitual Residence! *(Page 20)*

New Regulation on Apartment Fee Increases and Apartment Management Practices Published in the Official Journal! *(Page 31)*

Lifetime Alimony Provision Annulled by the Constitutional Court! *(Page 31)*

"12th Judicial Package" Submitted to the Grand National Assembly of Türkiye! *(Page 40)*

DREAMS OF A FUTURE WITH ANOTHER PERSON IN MANIFESTATION LISTS AND PERSONAL WISH NOTES: EVIDENCE AND FAULT IN DIVORCE PROCEEDINGS

1. INTRODUCTION

The family is regarded as the fundamental unit of society, and the institution of marriage constitutes one of the most significant components of this structure protected by law. The Turkish Civil Code proceeds on the premise that marriage imposes reciprocal rights and obligations upon the spouses and accordingly regulates their duties to live together, to act in solidarity, to remain faithful to one another, and to preserve the family union. However, where the marital relationship becomes intolerable for the spouses due to various circumstances, the institution of divorce comes into play, providing them with the legal means to terminate the marital union.

Under Turkish law, divorce is not merely an act based on the parties' mutual will; rather, it is a judicial process that requires the existence and proof of legally recognized grounds and the underlying facts supporting those grounds. In addition to specific grounds for divorce—such as adultery, attempted murder, cruel or degrading treatment, abandonment, and mental illness—the Turkish Civil Code also recognizes the "irretrievable breakdown of the marital union" as a general ground for divorce, which is the most frequently invoked basis in practice. In particular, the deterioration of mutual trust, breach of the duty of fidelity, neglect, psychological abuse, communication breakdown or serious marital discord are assessed within this framework, with each case being evaluated on the basis of its own particular circumstances.

In divorce proceedings, the court's primary task is to determine whether the parties' allegations and defenses accurately reflect the facts. Accordingly, the law of evidence plays a central role in divorce litigation. Pursuant to the general principles of the Code of Civil Procedure, the burden of proving an asserted claim rests with the party advancing it. In determining the parties' respective degrees of fault, courts do not rely solely on their statements; rather, they assess witness testimony, documentary evidence, electronic communications, text messages, emails, social media posts, photographs, video recordings, and other tangible evidence as a whole before reaching a conclusion.

With the advancement of technology and the widespread use of digital communication tools, the types of evidence considered in divorce proceedings have become increasingly diverse. In particular, social media posts, personal notes, digital journals, and electronically stored records have emerged as frequently debated forms of evidence in recent years. Within this context, the legal characterization of personal notes commonly referred to as "manifests", "manifestation lists", or "wish lists"—which have recently gained widespread popularity among the public and on social media platforms—has also become a matter of increasing legal significance.

The concept of "manifestation" generally refers to the practice of putting into writing an individual's future goals, aspirations, expectations, or desired way of life, a practice rooted in the personal development literature that is based on the idea of giving concrete expression to one's thoughts and directing oneself toward specific objectives; however, whether such notes reflect an individual's actual conduct or merely their inner thoughts, and how they should be interpreted in divorce proceedings with respect to the assessment of fault and the alleged breach of the duty of fidelity, remain legally unsettled issues whose boundaries have yet to be clearly defined.

This article examines the legal nature of personal notes and manifestation lists, their admissibility and probative value in divorce proceedings, their implications for the duty of fidelity and the concept of fault, and their significance within the law of evidence, in light of doctrinal views and general principles of law; thereby seeking to elucidate the potential consequences of this increasingly prevalent phenomenon in the context of family law.

2. THE CONCEPTS OF PERSONAL NOTES AND MANIFESTATION LISTS

The concept of manifestation, which has its origins in positive psychology, cognitive-behavioral approaches, and personal development theories, is defined as a method whereby individuals articulate in writing the goals they wish to achieve, the life conditions they aspire to attain, or the events they seek to realize, with the aim of focusing their attention on these objectives. In recent years, this approach has become increasingly widespread, particularly through social media platforms, and is based on the assumption that an individual's thoughts and expectations may influence their future behavior. Within the scope of manifestation practices, individuals frequently set out their career goals, financial expectations, social relationships, plans concerning family life, or idealized descriptions of a spouse and romantic relationships in the form of various notes, diaries, or lists. In practice, these records—referred to interchangeably as "manifestation lists," "wish lists," "vision lists," or "goal lists"—constitute written expressions of an individual's expectations and aspirations regarding the future.

In the psychological literature, manifestation practices are grounded in the idea that individuals can concretize their goals, enhance their motivation, and orient themselves toward specific objectives.

Accordingly, manifestation lists often reflect not the realities of an individual's current life, but rather the conditions they aspire to bring into existence in the future. In other words, such lists are not records of events that have already occurred, but rather written expressions of an individual's thought processes and expectations.

From a legal perspective, the correct characterization of manifestation lists is of particular importance, as the legal order is, as a rule, concerned not with individuals' thoughts, but with externally manifested volitional conduct and acts giving rise to legal consequences. Indeed, Article 25 of the Constitution of the Republic of Türkiye guarantees freedom of thought and opinion, stipulating that everyone has the right to freedom of thought and opinion (Constitution of the Republic of Türkiye, Art. 25). For this reason, an individual's thoughts and expectations expressed solely in personal notes cannot, in themselves, be said to give rise to legal liability or fault.

However, personal notes and manifestation lists may, by virtue of their content, become subject to evidentiary assessment in certain legal disputes. In particular, in divorce proceedings where fault is examined, the parties' conduct, correspondence, social media posts, and other forms of evidence are evaluated as a whole. In the established case law of the Court of Cassation, it is likewise accepted that fault assessment must be carried out in light of the specific circumstances of the case and the parties' conduct. [1]

Indeed, the established case law of the Court of Cassation accepts that, in divorce proceedings, the determination of fault must be made by taking into account the parties' concrete conduct, actions, and their effects on the marital union. Accordingly, when assessing the legal value of manifestation lists, it is necessary to examine whether such records merely reflect personal thoughts and expectations, or whether, when evaluated in conjunction with other evidence, they reveal a particular conduct or relationship.

In this context, manifestation lists, while not constituting a direct form of conduct or a legal transaction in legal terms, may nevertheless be regarded as personal records that can be taken into account in evidentiary assessment depending on their content and their connection to the specific circumstances of the case. However, in making such an assessment, a delicate balance must be struck between freedom of thought, the right to privacy, and the fundamental principles of the law of evidence.

3. THE DUTY OF FIDELITY AND FAULT ASSESSMENT IN DIVORCE PROCEEDINGS

Marriage, as is well known, is not merely a legal act whereby the parties declare their intention to establish a shared life, but also a special legal status that imposes certain rights and obligations on spouses. Article 185(3) of the Turkish Civil Code expressly provides that spouses are obliged to live together, assist one another, and remain faithful to each other. In this respect, the duty of fidelity constitutes one of the fundamental elements of the marital union and aims to preserve the relationship of trust between the spouses.

The duty of fidelity does not refer solely to physical fidelity. As accepted in doctrine and judicial practice, the duty of fidelity also encompasses spouses acting honestly towards one another, refraining from conduct that may harm the marital union, and avoiding actions that could undermine the bond of trust between them. Accordingly, a breach of the duty of fidelity does not arise exclusively in the form of adultery; inappropriate emotional relationships with third parties, trust-damaging behavior, secret meetings, romantically charged communications, or other conduct impairing the marital union may also be subject to fault assessment. [2]

In divorce proceedings, the concept of fault may be defined as a spouse's breach of the obligations arising from the marital union, thereby contributing to the breakdown of the marriage. In particular, in divorce actions based on the ground of irretrievable breakdown of the marital union, set out under Article 166 of the Turkish Civil Code, fault plays a significant role in the assessment of the parties' divorce claims, in claims for pecuniary and non-pecuniary damages, and in the judgments rendered at the conclusion of the proceedings. However, in assessing fault in divorce law, it is not possible to rely solely on assumptions or subjective opinions. Pursuant to the general principles of proof under the Code of Civil Procedure, the conduct alleged to constitute fault must be established through concrete evidence. Indeed, in the established case law of the Court of Cassation, it is likewise accepted that the determination of fault requires a holistic assessment of the parties' actual conduct, the impact of such conduct on the marital union, and the available evidence. [3]

The key point here is that the legal order, as a rule, assesses conduct rather than thoughts. Pursuant to Article 25 of the Constitution of the Republic of Türkiye, everyone enjoys freedom of thought and opinion. For this reason, an individual's internal thoughts, fantasies, or personal assessments cannot, in themselves, be regarded as a breach of the duty of fidelity. Similarly, personal notes, diaries, or manifestation lists cannot be treated as conduct that directly constitutes fault. Nevertheless, where the content of such records, when assessed together with other evidence, reveals a specific act or relationship, they may be taken into account by the court as corroborative evidence.

Accordingly, in divorce proceedings, the decisive factor in determining whether the duty of fidelity has been breached is not the individual's inner thought world, but rather whether those thoughts have materialized into externally observable conduct. For this reason, personal notes and manifestation lists are not, in themselves, considered sufficient to establish fault; however, depending on the specific circumstances of the case, they may acquire legal significance when assessed together with other evidence. However, it must also be borne in mind that each case must be assessed in light of its own specific circumstances.

Although the legal order, as a rule, focuses not on individuals' thoughts but on externally manifested conduct, the content of personal notes may, in certain situations, lead to different legal consequences in the context of the marital union. In particular, where a married person systematically records detailed fantasies and plans concerning marrying, living with, or maintaining a romantic relationship with a specific person other than their spouse, such records cannot always be regarded merely as abstract expressions of thought. This is because the marital union is founded on the principles of mutual trust, commitment, and fidelity.

The written expression of expectations and desires to build a shared future with another person may seriously undermine the sense of trust that constitutes the essence of the marital relationship from the perspective of the other spouse.

For this reason, even if such notes cannot, on their own, be regarded as adultery or a direct breach of the duty of fidelity, they may nevertheless be taken into consideration in the assessment of irretrievable breakdown of the marital union, depending on their content and the specific circumstances of the case. In particular, where the expressions contained therein are degrading, exclusionary, or indicative of a lack of intention to continue the marital relationship from the perspective of the other spouse, it may be argued that such conduct constitutes trust-damaging behavior and may be classified among the circumstances rendering the marital union intolerable.

Indeed, under Article 166 of the Turkish Civil Code, what is of significance is not merely whether the duty of fidelity has been breached in a technical sense, but whether it can reasonably be expected that the spouses continue their shared life. In this context, where there are intensive and continuous written expressions concerning the establishment of a life with another person, and where such expressions render the continuation of the marital union intolerable for the other spouse, it is possible for them to be taken into account as corroborative circumstances in the assessment of fault.

4. LEGAL CONSEQUENCES OF MANIFESTATION LISTS IN TERMS OF THE DUTY OF FIDELITY AND FAULT ASSESSMENT

The view that manifestation lists merely constitute records of an individual's thought processes and therefore do not give rise to legal consequences may, at first sight, appear sound; however, given the specific nature of family law, it cannot be said that this conclusion is valid in every individual case. A marital union is not limited to the spouses' cohabitation but rather constitutes a special legal and emotional relationship founded on mutual love, respect, trust, commitment, and the intention to build a shared future. For this reason, not only the spouses' conduct but also their attitudes towards the marital union and their intent regarding its continuation are of significance.

Indeed, pursuant to Article 185 of the Turkish Civil Code, spouses are obliged to remain faithful to one another. The duty of fidelity does not encompass only physical fidelity; it also includes preserving the spouses' mutual commitment, refraining from conduct that may undermine the marital union, and maintaining the intention to continue the shared life. For this reason, in assessing the duty of fidelity, not only completed physical acts but also other forms of conduct that are trust-damaging in terms of their impact on the marital union must be taken into account.

In this context, where a married individual systematically records thoughts concerning marrying, cohabiting with, forming a family with, or planning a shared future with a person other than their spouse, and adopts such ideas as a personal goal or life plan, such conduct, although it may not be characterized as a direct breach of the duty of fidelity, may nevertheless be regarded as incompatible with the essence of the marital union.

In particular, where emotionally charged fantasies directed at a specific third person, post-marital life plans, or a detailed intention to establish a relationship with someone other than the spouse are set out in writing, such circumstances may lead to a serious loss of trust from the perspective of the existing spouse.

Indeed, the discovery that one spouse has, while the marital union is still ongoing, reduced to writing their fantasies of building a happy life with another person may be perceived by the other spouse not only as disturbing but also as humiliating and distressing.

The issue here is not merely the existence of such thoughts, but the fact that the individual's mental and emotional orientation is directed towards a person outside the marital union. In such a situation, it may be regarded as consistent with the ordinary course of life that the other spouse loses trust in the future of the marriage and no longer wishes to continue the shared life.

For this reason, treating expressions contained in manifestation lists as mere "personal thoughts" may not always be sufficient. In particular, records which, by virtue of their content, indicate the exclusion of the existing spouse, the planning of a shared future with another person, or the desire to terminate the marital union may be taken into account in assessing the existence of an irretrievable breakdown of the marital union under Article 166 of the Turkish Civil Code.

Indeed, the establishment of irretrievable breakdown does not require the occurrence of adultery or another specific ground for divorce. What is essential is the collapse of the relationship of trust between the spouses and the point at which the continuation of the shared life can no longer reasonably be expected.

On the other hand, the significance of manifestation lists in fault assessment is not limited solely to their effects on the dissolution of the marital union. Where the content of such records is subsequently corroborated by concrete conduct, these notes may also serve as corroborative evidence in proving fault.

For instance, where intensive communication is later established with the person named in the manifestation list, an emotional relationship develops, romantically charged correspondence is found, or other evidence indicating a de facto relationship emerges, the manifestation list may be regarded as supporting evidence demonstrating the party's inclination and intent.

In our view, while a married individual's systematic recording of fantasies concerning building a life with someone other than their spouse cannot, on its own, be characterized as a breach of the duty of fidelity or as adultery, it nonetheless constitutes an important factual element that may be taken into account in divorce proceedings, insofar as it indicates a weakening of the intention to continue the marital union and may render the shared life intolerable for the other spouse. In particular, where such records are supported by other evidence, they should also be considered in the assessment of fault.

5. THE IMPORTANCE OF MANIFESTATION LISTS IN DETERMINING THE INTENTION TO CONTINUE THE MARITAL UNION

In divorce law, the assessment of whether the marital union has broken down irretrievably is not limited to overt conflicts between the spouses, acts of physical infidelity, or seriously wrongful conduct; rather, the parties' intention to continue the marital union is also of significance. Marriage is not merely a legal relationship but a special form of life partnership grounded in the spouses' intention to live together, support one another, remain faithful, and build a shared future.

Pursuant to Article 185 of the Turkish Civil Code, spouses are obliged to live together, assist one another, and remain faithful to each other. These obligations require not only the formal continuation of the marital relationship but also conduct consistent with the nature of marriage and a genuine intention to maintain the shared life. Accordingly, where a spouse appears to continue the marriage in practice but directs their mental and emotional orientation towards an imagined future with another person, such circumstances may, depending on the specific facts of the case, indicate a weakened intention to continue the marital union.

Manifestation lists gain significance at this point. As a rule, thoughts, fantasies, or wishes expressed in a person's private notes do not, on their own, give rise to legal liability or fault. The legal order is concerned not with individuals' inner thoughts, but with their externally manifested conduct. However, where the records contained in a manifestation list go beyond a merely abstract desire or general expectation for the future and take the form of concrete plans to marry, cohabit with, establish a family with, or build a shared life with a specific person other than the spouse, such circumstances must be separately assessed in terms of the intention to continue the marital union.

At the core of the marital union lies the spouses' intention to build a shared future. When this shared intention disappears, or when one spouse redirects it towards another person, the foundation of trust underlying the marital relationship may be seriously undermined. In particular, where a married individual systematically records written statements concerning how they intend to live in the future with a specific person other than their spouse, their intention to marry that person, to maintain a happy family life with them, or to enjoy a peaceful future with them in contrast to their current spouse, such circumstances may render the continuation of the marital union intolerable for the other spouse.

It should be expressly emphasized that such a manifestation record cannot, on its own, be characterized as adultery or a direct breach of the duty of fidelity. However, in divorce law, each case is not assessed in isolation but in conjunction with other factual circumstances. Accordingly, where thoughts recorded in a manifestation list concerning building a future with another person are accompanied by other indicia—such as indifference towards the spouse, emotional coldness, distancing behavior, avoidance of shared life, reduced communication, failure to fulfill marital responsibilities, or additional evidence suggesting closeness with a third party—such records can no longer be regarded merely as expressions of thought.

In such a case, a manifestation list may acquire the character of corroborative evidence revealing the spouse's attitude towards the marital union, their intention regarding a shared future, and their emotional orientation. In other words, a manifestation record may not constitute conclusive proof of fault in itself; however, it may be taken into account as a significant factual element indicating that the spouse's intention to continue the marital union has weakened or ceased to exist.

In particular, where the person named in a manifestation list is subsequently contacted, followed by closer interaction through social media, engages in romantically charged correspondence, or where witness testimony confirms the existence of an emotional relationship, or where the spouse displays indifference and exclusionary behavior towards the existing marital relationship, such manifestation records gain significance when assessed together with other evidence. In such cases, the court must not rely solely on the existence of the manifestation list; rather, it should examine its content, the manner in which it was written, its continuity, whether it is directed towards a specific person, and its connection with the spouse's other conduct.

In our view, where one of the spouses systematically records thoughts during the continuation of the marital union concerning building a shared future with another person—particularly where such conduct is accompanied by behavior that is distant, indifferent, or otherwise damaging to the marital relationship—it may be taken into account, within the scope of Article 166 of the Turkish Civil Code, in assessing the existence of an irretrievable breakdown of the marital union.

In such a case, the issue is not confined to a purely internal mental process but rather concerns the weakening of the intention to continue the marital union and the resulting deterioration of the relationship of trust between the spouses. In conclusion, manifestation lists cannot in every case be regarded as a ground for divorce or as a breach of the duty of fidelity.

However, records that contain plans to build a future with a specific person other than the spouse, that exclude the existing spouse, and that indicate a weakening of commitment to the marital union may, when assessed together with the spouse's other conduct and the evidence in the case file, be accepted as corroborative and supplementary evidence demonstrating an irretrievable breakdown of the marital union.

6. CONCLUSION AND EVIDENTIARY ASSESSMENT

The primary aim in divorce proceedings is to establish, on the basis of concrete evidence, the facts that have led to the irretrievable breakdown of the marital union and to determine the parties' respective degrees of fault in accordance with the law. In this context, courts reach a conclusion not solely on the basis of the parties' statements, but by assessing all the evidence contained in the case file as a whole.

Manifestation lists and personal wish notes may, at first glance, be regarded merely as records reflecting an individual's inner thought processes. Indeed, the legal order generally focuses not on thoughts themselves but on externally manifested conduct, and does not, as a rule, treat an individual's mental processes as the sole source of legal liability or fault.

However, having regard to the distinctive nature of family law, we are of the view that this conclusion does not necessarily lead to the same result in every individual case. Marriage is not merely a legal relationship but also a special form of life partnership based on mutual trust, commitment, fidelity, and the intention to build a shared future between spouses.

Accordingly, where a married individual systematically reduces to writing thoughts concerning marrying, cohabiting with, or planning a shared future with a person other than their spouse, such conduct, although it may not be directly characterized as a breach of the duty of fidelity, may nevertheless seriously undermine the sense of trust from the perspective of the existing spouse.

In particular, the written expression of emotionally charged fantasies directed at a specific third person, post-marital life plans, or future scenarios in which the existing spouse is excluded may render the continuation of the marital union intolerable for the other spouse. In such cases, the issue is not merely the existence of a thought, but the concrete manifestation of a weakened commitment to the marital relationship and a diminished intention to maintain a shared future. For this reason, manifestation lists may, in certain cases, constitute factual circumstances that can be taken into account in assessing the existence of an irretrievable breakdown of the marital union under Article 166 of the Turkish Civil Code.

From the perspective of the law of evidence, manifestation lists cannot, in themselves, be regarded as conclusive proof. However, when these records are assessed together with

- correspondence between the parties,

- social media posts,

- electronic messages,

- witness testimony,

- photographs and video recordings,

- telephone records, and

- other evidence indicating the existence of a relationship with third parties,

they may acquire significant probative value as corroborative evidence.

In particular, where subsequent contact is established with the person named in the manifestation list, an emotional relationship develops, or conduct emerges that undermines the marital union, such records may be regarded as corroborative evidence revealing the party's intention, orientation, and attitude towards the marital relationship.

In conclusion, although manifestation lists cannot in all cases be regarded as a breach of the duty of fidelity or as a direct ground of fault, we are of the view that, depending on their content, scope, and the specific circumstances of the case, they may be of relevance in the assessment of irretrievable breakdown of the marital union, the erosion of trust between the spouses, and fault.

Accordingly, rather than categorically dismissing manifestation lists as legally insignificant in divorce proceedings, it would be more appropriate to assess them on a case-by-case basis together with other evidence.

In our view, where a spouse systematically records thoughts during the continuation of the marital union concerning marrying, cohabiting with, or building a romantic future with a specific third person, such conduct—although it may not, on its own, be characterized as adultery or a clear breach of the duty of fidelity—should nevertheless be regarded as an important indicator of a weakened commitment to the marital union.

In particular, where such records are accompanied by conduct such as indifference towards the spouse, emotional distancing, cold behavior, avoidance of shared life, and similar acts, these circumstances must be assessed as a whole. In such cases, manifestation lists cease to be mere expressions of thought and acquire the character of corroborative evidence indicating an irretrievable breakdown of the marital union.

For further information:
Att. Gülden Mehmed
info@ozgunlaw.com

References:

1. Dural, Mustafa / Öğüz, Tufan / Gümüş, Mustafa Alper, Türk Özel Hukuku Cilt III (Turkish Private Law Vol. III) - Aile Hukuku (Family Law), Filiz Publishing House, Istanbul, 2024, p. 118 et seq.

2. Dural, Mustafa / Öğüz, Tufan / Gümüş, Mustafa Alper, Türk Özel Hukuku (Turkish Private Law)– Aile Hukuku (Family Law), Filiz Publishing House, Istanbul, 2024, p. 102 et seq.

3. Decision, bearing the Basis number 2017/2-2057, the Decision number 2020/240 and dated 26.02.2020, of the General Assembly of Civil Chambers of the Court of Cassation; Decision, bearing the Basis number 2021/3707, the Decision number 2021/6046 and dated 05.07.2021, of the 2nd Civil Chamber of the Court of Cassation

THE WRITTEN EXPRESSION OF EMOTIONALLY CHARGED FANTASIES DIRECTED AT A SPECIFIC THIRD PERSON, POST-MARITAL LIFE PLANS, OR FUTURE SCENARIOS IN WHICH THE EXISTING SPOUSE IS EXCLUDED MAY RENDER THE CONTINUATION OF THE MARITAL UNION INTOLERABLE FOR THE OTHER SPOUSE.

OFFENSE OF FACILITATING FOREIGN-BASED SPORTS BETTING FROM TÜRKİYE UNDER ARTICLE 5/1-B OF LAW NR. 7258

1. INTRODUCTION

Technological advancements have led to the relocation of many economic and commercial activities to digital environments, while also enabling the organization of betting and games of chance via the internet. In this context, the ability of betting companies operating abroad to reach users located in Türkiye through their websites has significantly contributed to the proliferation of illegal betting activities in the digital sphere.

In Turkish law, the primary regulation governing betting and games of chance based on sporting competitions is Law Nr. 7258 on the Regulation of Betting and Games of Chance in Football and Other Sports Competitions. The legislator provides that betting and gaming activities relating to sporting events may only be conducted through state-authorized entities and criminalizes betting activities carried out outside this framework under various offense types. An examination of Article 5 of the Law shows that different forms of illegal betting activities related to sporting competitions are defined as separate offenses.

Article 5/1-b of Law Nr. 7258 constitutes a specific criminal provision developed under Turkish criminal law in response to the global organization of sports betting and games of chance through the internet. The provision criminalizes any person who, without any authorization granted under the Law, facilitates participation from Türkiye in fixed-odds or pari-mutuel betting or games of chance based on sporting competitions that are operated abroad by providing access via the internet or by any other means. Accordingly, the offense specifically focuses on conduct that renders foreign-based betting operations accessible and playable from within Türkiye through digital or other means of access.

The said provision is primarily intended to prevent international betting operators, particularly those operating through the internet, from accessing the Turkish market. Nevertheless, in practice, several issues remain controversial, including the scope of the offense, the identity of the perpetrator, the acts capable of constituting the offense, and, in particular, how the boundary between this offense and the offense set out under Article 5/1-a should be drawn.

This article first examines the relationship between the offense set out under Article 5/1-b of Law Nr. 7258 and the offense of providing a place and opportunity for gambling under Article 228 of the Turkish Penal Code. It then analyzes the offense in accordance with the general framework of criminal offense analysis. The primary objective of this article is to examine the practical issues arising, particularly regarding the perpetrator and act elements of the offense, and to delineate the scope of the offense in light of the case-law of the Court of Cassation and the views expressed in legal doctrine.

2. RELATIONSHIP WITH THE OFFENSE OF PROVIDING A PLACE AND OPPORTUNITY FOR GAMBLING UNDER ARTICLE 228 OF THE TURKISH PENAL CODE

Article 228 of the Turkish Penal Code criminalizes any person who provides a place and opportunity for gambling. Furthermore, Article 228/3 of the Turkish Penal Code designates the commission of the offense through the use of information systems as an aggravated form of the offense. By contrast, Article 5/1-b of Law Nr. 7258 criminalizes any person who facilitates participation from Türkiye in fixed-odds or pari-mutuel betting or games of chance based on sporting competitions operated abroad by providing access via the internet or by other means. Article 228 of the Turkish Penal Code concerns the act of providing a place and opportunity for gambling. Under Article 228/6 of the Turkish Penal Code, "gambling" is defined as games played for financial gain in which profit and loss depend on chance. By contrast, the subject matter of Article 5 of Law Nr. 7258 is limited to fixed-odds and pari-mutuel betting or games of chance based on sporting competitions.

The terms used in this provision are defined as follows:

The term "pari-mutuel betting" is defined under Article 2/1-h of Law Nr. 5738 on the Provision of Fixed-Odds and Pari-Mutuel Betting Games Based on Sporting Competitions to Private Legal Entities as betting games based on predicting the results of sporting competitions organized both in Türkiye and abroad, in which a predetermined percentage of the betting proceeds is distributed as prizes among participants who correctly predict the results.

The term "fixed-odds betting" is defined under Article 2/1-n of Law Nr. 5738 as betting based on predicting the results or events of sporting competitions organized in Türkiye or abroad, in which participants who correctly predict the results are entitled to prizes calculated according to predetermined betting odds.
The term "games of chance" is defined under Article 2 of Decree Law Nr. 320 as lotteries, numerical games, instant-win games, and similar games played in return for cash.

Finally, the term "sporting competition" is defined under Article 2/1-ö of Law Nr. 5738 as official, private, representative, national, or international sporting competitions organized by the relevant institutions and organizations in Türkiye or abroad.

In light of these definitions, it is apparent that the concepts referred to in Article 5 of Law Nr. 7258 fall within the general concept of gambling but are narrower in scope than gambling as a whole. Accordingly, Article 5 of Law Nr. 7258 may be regarded as a special provision (lex specialis) in relation to Article 228 of the Turkish Penal Code. This position is likewise supported in legal doctrine:

"*Fixed-odds and pari-mutuel betting or games of chance based on sporting competitions are, in essence, games in which profit and loss depend on chance for persons other than those participating in such betting or games. Accordingly, since they are also conducted for financial gain, they fall within the broader concept of gambling. However, as they relate exclusively to fixed-odds and pari-mutuel betting or games of chance based on sporting competitions, they constitute a specific form of gambling. It therefore follows that the two offenses should be regarded as protecting the same legal interest, one being regulated under the general code and the other under a special provision. Accordingly, a general–special provision (lex generalis–lex specialis) relationship exists between the two offenses. Consequently, Article 228 of the Turkish Penal Code is inapplicable to the acts falling within the scope of Law Nr. 7258. It should be noted that this conclusion applies to Articles 5/1-a and 5/1-b of Law Nr. 7258.*" [1]

Accordingly, Article 228/3 of the Turkish Penal Code applies only to gambling conducted via the internet that does not qualify as fixed-odds or pari-mutuel betting based on sporting competitions. Online casino games, slot machines, roulette, and other digital games of chance unrelated to sporting competitions may therefore fall within its scope.

Law Nr. 7258 specifically sets out betting and games of chance based on sporting competitions. Consequently, where illegal betting based on sporting competitions is involved, Article 228/3 of the Turkish Penal Code, as the general provision, does not apply.

The case law of the Court of Cassation likewise establishes that conduct facilitating participation in betting based on sporting competitions constitutes the offense set out under Article 5/1-a or Article 5/1-b of Law Nr. 7258, and that no conviction can additionally be applied under Article 228 of the Turkish Penal Code. In this regard, the relevant part of the Decision, bearing the Basis number 2022/6090, the Decision number 2024/7583 and dated 10.10.2024, of the 8th Criminal Chamber of the Court of Cassation, reads as follows:

"*(...) considering that the act of facilitating participation in betting based on sporting competitions constitutes the offense set out under either Article 5/1-a or Article 5/1-b of Law Nr. 7258, depending on whether the betting website is based in Türkiye or abroad, it is contrary to the first paragraph of Article 225 of Law Nr. 5271 to divide what constitutes a single act in legal terms and, on that basis, also enter a separate conviction for the offense of providing a place and opportunity for gambling.*" [2]

3. LEGAL INTEREST PROTECTED BY THE OFFENSE

According to the Constitutional Court, the legal interests protected by the offenses set out under Article 5 of Law Nr. 7258 are, similarly to the offense of providing a place and opportunity for gambling under Article 228 of the Turkish Penal Code, public morality, the protection of society and children from gambling, as well as the financial interests of persons authorized by the State to organize betting and games of chance and of the public institutions and organizations that receive a share of the revenues generated by such activities.

This was stated by the Constitutional Court under the Decision, bearing the Basis number 2016/51, the Decision number 2016/179 and dated 23.11.2016, as follows:

"*(...) The legal interest protected by the offense under Law Nr. 5237 is the protection of public morality and the protection of society and children from the significant social dangers and potentially serious consequences associated with gambling.*

By contrast, the legal interest protected by the provision at issue includes not only those interests but also the financial interests of the natural persons and legal entities authorized by the State to organize betting and games of chance, as well as of the public institutions and organizations that receive a share of the revenues generated by such activities.

Under Law Nr. 7258, the revenues generated from betting and games of chance conducted under the supervision and control of the State constitute an important source of funding for sports-related institutions and organizations, as well as other public institutions and organizations.

In this context, where such betting and games of chance are operated illegally via the internet or other means, those institutions and organizations are deprived of their respective revenue shares.

Furthermore, facilitating such illegal betting and games of chance also serves as a means of money laundering. It is therefore understood that, in enacting the provision at issue , the legislature, having regard to the nature of the offense, the manner in which it is committed, the harm suffered by the victim, and the legal interest protected, deliberately regulated such conduct outside the scope of Law Nr. 5237 and provided for a more severe sanction. (...)" [3]

4. MATERIAL ELEMENTS OF THE OFFENSE

4.1. Subject of the Offense

According to the settled case law of the 19th Criminal Chamber of the Court of Cassation, the subject of the offenses set out under Article 5 of Law Nr. 7258 consists of the persons participating in betting and games of chance. The relevant part of the Decision, bearing the Basis number 2020/2391, the Decision number 2021/3771 and dated 29.03.2021, of the 19th Criminal Chamber of the Court of Cassation, reads as follows:

"*In the present case, the victim of the offense defined under Article 5/2 of Law Nr. 7258, with which the defendants are charged, is society, whereas the persons participating in betting constitute the subject of the offense (...).*" [4]

4.2. Perpetrator

The offenses set out under Article 5 of Law Nr. 7258 concerning illegal betting or games of chance based on sporting competitions may be committed by any person. Accordingly, these offenses do not constitute special offenses. [5]

On the other hand, as will be explained below, the conduct constituting the offense under Article 5/1-b consists of facilitating participation from Türkiye in betting or games of chance operated abroad by providing access via the internet. Where such facilitating conduct takes place in the online environment, it is necessary, in order to determine the perpetrator of the offense, to examine the definitions set out under Law Nr. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed through Such Publications.

According to Article 2, entitled "Definitions", of Law Nr. 5651, the terms "content provider" and "hosting provider" are defined as follows:

"Content provider": Any natural persons or legal entities that produce, modify, or provide any information or data made available to users through the internet.

"Hosting provider": Any natural persons or legal entities that provide or operate the systems hosting services and content.
Pursuant to Article 4/1 of Law Nr. 5651, a "content provider" is liable for all content that it makes available through the internet. Pursuant to Article 5/1 of Law Nr. 5651, however, a "hosting provider" is under no obligation to verify the content it hosts or to investigate whether such content or activity is unlawful.

In light of these provisions, where the conduct of facilitating participation takes place in the online environment, the content provider will be regarded as the principal perpetrator of the offense under Article 5/1-b of Law Nr. 5651. This is because it is the content provider that creates and makes the relevant content available. It should be emphasized that the content provider facilitates illegal betting in the online environment.

Although a content provider is not a hosting provider within the meaning of Article 5/1 of Law Nr. 5651, it facilitates participation by making the relevant content accessible online. Nevertheless, it is submitted that a hosting provider should not incur criminal liability for this offense. This is because a hosting provider merely provides hosting services and is under no obligation to know whether its hosting services are being used for criminal purposes. It should be noted, however, that a hosting provider may incur criminal liability where it acts with criminal intent and the requirements for accomplice liability are satisfied. On the other hand, the commission of this offense does not require any special perpetrator status. Accordingly, a hosting provider may also act as a content provider, in which case it may be held criminally liable as the perpetrator. [6]

4.3. Victim

According to the prevailing view in legal doctrine and the settled case law of the Court of Cassation, the victim of the offense is society. As noted in the abovementioned Decision, dated 29.03.2021, of the 19th Criminal Chamber of the Court of Cassation, the Court expressly states that the victim of the offense under Article 5/1-b of Law Nr. 7258 is society.

4.4. Conduct

The conduct constituting the offenses set out under Article 5 of Law Nr. 7258 is as follows;

Article 5/1-a of Law Nr. 7258 – Conduct: Operating, or providing a place or opportunity for, fixed-odds or pari-mutuel betting or games of chance that are neither organized nor caused to be organized by the Presidency of the Sports Toto Organization in accordance with the related applicable regulations.

Article 5/1-b of Law Nr. 7258 – Conduct: Facilitating participation from Türkiye in fixed-odds or pari-mutuel betting or games of chance based on sporting competitions operated abroad by providing access via the internet or by other means.
Article 5/1-c of Law Nr. 7258 – Conduct: Acting as an intermediary in the transfer of funds relating to such games.

Article 5/1-ç of Law Nr. 7258 – Conduct: Encouraging participation in such games.

The conduct set out under Article 5/1-b of Law Nr. 7258 consists of facilitating participation from Türkiye in fixed-odds or pari-mutuel betting or games of chance based on sporting competitions operated abroad by providing access via the internet or by other means.

By virtue of the phrase "via the internet or by other means", the provision encompasses not only access through the internet but also access established through any form of remote connection made possible by technological developments, thereby enabling participation from Türkiye in betting or games of chance based on sporting competitions operated abroad. [7]

There is debate in both legal doctrine and judicial practice as to whether the phrase "operated abroad" in the provision qualifies the sporting competition or the betting or game of chance itself. In its settled case law, the 19th Criminal Chamber of the Court of Cassation has consistently held that, in determining whether the conduct falls within Article 5/1-a or Article 5/1-b, the decisive criterion is not the location where the sporting competition takes place, but rather the location of the betting operation or the website through which access is provided for the purpose of operating betting.

Accordingly, where the betting website is operated from abroad, the conduct falls within the scope of Article 5/1-b; where it is operated from within Türkiye, Article 5/1-a applies.

The relevant part of the Decision, bearing the Basis number 2020/4413, the Decision number 2021/6614 and dated 15.06.2021, of the 19th Criminal Chamber of the Court of Cassation, reads as follows:

"Articles 5/1-a and 5/1-b of Law Nr. 7258 criminalize the operation of, or the facilitation of participation in, fixed-odds or pari-mutuel betting or games of chance based on sporting competitions in violation of the provisions of the Law, while prescribing different penalties depending on whether the betting operation is operated from abroad. Article 5/1-b provides that 'persons who facilitate participation from Türkiye in fixed-odds or pari-mutuel betting or games of chance based on sporting competitions operated abroad by providing access via the internet or by other means...'.

Having regard both to the explanatory memorandum accompanying the provision and to the wording 'by providing access via the internet or by other means', the decisive criterion for determining whether the conduct falls within Article 5/1-a or Article 5/1-b is not the location where the football or other sporting competitions on which the bets are placed take place, but rather the location of the betting operation or, in light of current technological developments, the website through which access is provided for the purpose of operating betting.

Accordingly, although the expert's report prepared following the retrial stated that the football matches appearing on the betting slips found on the computer had been played abroad and therefore concluded that the defendant's conduct fell within the scope of Article 5/1-b of Law Nr. 7258, the legal status of the defendant should have been assessed only after determining, where necessary through inquiries to the Information and Communication Technologies Authority and other relevant sources, the location of the website 'www.korner24bet.com', through which the defendant was found to have operated betting, as of the date of the offense (...)." [8]

However, the wording of Article 5/1-b of Law Nr. 7258 is also capable of being interpreted as requiring that the sporting competition on which the betting or game of chance is based be held outside Türkiye.

In this regard, under the Decision, bearing the Basis number 2016/68, the Decision number 2016/57 and dated 29.11.2016, of the 16th Criminal Chamber of the Regional Court of Appeal of Istanbul, the court adopted the view that the sporting competition itself must take place abroad and held accordingly:

"(...) an expert's examination should be conducted to decrypt the software preventing access to the betting slips placed on the website 'http://www (...)' and, if access to the contents of those betting slips is obtained, an expert's report should be obtained to determine whether the football matches on which the bets were placed involved Turkish football teams or foreign football teams.

If it is concluded that the defendant operated betting on sporting competitions held in Türkiye, a conviction should be entered under Article 5-a of Law Nr. 7258; whereas, if it is established that the defendant operated betting on sporting competitions held abroad, a conviction should be entered under Article 5-b of Law Nr. 7258 (...)". [9]

This divergence in the case law clearly reflects the ambiguity in the wording of the provision. Legal doctrine likewise recognizes that, owing to the wording of the Law, the provision is open to two different interpretations: one requiring that the betting or game of chance be operated abroad, and the other requiring that the sporting competition on which the bet is placed take place abroad. [10]
As is apparent from the above-mentioned Decision of the 19th Criminal Chamber of the Court of Cassation, the Court requires that, in order to distinguish correctly between the two provisions, it be determined beyond doubt which paragraph covers the perpetrator's conduct.

To that end, it emphasizes that an expert's examination should be carried out on the seized computer and any other relevant items in order to determine the location of the website through which access was provided for the purpose of operating betting.

Otherwise, not only does rendering a judgment on the basis of an incomplete investigation and insufficient reasoning constitute a ground for quashing the judgment, but failure to determine which paragraph applies to the perpetrator's conduct is also regarded as resulting in the imposition of an incorrect sentence, thereby requiring the judgment to be quashed.

4.5. Result

The completion of the illegal betting offenses under Article 5 of Law Nr. 7258 does not depend on the occurrence of any particular result. Accordingly, these are resultless (mere conduct) offenses. Likewise, with respect to the offense of facilitating participation under Article 5/1-b of Law Nr. 7258, the act of facilitating participation from Türkiye in betting or games of chance operated abroad is sufficient for the offense to be completed. [11]

5. MENTAL ELEMENTS OF THE OFFENSE

The offenses set out under Article 5 of Law Nr. 7258 may only be committed intentionally, since no negligent form of these offenses is provided for under the Law. It is sufficient that the perpetrator acts with general criminal intent to operate betting or games of chance; the legislature does not require any specific intent.

Nevertheless, Article 5/1-b expressly provides that the conduct constitutes an offense only where it is committed "without authorization granted by law", thereby expressly incorporating the element of unlawfulness into the statutory definition of the offense.

Where the statutory definition of an offense expressly refers to unlawfulness, the legislature requires a separate examination of whether the perpetrator's intent extends to that element of unlawfulness.

Accordingly, it may be argued that the offenses set out under Article 5 of Law Nr. 7258 may be committed only with direct intent and not with conditional intent (dolus eventualis).

Consequently, with respect to the offense under Article 5/1-b, the perpetrator's intent must encompass the element of unlawfulness; in other words, the perpetrator must commit the conduct with the awareness that it is not based on authorization granted by law.

The conclusion that the perpetrator must be acting as a content provider is also significant in terms of the mental elements of the offense. A person who provides content knowing that it enables access to an illegal betting or game of chance operated abroad may be considered to have acted with direct intent. By contrast, such intent cannot ordinarily be established in the case of a mere infrastructure provider that has no control over the content. Accordingly, the offense under Article 5/1-b may only be committed with direct intent.

6. ELEMENT OF UNLAWFULNESS

For the offense set out under Article 5 of Law Nr. 7258 to be committed, the conduct prescribed in the provision must be carried out "without authorization granted by law." Accordingly, betting and games of chance organized by the Presidency of the Sports Toto Organization, or operated upon authorization granted by the Presidency of the Sports Toto Organization pursuant to Law Nr. 5738 and the related applicable regulations are lawful. In legal doctrine, this is regarded as a ground of justification under Article 24 of the Turkish Penal Code (execution of a statutory provision). [11]

7. SPECIAL FORMS OF THE OFFENSE

7.1. Attempt

The illegal betting offenses are offenses of mere conduct, and therefore their completion does not depend on the occurrence of any particular result. Nevertheless, where the conduct consists of separable acts of execution that manifest the perpetrator's intent, an attempt is possible pursuant to Article 35 of the Turkish Penal Code.

Accordingly, depending on the circumstances of the particular case, acts such as making a foreign betting website accessible to users in Türkiye, preparing a Turkish-language interface, integrating a payment channel, setting up a user account signup and login system, or activating a betting slip module may constitute acts of execution. The acts of execution must be directly directed at making foreign betting content accessible for participation from Türkiye. In this context, provided that acts of execution suitable for the commission of the offense have been commenced, an attempt may arise where the perpetrator is apprehended or access is blocked before participation from Türkiye is made possible.

7.2. Complicity

The offense under Article 5/1-b of Law Nr. 7258 is governed by the general provisions on complicity. In addition to the content provider as the perpetrator, persons who procure users, organize payment transactions, advertise the platform or redirect users to it, provide live support, manage the administrative panel, or process user account registration and bet slip creation may, depending on the nature and extent of their contribution, incur criminal liability as co-perpetrators, instigators, or aiders. However, liability for complicity requires that the participant be aware of the perpetrator's criminal intent and intentionally direct her/his own contribution to the commission of the offense.

At this point, the distinction between the direct perpetrator and the indirect perpetrator becomes important. The content provider is the person who makes the betting content available for use in Türkiye and exercises control over the betting service. By contrast, an accomplice may merely make an ancillary contribution to the operation of that content. However, Article 5/1-b of Law Nr. 7258 defines acting as an intermediary in the transfer of funds relating to illegal betting as a separate offense, while Article 5/1-ç defines encouraging persons to participate in betting and games of chance as a separate offense. Accordingly, conduct that would ordinarily be treated as aiding and abetting is separately criminalized by being defined as an independent offense under the Code.

The most problematic expansive interpretation on complicity would be to regard every actor in the internet chain as participating in the offense. Such an interpretation would render the distinction between content providers, hosting providers, and access providers meaningless. Accordingly, imposing liability for complicity in the absence of functional control over the commission of the offense and the requisite criminal intent would be unlawful.

7.3. Concurrence of Offenses

The Court of Cassation has consistently held that Article 43 of the Turkish Penal Code, governing chain offenses, is not applicable to the offense of operating illegal betting. According to the 19th Criminal Chamber of the Court of Cassation, since society is the victim of the offense and the persons participating in betting constitute the subject of the offense, the statutory requirements that the offense be committed against the same victim on different occasions pursuant to a single criminal decision, or against multiple victims through a single act, are not satisfied. The relevant part of the Decision, bearing the Basis number 2020/2391, the Decision number 2021/3711 and dated 29.03.2021, of the 19th Criminal Chamber of the Court of Cassation, reads as follows;

"Pursuant to Article 43 of the Turkish Penal Code Nr. 5237, where the same offense is committed more than once against the same person at different times in execution of a single criminal decision, or where the same offense is committed against more than one person through a single act, the sentence imposed on the defendant must be increased pursuant to the rules governing chain offenses. However, in the present case, since society is the victim of the offense defined under Article 5/2 of Law Nr. 7258 with which the defendants are charged, and the persons participating in betting constitute the subject of the offense, the conditions for the application of the rules on chain offenses were not satisfied. Accordingly, applying those rules in determining the sentence and thereby imposing a heavier sentence on the defendants required the judgment to be quashed (...)." [12]

The Chamber has likewise held that, even where the defendant accesses illegal betting websites on different occasions, the rules on chain offenses are not applicable because society is the direct victim of the offense and, therefore, the same offense cannot be regarded as having been committed repeatedly against the same victim. The relevant part of the Decision, bearing the Basis number 2016/8273, the Decision number 2016/20155 and dated 22.06.2016, of the 19th Criminal Chamber of the Court of Cassation reads as follows:

"Since, in offenses committed in violation of Law Nr. 7258, society is the direct victim of the offense, and since the defendant's act of accessing illegal websites was established on 22.05.2013, the application of Article 43/1 of the Turkish Penal Code without taking into consideration that the defendant had not, in execution of a single criminal decision, committed the same offense more than once against the same victim on different occasions, required the judgment to be quashed (...)."

The same view is also supported in legal doctrine, where it is argued that, since society is the victim of the offense, the participation of multiple persons in the betting or game of chance does not result in a corresponding number of offenses, and that the rules on chain offenses are therefore inapplicable. [13]

Furthermore, each of the offenses set out in Article 5 of Law Nr. 7258 is defined as a separate and independent offense. Accordingly, each of the acts prescribed under Article 5 constitutes a distinct offense and is punishable independently.
As explained in Section 2 of this article, the offense of providing a place and opportunity for gambling under Article 228 of the Turkish Penal Code and the offenses set out in Article 5 of Law Nr. 7258 stand in a general provision- special provision relationship. In this respect, Law Nr. 7258 constitutes the special provision and therefore takes precedence in its application. Accordingly, the same conduct cannot give rise to criminal liability under both Article 228 of the Turkish Penal Code and Article 5 of Law Nr. 7258.

Where the offense is committed within the framework of the activities of a criminal organization, the perpetrator incurs criminal liability both for the offense of membership in or leadership of a criminal organization under Article 220 of the Turkish Penal Code and for the relevant

offense under Law Nr. 7258. Likewise, where the proceeds of illegal betting are transferred to a terrorist organization, the perpetrator is liable both under Article 5 of Law Nr. 7258 and for the offense of financing terrorism under Article 4 of Law Nr. 6415, since the conduct consists of two distinct acts.

Finally, it should be noted that where the perpetrator does not in fact operate a betting or game of chance but, by means of fraudulent conduct, obtains a benefit from others by falsely representing that such a game is being operated, the conduct constitutes the offense of fraud under Article 157 et seq. of the Turkish Penal Code rather than an offense under Law Nr. 7258, since no betting or game of chance is actually operated.

8. CONCLUSION

The offense of facilitating participation from Türkiye, by providing access via the internet or by other means, in betting or games of chance based on sporting competitions operated abroad, as set out in Article 5/1-b of Law Nr. 7258, is a special offense introduced to combat illegal betting activities conducted in the digital environment.

The legal interest protected by the offense is not limited to the protection of public morality and public order; it also extends to safeguarding the financial interests of the entities authorized under the relevant legislation to organize such betting and games of chance, as well as the public institutions and organizations that receive a share of the revenues generated by those activities.

The offense in question constitutes a special provision (lex specialis) in relation to the offense of providing a place and opportunity for gambling under Article 228 of the Turkish Penal Code. Accordingly, Article 5 of Law Nr. 7258 takes precedence in cases involving betting and games of chance based on sporting competitions. Consequently, the same conduct cannot give rise to criminal liability under both Article 228 of the Turkish Penal Code and Article 5 of Law Nr. 7258.
With respect to the material elements of the offense, the principal issue concerns the distinction between Articles 5/1-a and 5/1-b of Law Nr. 7258.

In particular, the wording "operated abroad" is capable of referring either to the betting operation or to the sporting competition on which the bet is placed and allows for more than one interpretation. Nevertheless, according to the settled case law of the Court of Cassation, the distinction should be drawn on the basis of the location of the betting operation or the website through which access is provided for the purpose of operating betting.

The Court has further emphasized that the applicable paragraph must be determined beyond doubt and that, for this purpose, an expert's examination should be conducted on the seized computer and any other relevant items in order to establish the location of the website through which access was provided for the purpose of operating betting. However, the ambiguity arising from the wording of the provision continues to give rise to divergent interpretations in practice.

As regards the perpetrator, the offense is not a specific offense and may, in principle, be committed by any person. However, in the online environment, liability primarily rests with content providers.

By contrast, hosting providers that merely provide technical infrastructure and exercise no control over the content should not, in principle, be held liable as perpetrators unless criminal intent and the requirements for complicity are established.

Accordingly, treating every actor within the internet ecosystem as a perpetrator without establishing the requisite criminal intent would be unlawful.

Since the offense is one of mere conduct, neither actual harm nor any specific result is required for its completion. The offense is completed once access is provided from Türkiye, thereby facilitating participation in betting or games of chance operated abroad. Furthermore, the offense may be committed only intentionally. The perpetrator's intent must also extend to the element of unlawfulness, meaning that the perpetrator must knowingly make a functional contribution to enabling users in Türkiye to participate in illegal betting while being aware that the system to which access is provided is unauthorized and unlawful.

In conclusion, Article 5/1-b of Law Nr. 7258 constitutes an important criminal provision aimed at combating illegal betting activities in light of the cross-border nature of internet technologies. Nevertheless, it is submitted that, particularly for the purpose of clarifying the scope of the offense and delineating the boundary between Articles 5/1-a and 5/1-b, the provision should be redrafted in clearer and more foreseeable terms. Such an amendment would better serve the principles of legal certainty and legality in criminal law.

For further information:
Osman Serhat Demirci, Legal Intern
info@ozgunlaw.com

References:

1. Özbek V.Ö, "Kumar Oynanması İçin Yer ve İmkan Sağlama Suçu (TCK m 228) ve Benzer Suçlarla Karşılaştırılması (*The Offense of Providing a Place and Opportunity for Gambling (Article 228 of the Turkish Penal Code) and Its Comparison with Similar Offenses)*" (2025) 83(4), Istanbul Law Review 1720. https://doi.org/10.26650/mecmua.2025.83.4.0019

2. Decision, bearing the Basis number 2022/6090, the Decision number 2024/7583 and dated 10.10.2024, of the 8th Criminal Chamber of the Court of Cassation

3. Decision, bearing the Basis number 2016/51, the Decision number 2016/179 and dated 23.11.2016, of the Constitutional Court

4. Decision, bearing the Basis number 2020/2391, the Decision number 2021/3771 and dated 29.03.2021, of the 19th Criminal Chamber of the Court of Cassation

5. Şen E. , Bodur FE., "Futbol Müsabakalarında Bahis ve Şans Oyunları (*Betting and Games of Chance in Football Competitions*)", Yorumluyorum XVII, Seçkin Publishing House, Ankara, 2018.

6. Babayiğit B. , "Kumar Oynama ve Kumar Oynanması İçin Yer ve İmkan Sağlama Fiilleri (*Gambling and the Acts of Gambling and Providing a Place and Opportunity for Gambling*)" Law and Justice Review, Year:9, Issue:34 (April 2018).

7. İçer Z. , Akıncı C. , "Spor Müsabakalarında Yasa Dışı Bahis ve Şans Oyunu Suçları (7258 sayılı Kanun m. 5) (*The Offenses of Illegal Betting and Games of Chance in Sporting Competitions (Article 5 of Law Nr. 7258)*", Marmara University - Faculty of Law - Journal of Legal Studies, Vol. 29, Issue 2, Special Issue, December 2023.

8. Decision, bearing the Basis number 2020/4413, the Decision number 2021/6614 and dated 15.06.2021, of the 19th Criminal Chamber of the Court of Cassation

9. Decision, bearing the Basis number 2016/68, the Decision number 2016/57 and dated 29.11.2016, of the 16th Criminal Chamber of the Regional Court of Appeal of Istanbul

10. Belci, O. "Spor Müsabakalarında Yasadışı Bahis ve Şans Oyunu Suçları (*The Offenses of Illegal Betting and Games of Chance in Sporting Competitions*)", Süleyman Demirel University - Faculty of Law Journal, Vol. XI, Issue. 2, 2021, pp. 379-418.

11. Çalışkan S. - Gürel A., "Yasadışı Bahis ve Kumar Suçları (*Illegal Betting and Gambling Offenses*)", 2nd Edition, Platon Plus Publishing House, Istanbul, 2021.

12. Decision, bearing the Basis number 2020/2391, the Decision number 2021/3711 and dated 29.03.2021, of the 19th Criminal Chamber of the Court of Cassation

13. Yılmaz S., 'Bahis Oyunları ve Ceza Hukuku Sorumluluğu (*Betting Games and Liability under Criminal Law*)', in "Türk-Kore Ceza Hukuku Günleri Karşılaştırmalı Hukukta Ekonomik Suçlar Uluslararası Sempozyumu Tebliğler Kitabı (*Proceedings of the Turkish–Korean Criminal Law Days International Symposium on Economic Crimes in Comparative Law*)", Ed. İzzet Özgenç, Cumhur Şahin and Faruk Turhan, Seçkin Publishing House, Ankara, 2020, Vol. II, p. 1765.

DEPENDING ON THE CIRCUMSTANCES OF THE PARTICULAR CASE, ACTS SUCH AS MAKING A FOREIGN BETTING WEBSITE ACCESSIBLE TO USERS IN TÜRKİYE, PREPARING A TURKISH-LANGUAGE INTERFACE, INTEGRATING A PAYMENT CHANNEL, SETTING UP A USER ACCOUNT SIGNUP AND LOGIN SYSTEM, OR ACTIVATING A BETTING SLIP MODULE MAY CONSTITUTE ACTS OF EXECUTION.

SALE DECISIONS IN COMPANIES UNDER SDIF TRUSTEESHIP AND AVAILABLE LEGAL REMEDIES

1- INTRODUCTION

The appointment of a trustee to administer a company is a special protective measure, as set out under Article 133 of the Code of Criminal Procedure. This measure is available only in relation to the offences exhaustively listed under the Code and may be imposed only where the statutory requirements are satisfied. [1]

Although the primary purpose of appointing a trustee to administer a company is to establish the substantive truth, the measure also serves to monitor the company's operations, obtain information regarding its activities, prevent the company from losing value as a result of the criminal investigation, and protect the interests of its employees.

Accordingly, during the implementation of the measure involving the appointment of a trustee to administer a company, due regard must be given to the principle of proportionality, and it must be borne in mind that this measure is merely a special protective measure. This is of particular importance in preventing damages that may be difficult to remedy at a later stage. Pursuant to Article 7 of Law Nr. 7539 on Amendments to Certain Laws and the first paragraph of Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws, where the appointment of a trustee to companies under Article 133 of the Code of Criminal Procedure or to assets under the tenth paragraph of Article 128 of the Code of Criminal Procedure is ordered, the Savings Deposit Insurance Fund (SDIF) may be appointed as trustee.

This article examines, with respect to companies for which the SDIF has been appointed as a trustee for management purposes, the requirements that decisions taken by the SDIF regarding the sale of company assets must satisfy, the legal remedies available against such decisions and the competent judicial forum for resolving disputes arising therefrom, as well as the persons entitled to pursue such remedies.

2- REQUIREMENTS FOR THE SDIF TO ADOPT A DECISION ON THE SALE OF COMPANY ASSETS

Pursuant to Article 133 of the Code of Criminal Procedure, the SDIF has extensive powers over companies to which it has been appointed as trustee. One of its most significant powers is to "decide on the partial or complete sale of the company, its assets, or property values, or on its dissolution and liquidation." Given the significance of this authority, it is important to clearly define the limits of such power.

First, Article 7 of Law Nr. 7539 on Amendments to Certain Laws and the first paragraph of Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws provide that the companies for which the SDIF has been appointed as trustee shall be managed in accordance with commercial practices and with the diligence expected of a prudent merchant.

Accordingly, where the SDIF intends to sell a company or any assets belonging to a company, or to initiate its liquidation, certain conditions must be satisfied.

Since a decision to be taken by the SDIF may lead to irreversible consequences, the scope and limits of these conditions must also be clearly defined and foreseeable.

The first paragraph of Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws provides that, in order for the SDIF to adopt a sale decision, the "financial condition," "shareholding structure," "market conditions," or "other problems" of the companies or assets must necessitate such a sale.

However, as is evident from the wording of the provision, the phrase "other problems" leaves room for a highly broad interpretation, and it is clear that this phrase makes the judicial review of sale decisions issued by the SDIF more difficult. Therefore, judicial decisions rendered on this matter become particularly significant and serve as guidance.

In this regard, the 10th Administrative Litigation Chamber of the Regional Administrative Court of Istanbul, in its decision dated 24.05.2022, and bearing the Basis number 2022/1263 and the Decision number 2022/1109, concerning the establishment of an economic and commercial integrity for which the same requirements as those applicable to a sale transaction are sought, made the following statement:

"… It is clear from the above-mentioned statutory provisions that, where the Savings Deposit Insurance Fund determines that the existing situation is not sustainable due to the financial condition, shareholding structure, other problems, or market conditions of the companies or personal assets for which the SDIF has been appointed as trustee, the SDIF may decide on the sale of the company or assets, or on their dissolution and liquidation.

Under this present dispute, since it is understood that the contested decision was issued without determining that the integrity formed by consolidating all of the plaintiff's assets, rights, and receivables was not sustainable due to its financial condition, shareholding structure, other problems, or market conditions, and without obtaining any financial status report, and since the conditions stipulated under Article 19(3) of Law Nr. 6758, which provides that "where the SDIF determines that the existing situation is not sustainable due to the financial condition, shareholding structure, other problems, or market conditions of companies...", were not satisfied, the decision of the Board of the Fund concerning the establishment of an economic and commercial integrity and the sale thereof, as well as the judgment dismissing the action, were found to be unlawful."

As can be seen, a financial status report must be obtained before the SDIF adopts a decision, and the relevant action must be taken accordingly.

Before the SDIF adopts a sale decision, it must examine whether there are any disputes among shareholders, managerial deadlocks, or other corporate issues that may prevent the continuation of the company's activities; whether the company has a sound financial structure; whether the company faces any financial bottlenecks, payment difficulties, capital inadequacy, or insolvency that may affect its ability to continue operations; and whether there is any market contraction, collapse in demand, inability to maintain production, or extraordinary crisis threatening the economic viability of the sector in which the company operates.

Otherwise, the decision to be adopted by the SDIF will be unlawful and may result in violations of rights.

3- LEGAL REMEDIES AGAINST SDIF'S SALE DECISIONS AND THE COMPETENT JUDICIAL FORUM

As discussed above, the SDIF, which is appointed as a trustee for management purposes to companies under Article 133 of the Code of Criminal Procedure, must act and make decisions in accordance with commercial practices and with the diligence expected of a prudent merchant.

From this perspective, at first glance, it may be considered that actions against sale decisions adopted by the SDIF in its capacity as a trustee for management purposes should be brought before the civil courts, given that the provisions of the Turkish Commercial Code and the Turkish Civil Code may apply in the performance of the trusteeship function.

However, as is well known, the SDIF is an institution established by law and vested with public legal personality. Accordingly, the acts and decisions carried out by the SDIF are, in principle, administrative acts adopted through the exercise of public authority. The obligation of the SDIF to observe commercial practices in its operations does not, by itself, suffice to deprive such acts of their administrative nature.

In practice, due to the emergence of numerous disputes concerning the competent judicial forum for sale transactions carried out by the SDIF, the matter was brought before the Court of Jurisdictional Disputes. Under its decision dated 03.02.2025, and bearing the Basis number 2025/10 and the Decision number 2025/138, the Court of Jurisdictional Disputes concluded that such disputes must be resolved before the administrative courts:

"… Accordingly, considering that the decision subject to the present action, concerning the sale of assets allocated to the Gürmed Medical and Technological Systems Commercial and Economic Integrity and the Garnet Medical and Technological Systems Commercial and Economic Integrity, was of an administrative nature, it was concluded that the action seeking the annulment of the decision adopted by the SDIF through the exercise of administrative authority for the sale of the economic integrity at a determined value of TRY 46,700,000 on 24/07/2024 falls within the jurisdiction of the administrative judiciary. The decision was issued by the SDIF Board, which, pursuant to Article 111 of Law Nr. 5411, has public legal personality and administrative and financial autonomy, and which exercised public authority through a unilateral declaration of will in performing the duties conferred upon it under Articles 19 and 20 of Law Nr. 6758." [2]

Consistent with this decision of the Court of Jurisdictional Disputes, the third paragraph of Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws provides that "actions brought against the decisions and acts of the Savings Deposit Insurance Fund within the scope of its trusteeship duties shall be heard by the administrative courts situated in the jurisdiction where the headquarters of the Savings Deposit Insurance Fund is situated."

4- PERSONS ENTITLED TO BRING ACTIONS AGAINST ADMINISTRATIVE ACTS ADOPTED BY THE SDIF

Article 2 of the Code of Administrative Procedure defines an action for annulment as an action brought by persons whose interests have been violated for the annulment of administrative acts. Considering the fundamental principles governing administrative law and the distinctive characteristics of this field, the concept of "interest" should not be understood merely as a benefit or advantage. In actions for annulment, when assessing whether a person has capacity to bring an action, the concept of "interest" should be interpreted as a serious and reasonable connection or concern. In particular, considering that, in administrative acts adopted by the SDIF in its capacity as a trustee for management purposes, the authority deciding on the sale transaction is also the authority determining the management of the company subject to the administrative act, it is evident that the company itself will not bring an action against the sale decision adopted by the SDIF.

It is evident that limiting the assessment solely to whether the company has capacity to bring an action would result in the sale decision adopted by the SDIF being exempt from judicial review.

Accordingly, the Council of State also recognizes that the shareholders of a company have a current interest in bringing an action for annulment against administrative acts adopted by the SDIF. In this regard, the decision, dated 26.03.2025, and bearing the Basis number 2025/4296 and the Decision number 2025/3670, of the 5th Chamber of the Council of State reads as follows:

"Since actions for annulment aim to determine whether administrative acts comply with the law, ensure the supremacy of law, thereby establish the administration's adherence to the law, and ultimately realize the principle of the rule of law, the relationship of interest in such actions must be interpreted in accordance with these purposes.

The violation of interest required for capacity in administrative proceedings refers to even a minimum degree of connection or concern that may be established between the plaintiff and the administrative act challenged. In judicial decisions, the requirement of an infringement of interest has been defined as the establishment of a legitimate, personal, and current interest relationship between the plaintiff and the administrative act. A legitimate interest means that the person bringing an action for annulment seeks to benefit from legal protection.

A current interest refers to an actual and existing connection or concern at the time the action is brought. The requirement of personal interest, which is a condition for an infringement of interest to be sufficient for bringing an action, does not mean that the administrative act must be directly addressed to that person; rather, it is sufficient that the act affects that person, even indirectly. The existence and scope of such an interest relationship are determined by the competent court in each individual case, taking into account the nature of the dispute.

Upon examination of the case file, it is understood that the Private ... Hospital, operating under Özel ... Sağlık Hizmetleri A.Ş., in which the plaintiff holds a 7% shareholding, was closed by being included by name in the list annexed to Decree-Law Nr. 667 on the grounds of its affiliation and connection with the FETÖ/PDY terrorist organization.

It is further understood that, following the rejection of the application filed against the closure decision by the Commission for Examination of State of Emergency Procedures through its decision dated ... and numbered ..., the present action was brought, and the case is under appellate review for the annulment of the said decision.

In this present case, it is evident that the plaintiff has the right to bring before the court the issue of reviewing the lawfulness of the contested act, as the plaintiff's personal, current, and legitimate interest was affected by the act rejecting the application submitted to the Commission for Examination of State of Emergency Procedures following the closure of Private ... Hospital, which operated under Özel ... Sağlık Hizmetleri A.S., in which the plaintiff held a 7% shareholding and partnership interest at the time of its closure, the company's ex officio removal from the Turkish Trade Registry Gazette, and the transfer of its assets to the Treasury.

Accordingly, since the action should have been adjudicated on the merits, the decision of the Regional Administrative Court, which is subject to appeal and dismissed the appellate application against the Administrative Court's decision rejecting the action on the grounds of lack of capacity, is not legally sound." [3]

Decision, bearing the Basis number 2019/3075, the Decision number 2023/9604 and dated 20.06.2023, of the 5th Chamber of the Council of State reads as follows:

"... Accordingly, although the legal personality of the company had been terminated as of the date on which the action was filed, it is apparent that the plaintiff, who was a shareholder and authorized representative of the company, had a legitimate, personal, and current interest in seeking the annulment of the administrative act at issue. Therefore, the decision should have been rendered following an examination of the merits of the case. The decision of the Regional Administrative Court, which is the subject of the appeal and which dismissed the action on the ground of lack of capacity, is not legally justified." [4]

As can be seen, the shareholder and authorized representative of a company that is the subject of an administrative act issued by the SDIF has a legal interest in bringing an action against such administrative act.

V- CONCLUSION

Although the SDIF, appointed as trustee to companies within the scope of Article 133 of the Code of Criminal Procedure, has considerably broad powers, the limits of such authority are prescribed by law. However, as noted above, the Provisional Article 2 of the Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws contains ambiguous and open-ended expressions concerning the requirements for issuing a decision to sell. This situation renders the availability of legal remedies against sale decisions issued by the SDIF even more significant. Pursuant to Provisional Article 2 of Law Nr. 7145 on Amendments to Certain Laws and Decree-Laws, annulment actions may be brought before the administrative courts situated in the jurisdiction where the headquarters of the Savings Deposit Insurance Fund is based against decisions issued by the SDIF. In terms of bringing an annulment action, the shareholder and authorized representative of the company also have a legal interest.

For further information:
Att. Gülşah Işık
info@ozgunlaw.com

References:

1. Cumhur Şahin- Neslihan Göktürk, Ceza Muhakemesi Hukuku (Law of Criminal Procedure), (Ankara: Seçkin Publishing House, 2022), p. 363.

2. https://kararlar.uyusmazlik.gov.tr/

3. https://www.lexpera.com.tr/- Decision, dated 26.03.2025 and bearing the Basis number 2025/4296 and the Decision number 2025/3670, of the 5th Chamber of the Council of State

4. https://www.lexpera.com.tr/- Decision, dated 20.06.2023 and bearing the Basis number 2019/3075 and the Decision number 2023/9604, of the 5th Chamber of the Council of State

CONSIDERING THE FUNDAMENTAL PRINCIPLES GOVERNING ADMINISTRATIVE LAW AND THE DISTINCTIVE CHARACTERISTICS OF THIS FIELD, THE CONCEPT OF "INTEREST" SHOULD NOT BE UNDERSTOOD MERELY AS A BENEFIT OR ADVANTAGE.

ASSESSMENT OF REQUESTS FOR ACCESS BLOCKING IN LIGHT OF THE ANNULMENT OF ARTICLE 9 OF LAW NR. 5651 CONCERNING THE VIOLATION OF PERSONAL RIGHTS

The conditions governing the removal of online content are set forth in Articles 8 and 9 of Law Nr. 5651, while the mechanisms of access blocking or content removal for the purpose of remedying violations of personal rights committed through the internet are set out under Article 9 of the same Law.

Pursuant to these provisions, the removal of online content or the blocking of access to the specific section (URL) of the website on which such content is published may be ordered on several grounds, including the violation of personal rights; the commission of a criminal offence; the infringement of the right to privacy; the infringement of rights protected under the Law Nr. 5846 on Intellectual and Artistic Works; the exercise of the right to be forgotten in the online environment; and considerations of public interest and public order. These grounds are not subject to the principle of numerus clausus and may therefore be assessed in light of the circumstances of each individual case.

With regard to the scope of application of Article 9 of Law Nr. 5651, it has been argued that the provision is applicable only where it is immediately apparent, at first glance, that a publication clearly violates an individual's personal rights. Where the alleged violation of personal rights is not manifestly evident, it is maintained that the judge should refrain from ordering the removal of the content or the blocking of access under Article 9; otherwise, such an order may result in violations of the freedom of expression and the right to a fair trial (Kemal Gözler, "Kişilik Haklarını İhlal Eden İnternet Yayınlarının Kaldırılması Usûlü ve İfade Hürriyeti: 5651 Sayılı Kanun'un 9'uncu Maddesinin İfade Hürriyeti Açısından Değerlendirilmesi (*Procedure for the Removal of Internet Publications Violating Personal Rights and Freedom of Expression: An Evaluation of Article 9 of Law Nr. 5651 from the Perspective of Freedom of Expression*)", Legal Law Journal 1, Special Issue in Honor of Rona Aybay, (December 2014): 1060)

The provision in question has been the subject of considerable debate with respect to the balance between the protection of personal rights and the freedom of the press. As a result of these discussions, the Constitutional Court, by its judgment, dated 20.11.2023 and bearing the Basis number 2020/76 and the Decision number 2023/172), annulled Article 9 of Law Nr. 5651 on the Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications, which governs violations of personal rights. In its judgment, the Constitutional Court held that the application of Article 9 of Law No. 5651 was marked by significant ambiguities and that such ambiguities could enable judicial authorities to render arbitrary decisions.

The Court further found that the resulting disproportionate restrictions on the freedom of expression and the freedom of the press were liable to produce consequences incompatible with the requirements of a democratic society.

Accordingly, the Constitutional Court concluded that Article 9, which sets out access-blocking orders and the removal of online content on the grounds of violations of personal rights, lacked the requisite legal certainty, was capable of giving rise to arbitrary judicial decisions, and imposed disproportionate restrictions on the freedoms of expression and the press.

On these grounds, the Court annulled Article 9 of Law Nr. 5651 in its entirety.

As a consequence of the aforementioned annulment decision, individuals seeking judicial remedies against violations of personal rights committed in the online environment will be required to file a complaint and/or bring an action for damages before the competent courts under adversarial judicial proceedings.

Furthermore, Article 9/A of Law Nr. 5651 sets out the individual application procedure to the Information and Communication Technologies Authority regarding violations of privacy.

Pursuant to this provision, an individual application may be submitted to the Information and Communication Technologies Authority concerning online content alleged to violate the right to privacy by following the relevant steps through the e-Government system.

Article 9/A of Law Nr. 5651 reads as follows:

“(1) Persons claiming that their right to privacy has been violated due to content published on the internet may directly apply to the Authority and request the implementation of an access-blocking measure in relation to such content.

(2) In such a request, the full address (URL) of the publication giving rise to the violation of the right, an explanation of the grounds on which the right has been violated, and information evidencing the applicant’s identity must be provided. Where such information is incomplete, the request shall not be processed.

(3) The Authority shall immediately notify the Association of the request for the implementation of the measure, and access providers shall comply with such request without any delay and, in any event, no later than four hours.

(4) The access-blocking measure shall be implemented by blocking access to the relevant content (identified by its URL), including the publication, section, part, image, or video that violates the right to privacy.

(5) Persons requesting access blocking shall submit their request, based on the allegation that the right to privacy has been violated due to content published on the internet, to the esteemed judge’s office of the court of peace for a decision within twenty-four hours as of the time of filing the request. The judge shall assess whether the right to privacy has been violated due to the content published on the internet and shall render a decision within no later than forty-eight hours, which shall be transmitted directly to the Authority. Otherwise, the access-blocking measure shall automatically cease to have effect.”

At this stage, persons applying to the Information and Communication Technologies Authority with a request for access blocking are required to submit, within twenty-four hours following the acceptance of their application by the Authority, the full internet addresses (URLs) they have identified as the basis for the alleged violation of the right to privacy to the esteemed judge’s office of the criminal court of peace for a decision.

The judge of the criminal court of peace is required to assess whether the right to privacy has been violated due to the content published on the internet and to render its decision within no later than forty-eight hours, transmitting it directly to the Authority.

Otherwise, the access-blocking measure imposed by the Information and Communication Technologies Authority shall automatically cease to have effect.

Although the Constitutional Court’s judgment may be regarded as highly comprehensive and expansive in terms of freedom of expression and freedom of the press, it may also lead to particularly serious consequences for individuals whose personal rights have been violated.

Indeed, as a result of the annulment decision rendered by the Constitutional Court, the new regulatory framework introduces a two-stage application system, requiring an initial application to the Information and Communication Technologies Authority, followed by an application to the esteemed judge’s office of the criminal court of peace.

Furthermore, since individuals seeking remedies against violations of personal rights in the online environment are now required to resort to adversarial judicial proceedings, namely by filing a complaint and/or bringing an action for damages, their ability to obtain urgent remedies for the protection of their rights has been hindered.

Moreover, since the new regulation has expanded the boundaries of freedom of the press, it is evident that the current issues of misinformation on social media, the rapid dissemination of news, and the resulting stigmatization of individuals before society may reach a point capable of causing irreparable harm to those individuals.

Accordingly, considering that the judgment in question may delay individuals’ access to legal remedies and prejudice their right to a trial within a reasonable time, it may be argued that the regulation could undermine the very essence of the protection it seeks to provide.

For further information:
Att. Merve Hilal Menteş
info@ozgunlaw.com

References:

1. Decision, dated 20.11.2023 and bearing the Basis number 2020/76 and the Decision number 2023/172, of the Constitutional Court

2. Kemal Gözler, “Kişilik Haklarını İhlal Eden İnternet Yayınlarının Kaldırılması Usûlü ve İfade Hürriyeti: 5651 Sayılı Kanun’un 9’uncu Maddesinin İfade Hürriyeti Açısından Değerlendirilmesi (*Procedure for the Removal of Internet Publications Violating Personal Rights and Freedom of Expression: An Evaluation of Article 9 of Law Nr. 5651 from the Perspective of Freedom of Expression*)”, Legal Law Journal 1, Special Issue in Honor of Rona Aybay, (December 2014): 1060)

CONSTITUTIONAL COURT FINDS VIOLATION OF THE RIGHT TO RESPECT FOR FAMILY LIFE DUE TO FAILURE TO CONSIDER THE CHILD’S BEST INTERESTS IN RETURN TO HABITUAL RESIDENCE!

The Constitutional Court issued an important ruling concerning cases involving the return from Türkiye of children whose habitual residence is abroad and who are living in their habitual residence. In its decision, 04.03.2026 and with application nr. 2025/16250, the Constitutional Court held that the right to respect for family life had been violated. The decision was published in the Official Journal on 8 June 2026.

Facts of the Case: The applicant, Ş.G., and her former spouse divorced while they were residing in the Netherlands. The couple had three children during their marriage. The applicant mother travelled to Türkiye with the children in 2022.

Following the applicant’s failure to return to the Netherlands with the children on the agreed date of return, the children’s father applied to the Dutch authorities, alleging that the children had been wrongfully retained and requesting the initiation of return proceedings pursuant to the Hague Convention dated 25.11.1980.

The first-instance court dismissed the request for the return of the children, and the father appealed the decision. The appeal court also dismissed the appeal at regional level. The father subsequently filed an appeal at supreme-court level. During the appellate review, it was concluded that the children should be returned to their father and issued a decision to quash the judgment.

Following a retrial, the court ordered the return of the children to the father. Although the applicant mother appealed the decision, the judgment was upheld.

After the judgment became final, the applicant mother lodged an individual application before the Constitutional Court. In her application, she argued that the children had been living in Türkiye for a long time, that their education and social environment had been established there, and that they could face physical and psychological risks if they were returned. The applicant claimed that the courts had failed to adequately examine the children’s best interests before ordering their return.

The Constitutional Court’s Assessment: The Constitutional Court examined the application under the right to respect for family life. The Court stated that, in proceedings concerning the return of children, courts must not limit their assessment to the application of the provisions of the Hague Convention alone. They must also conduct a detailed assessment of the child’s best interests based on the circumstances of the specific case.

The Constitutional Court concluded that insufficient examination had been conducted regarding the children’s current living conditions, social environment, psychological well-being, and potential risks they might face. The Court found that the assessments concerning the children’s best interests were inadequate. For this reason, the Constitutional Court ruled that the right to respect for family life, guaranteed under Article 20 of the Constitution, had been violated.

In order to eliminate the consequences of the violation, the Constitutional Court ordered that the case file be remitted to the relevant court for a retrial and that the children not be returned to their habitual residence during the retrial process.

Accordingly, the relevant court will be required to reassess the children’s best interests and all circumstances of the case before issuing a new decision.

In international child abduction and child return proceedings, courts must not base their decisions solely on the provisions of the relevant convention. Decisions must be made following a comprehensive assessment that places the child’s best interests at the center of the evaluation.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/06/20260608-5.pdf***

APPOINTMENT OF A TRUSTEE AND THE ASSESSMENT OF APPLICATIONS FOR INTERIM INJUNCTIONS IN ACTIONS FOR THE DISSOLUTION OF INCORPORATED COMPANIES ON JUST GROUNDS

1. INTRODUCTION

Article 531 of the Turkish Commercial Code Nr. 6102 ("TCC") grants minority shareholders of incorporated companies the right to seek the dissolution of the company where just grounds exist. This provision is intended to protect minority shareholders in situations where the majority abuses its managerial power, the minority is systematically excluded from the company's affairs, or the corporate relationship has otherwise become intolerable.

In practice, however, actions for dissolution on just grounds are frequently accompanied by requests for interim legal protection through which the claimant shareholders seek judicial intervention in the management of the incorporated company. In this context, claimants commonly request the appointment of a trustee to the incorporated company, the appointment of a supervisory trustee to oversee the company's management, or the issuance of interim injunctions aimed at preventing the transfer or disposal of the company's assets.

This article first examines the legal nature of actions for the dissolution of incorporated companies on just grounds, as well as the limits of judicial intervention in such actions. It then evaluates applications for the appointment of a trustee in actions for dissolution on just grounds in light of the relevant provisions of the Turkish Civil Code, the prevailing views in legal doctrine, and judicial decisions. Finally, it analyzes applications for interim injunctions concerning the company's assets within the framework of the provisions of the Code of Civil Procedure governing interim legal protection.

2. THE LEGAL NATURE OF ACTIONS FOR DISSOLUTION ON JUST GROUNDS AND THE LIMITS OF JUDICIAL INTERVENTION

Article 531 of the TCC grants minority shareholders representing a specified proportion of the share capital in an incorporated company the right to seek the dissolution of the company where just grounds exist. Accordingly, shareholders representing at least one-tenth of the company's share capital, or one-twentieth in the case of publicly held companies, may apply to the commercial court of first instance having jurisdiction over the place where the company's registered office is situated and request the dissolution of the company on just grounds.

However, the purpose of Article 531 of the TCC is not to bring about the dissolution of the incorporated company in every dispute. Indeed, the provision confers broad discretion upon the court to order, instead of dissolution, the purchase of the claimant shareholders' shares at their fair value as of the date closest to the date of the judgment and their consequent exit from the company, or to adopt another appropriate and acceptable solution suited to the circumstances of the case.

It is likewise well established in legal doctrine that an action for dissolution on just grounds is an exceptional remedy and that the dissolution of the incorporated company should be regarded as a measure of last resort (ultima ratio). Accordingly, the court should first determine whether less intrusive measures or alternative remedies capable of resolving the dispute are available. Only where no reasonable solution capable of preserving the continued existence of the company can be identified should dissolution be ordered as a remedy of last resort.

The exceptional nature of actions for dissolution on just grounds is also significant in determining the limits of the court's authority to intervene in the management of the incorporated company. This is because, in incorporated companies, the board of directors and the general assembly are mandatory corporate organs prescribed by law, and their duties and powers derive directly from statutory provisions. Matters such as the conduct of company management, the appointment or removal of members of the board of directors, the determination of company policies, and the distribution of profits generally fall within the sphere of authority of the company's internal organs.

Therefore, the mere filing of an action for dissolution on just grounds does not confer upon the court the authority to replace the company's management or direct the company's activities. The court's function is limited to assessing the existence of the alleged just grounds and ordering the measures prescribed by law for the resolution of the dispute. An approach to the contrary would undermine the system of corporate organs underlying the structure of incorporated companies.

Within this framework, applications for the appointment of a trustee, which are frequently encountered in practice, must also be assessed by taking into account the limits of judicial intervention in incorporated companies and only where the exceptional conditions prescribed by law are satisfied.

3. ASSESSMENT OF APPLICATIONS FOR THE APPOINTMENT OF A TRUSTEE IN ACTIONS FOR DISSOLUTION ON JUST GROUNDS

One of the applications frequently encountered in actions for dissolution on just grounds is the appointment of a trustee to the defendant incorporated company as an interim measure. Particularly in actions brought by minority shareholders, claimants request the court to appoint either a trustee with powers of management and representation or a supervisory trustee on the grounds that the company is being mismanaged, that the company's assets have been impaired, or that the term of office of the board of directors has expired. It should be noted here that the Turkish Commercial Code does not contain any specific provision concerning the appointment of a trustee to incorporated companies.

Therefore, in assessing applications for the appointment of a trustee to incorporated companies, the provisions of the Turkish Civil Code concerning trusteeship must be taken into consideration.

Article 403(2) of the Turkish Civil Code provides that a trustee shall be appointed for the purpose of carrying out specific tasks or managing assets. Article 426 of the Turkish Civil Code stipulates that the guardianship authority shall appoint a representative trustee, upon the request of the relevant person or ex officio, in the circumstances specified in that provision or in other cases provided for by law, and that the appointment of a trustee does not prevent the legal representative from performing her/his duties.

Article 427 of the Turkish Civil Code, on the other hand, sets out that a trustee shall be appointed where a legal entity is deprived of its necessary organs and its management cannot be ensured through any other means.

In particular, pursuant to Article 427(4) of the Turkish Civil Code, it is accepted that a trustee may be appointed where a legal entity is deprived of its necessary organs and its management cannot be ensured through any other means.

Within this framework, the appointment of a trustee to an incorporated company requires, first and foremost, that the company has become deprived of its mandatory organs or that its existing organs have become legally or factually incapable of functioning. In other words, the appointment of a trustee may arise where the management of the company cannot be maintained through ordinary mechanisms, and the resulting management vacuum cannot be remedied by any other means.

With respect to this matter, under its decision, dated 08/03/2018 and bearing the Basis number 2016/7714 and the Decision number 2018/1804, the 11th Civil Chamber of the Court of Cassation held that: *"For the appointment of a management trustee, it is required that the establishment of the company's board of directors is not possible in any manner and that this deficiency has not been remedied through other legal means. Where the company has an elected board of directors, it cannot be argued that there is an absence of a corporate organ; likewise, the inability of the existing board of directors to function is a situation that can always be remedied within the framework of the Turkish Commercial Code's system."*

The TCC does not grant the court the authority to remove members of the board of directors of an incorporated company (regardless of the underlying reason) and appoint replacements in their stead; this authority belongs to the general assembly. Therefore, a decision by the court to appoint a management trustee, which would result in the removal of the board members' powers of management and representation, may only be rendered in circumstances where such powers cannot be exercised either legally or factually. However, allegations that the company is being poorly managed, that the board of directors has adopted erroneous decisions, or that minority shareholders do not agree with the company's policies do not, in themselves, justify the appointment of a trustee.

Likewise, under its decision, dated 11/09/2025 and bearing the Basis number 2025/996 and the Decision number 2025/895, the 21st Civil Chamber of the Regional Court of Appeal of Ankara held that: *"Accordingly, a judge cannot appoint a management trustee on the grounds that the company is not being properly managed; in other words, the judge cannot conduct an 'appropriateness' review of the company's management. The purpose of Article 427(4) of the Civil Code is not to ensure that the company achieves better management; rather, this is an internal matter of the company. The authority to monitor and evaluate the management of the company exclusively belongs to the general assembly. The general assembly, which disapproves of and considers the management inappropriate, may remove the members of the board of directors from office, refrain from re-electing them, refuse to discharge them, and resolve to initiate liability proceedings against them."*

Indeed, allegations that members of the board of directors have managed the company negligently or even abused their duties and powers cannot be resolved through the appointment of a trustee. Shareholders may bring such allegations before the general assembly and seek solutions to the relevant issues through corporate mechanisms. In this regard, shareholders may exercise the rights granted under the TCC, including the right to obtain information and inspect documents under Article 437, request the appointment of a special auditor under Article 438, initiate liability actions against members of the board of directors under Articles 553 et seq., bring actions for the annulment or nullity of resolutions of the general assembly and the board of directors pursuant to Articles 445 and 447, and, as minority shareholders, file an action for the dissolution of the company on just grounds under Article 531. In short, shareholders must seek remedies for allegations of violations in these matters and claims that the minority is being oppressed by the majority through the individual or minority shareholder rights provided under the TCC. It is therefore not possible to bypass these legal remedies and request the appointment of a management trustee by the court on the basis of such grounds. [1]

In conclusion, the appointment of a trustee to an incorporated company is not a mechanism that may be resorted to for the purpose of addressing dissatisfaction with the company's management, disapproval of the board of directors' decisions, or disputes between minority shareholders and the majority. The appointment of a trustee is only possible where exceptional conditions exist, such as the company being deprived of its mandatory organs and the management of the company being incapable of being ensured through other means.

4. ASSESSMENT OF APPLICATIONS FOR INTERIM INJUNCTIONS IN ACTIONS FOR DISSOLUTION ON JUST GROUNDS

Another application frequently submitted by claimant shareholders in actions for dissolution on just grounds is the imposition of an interim injunction over the assets of the incorporated company.

In practice, applications are particularly made for the issuance of interim injunctions aimed at preventing the transfer of the company's immovable properties, vehicles, shareholdings in subsidiaries or affiliates, or other assets to any third parties. It should first be noted that the institution of interim injunction is set out under Articles 389 et seq. of the Code of Civil Procedure Nr. 6100 ("CCP") and constitutes one of the forms of interim legal protection that may be sought where there is a concern that obtaining the right may become significantly difficult or entirely impossible due to a change that may occur in the existing circumstances, or that serious harm may arise as a result of delay.

Pursuant to Article 389 of the CCP, the existence of a right worthy of protection on the part of the applicant is not, by itself, sufficient for the granting of an interim injunction; there must also be a concrete risk requiring the immediate protection of such right.

In addition, pursuant to Article 390(3) of the CCP, the party requesting an interim injunction is required to demonstrate, on the basis of a prima facie standard of proof, the existence of the right relied upon and the grounds justifying the requested measure.

Likewise, under its decision, dated 02.11.2023 and bearing the Basis number 2023/1950 and the Decision number 2023/1788, the 14th Civil Chamber of the Regional Court of Appeal of Istanbul held that:

"Although it has been abstractly alleged that fictitious and collusive transactions may be carried out over the company's assets, thereby causing harm to the company's shareholders and creditors, no evidence has been submitted in this regard.

Although the reasoning for rejecting the injunction concerning the immovable property, on the ground that the company's assets became the subject matter of the dispute due to the action for dissolution, is not appropriate, the rejection of the application for an interim injunction is correct in terms of its outcome, since no evidence meeting the prima facie standard of proof has been submitted indicating that a member of the board of directors has carried out any transaction reducing the company's assets, caused harm to the company, or attempted to dispose of the immovable property in a manner contrary to the company's interests."

Pursuant to established judicial precedents, abstract concerns raised by claimant shareholders that the company's assets may in the future be dissipated, become subject to collusive transactions, or that the company's managers may cause harm to the company are not, by themselves, sufficient to justify the granting of an interim injunction.

In conclusion, the mere filing of an action for dissolution on just grounds does not, by itself, require the granting of an interim injunction. The claimant shareholders must present concrete facts demonstrating that the company's assets may be diminished or that the right likely to be obtained at the end of the proceedings may be seriously jeopardized, and they must support such facts by satisfying the prima facie standard of proof.

An approach to the contrary would exceed the purpose of the interim injunction mechanism, potentially resulting in the unnecessary restriction of the company's activities and disproportionate interference with the corporate functioning of incorporated companies.

5. CONCLUSION

An action for the dissolution of an incorporated company on just grounds constitutes an important legal mechanism aimed at protecting minority shareholders; however, due to its potential consequences, which may extend to the termination of the company, it is an exceptional type of action.

Therefore, pursuant to both Article 531 of the TCC and the prevailing view in legal doctrine, the dissolution of the company should be regarded as a remedy of last resort, and alternative solutions capable of ensuring the continued existence of the company should be considered as a priority.

The same approach applies to applications for the appointment of a trustee, which are frequently submitted in actions for dissolution on just grounds.

The TCC does not contain any specific provision concerning the appointment of a trustee to incorporated companies; therefore, such applications must be assessed within the framework of the provisions of the Turkish Civil Code concerning trusteeship.

Accordingly, the appointment of a trustee may only be possible where exceptional conditions exist, such as the company being deprived of its mandatory organs and its management being incapable of being ensured through other means.

Allegations that the company is poorly managed, that the decisions of the board of directors are inappropriate, or that minority shareholders do not agree with the company's management policies do not, by themselves, justify the appointment of a trustee. Similarly, applications for the imposition of interim injunctions over the company's assets must be assessed within the framework of the conditions set forth under Articles 389 et seq. of the CCP.

For an interim injunction to be granted, it is not sufficient for the claimant merely to assert the existence of a right; there must also be concrete facts demonstrating that the exercise or realization of such right may be seriously jeopardized, and these facts must be established according to the prima facie standard of proof.

Abstract allegations that the company's assets may be dissipated in the future or that the company's managers may cause harm to the company should not be deemed sufficient for the granting of an interim injunction.

Ultimately, applications for the appointment of a trustee and interim injunctions submitted in actions for dissolution on just grounds constitute forms of interim legal protection that may result in direct intervention in the management of the company.

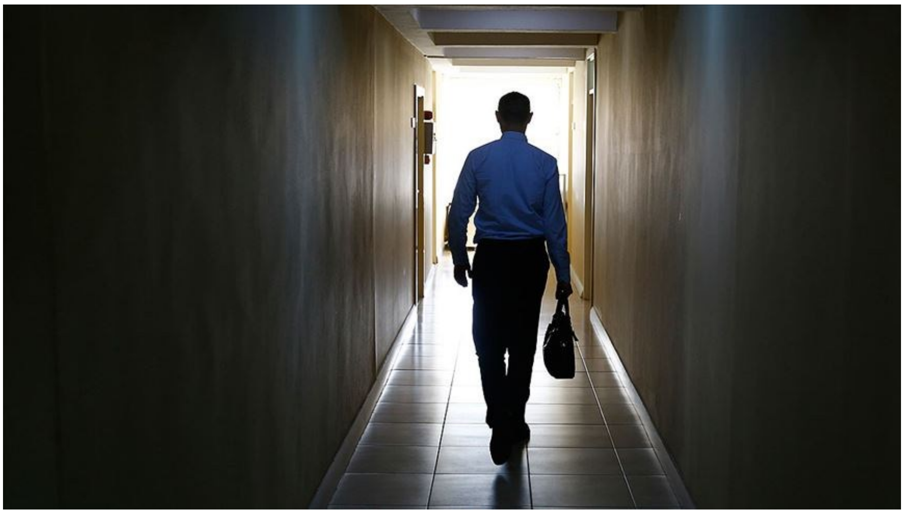
Therefore, when assessing such applications, courts should take into consideration the system of corporate organs of incorporated companies, the freedom of corporate activity, the principle of majority rule, and the principle of proportionality. Interim legal protection mechanisms should not be allowed to become instruments of pressure or intervention in the resolution of internal corporate disputes.

For further information:
Att. Ezgi Karpınar
info@ozgunlaw.com

References:

1. Prof. Dr. Ersin Çamoğlu, Anonim Ortaklığa Yönetim Kayyımı Atanması (Appointment of a Management Trustee to an Incorporated Company), Journal of Istanbul Bar Association, Vol. 91, Issue: 5, Year: 2017, pp. 17, 24 & 25.

ASSESSMENT OF THE TERMINATION OF THE EMPLOYER REPRESENTATIVES' EMPLOYMENT CONTRACTS AND JOB SECURITY PROVISIONS



1. INTRODUCTION

Although employer representatives act for and on behalf of the employer, they retain their status as employees by virtue of working under an employment contract. However, under certain circumstances, their entitlement to job security may be affected.

Accordingly, it is important to clarify the circumstances under which employer representatives are entitled to benefit from job security and those under which they are excluded from such security.

Whether employer representatives fall within the scope of job security, how the conditions governing termination should be applied to them, the legal relationship between the cessation of an employer representative's role and the termination of the employment contract, and the effect of employer representative status on the legal consequences arising from the termination of the employment contract, particularly reinstatement claims, give rise to significant disputes in practice.

This article first examines the concept of the employer representative and their legal status. It then evaluates the circumstances under which employer representatives may fall outside the scope of job security, with particular emphasis on the legal position of general managers and other senior executives.

2. THE LEGAL CONCEPT OF THE EMPLOYER REPRESENTATIVE AND THE ELEMENTS OF THEIR EXCLUSION FROM JOB SECURITY

An employer representative is defined under Article 2 of the Labor Law Nr. 4857 as *"a person who acts for and on behalf of the employer and participates in the management of the work, the workplace, or the enterprise."* However, not every employee who performs managerial duties within the workplace or the enterprise qualifies as an employer representative. In order to attain the status of an employer representative, certain constituent elements must coexist.

Certain senior executives who hold the status of employer representatives are excluded from the job security provisions. However, whether an employer representative falls outside the scope of job security is not determined solely by her/his job title. Rather, the actual scope of the authority exercised by the employer representative is assessed as a whole. Indeed, as reflected in the case law of the Court of Cassation:

"Pursuant to Article 18 of the Labor Law Nr. 4857, an employee may benefit from the job security provisions provided that s/he is neither an employer representative or their deputies responsible for the overall management of the enterprise, nor an employer representative responsible for the overall management of the workplace who is also vested with the authority to hire and dismiss employees. Since employer representatives who are excluded from job security are, first and foremost, those who are responsible for the overall management of the enterprise, together with their deputies, general managers and deputy general managers who manage the enterprise as a whole are likewise excluded from the job security provisions. It should be noted, however, that the mere use of the title of general manager or deputy general manager does not, in itself, result in exclusion from the scope of job security. What is decisive is whether the individual has been granted the authority to represent the employer and is responsible for managing the enterprise as a whole; in this regard, the individual's duties and position must be examined.

The second category of employer representatives excluded from job security consists of those who are responsible not for the overall management of the enterprise, but for the overall management of the workplace, and who are vested with the authority to hire and dismiss employees.

Accordingly, those who are responsible for the overall management of the enterprise are regarded as employer representatives without the need for any additional requirement.

By contrast, those who are responsible for the overall management of the workplace, rather than the enterprise, may be regarded as employer representatives only if they also possess the authority to hire and dismiss employees.

Thus, responsibility for the overall management of the workplace and the authority to hire and dismiss employees are cumulative requirements. Consequently, a bank branch manager or a factory manager who is responsible for managing the workplace but does not have the independent authority to hire and dismiss employees at her/his own discretion cannot be regarded as an employer representative and is therefore entitled to benefit from the job security provisions.

Likewise, a human resources manager or personnel manager who has the authority to hire and dismiss employees but is not responsible for the overall management of the workplace, is also entitled to benefit from the job security provisions." [1]

In determining whether an individual qualifies as an employer representative for the purposes of job security, a distinction is drawn between (i) employer representatives responsible for the overall management of the enterprise and (ii) employer representatives responsible for the overall management of the workplace who also have the authority to hire and dismiss employees. As is evident from this distinction, the mere status of employer representative does not, in itself, exclude an individual from benefiting from the job security provisions.

According to the case law of the Court of Cassation, employer representatives who are responsible for the overall management of the enterprise are excluded from the job security provisions without any additional requirements. By contrast, employer representatives who are responsible only for the overall management of the workplace are excluded from the job security provisions only if they also have the authority to hire and dismiss employees.

3. THE STATUS OF EMPLOYER REPRESENTATIVES UNDER THE JOB SECURITY PROVISIONS

The job security provisions primarily apply, in principle, to employees who are subject to the Labor Law. These provisions are set out in Articles 18 to 21 of the Labor Law. Pursuant to Article 18, the conditions governing entitlement to job security are prescribed therein.

"An employer who terminates the indefinite-term employment contract of an employee with at least six months' seniority employed at a workplace where thirty or more employees are employed must base such termination on a valid ground arising from the employee's competence or conduct, or from the operational requirements of the enterprise, the workplace, or the work. The six-month seniority requirement shall not apply to employees working in underground operations."

In order to fall within the scope of job security, an employee must be employed at a workplace employing thirty or more employees, have at least six months' seniority, and have had her/his employment contract terminated without a valid or just cause. In addition, the employee must not hold the status of an employer representative. *"Based on the evidence collected in the case file, it was established that the employment contract had been terminated by the defendant, and that the defendant failed to prove that the termination was based on a just or valid cause, and that the plaintiff had more than six months of seniority, and that more than thirty employees were employed at the workplace on the date of termination, and also that the plaintiff was not an employer representative. Accordingly, it was concluded that the plaintiff's appeal was well-founded and that the plaintiff should be reinstated."* [2]

This issue is set out under Article 18 of the Labor Law: *"The provisions of this Article, Articles 19 and 21, and the final paragraph of Article 25 shall not apply to employer representatives and their deputies who manage and administer the enterprise as a whole, nor to employer representatives who manage and administer the workplace as a whole and who are vested with the authority to hire and dismiss employees."*

Accordingly:

"Valid Grounds for Termination

Article 18 – An employer terminating an indefinite-term employment contract of an employee who has at least six months of seniority and who is employed at a workplace employing thirty or more employees shall be required to rely on a valid ground arising from the employee's competence or conduct, or from the operational requirements of the enterprise, the workplace, or the work. (Supplemented sentence: 10/09/2014-6552/Article 2). The seniority requirement shall not apply to employees working in underground operations.

…

The provisions of this Article, Articles 19 and 21, and the final paragraph of Article 25 shall not apply to employer representatives and their deputies who manage and administer the enterprise as a whole, or to employer representatives who manage and administer the workplace as a whole and who are authorized to hire and dismiss employees."

Procedure for Termination

Article 19 – The employer shall give notice of termination in writing and shall specify the grounds for termination in a clear and precise manner. An indefinite-term employment contract may not be terminated on grounds related to an employee's conduct or performance without first giving the employee an opportunity to present a defense against the allegations made against them. However, this shall be without prejudice to the employer's right to terminate the employment contract in accordance with subparagraph (II) of Article 25.

"Employer's Right to Immediate Termination for Just Cause

Article 25 – Whether the employment contract is for a definite or an indefinite term, the employer may terminate the employment contract before the expiry of its term or without observing the notice period in the circumstances set out below:

…

The employee may bring legal proceedings under Articles 18, 20 and 21 by alleging that the termination was not based on any of the grounds specified in the above subparagraphs."

Accordingly, the provisions concerning termination based on a valid ground, written notice of termination, and the employee's right to bring legal proceedings against a termination for just cause shall not apply to employer representatives.

"The purpose of this provision is to enable the employer to terminate, pursuant to Article 17 of the Labor Law, the employment contracts of employer representatives occupying positions of particular trust without having to provide any ground for termination where that trust has been undermined." [3]

According to the settled case law of the Court of Cassation, where a manager acts subject to the instructions or approval of their superiors when hiring or dismissing employees, such person is not considered as an employer representative:

"As emphasized both in the reasoning adopted by the court and in the settled case law of the Court of Cassation, the second category of employer representatives excluded from the job security provisions consists of those who manage the entire workplace, rather than the entire enterprise, and who are vested with the authority to hire and dismiss employees. Accordingly, persons who direct and manage the entire enterprise are regarded as employer representatives without any additional requirement. By contrast, those who direct and manage the entire workplace, but not the enterprise as a whole, may only be regarded as employer representatives within the meaning of Article 18 if they also possess the authority to hire and dismiss employees.

Thus, the authority to direct and manage the entire workplace and the authority to hire and dismiss employees must coexist cumulatively. Accordingly, a person who manages the entire workplace but does not have the independent authority to hire and dismiss employees at their own discretion cannot be regarded as an employer representative within the meaning of Article 18 of the Labor Law and is therefore entitled to benefit from the job security provisions." (Decision, bearing the Basis number 2009/41752 and the Decision number 2010/38580 and dated 17.12.2010, of the 9th Civil Chamber of the Court of Cassation) "In the present case, the defendant's workplace is the workplace situated in Adana. Although the plaintiff served as the manager of that workplace, it is evident from the emails submitted by the defendant as evidence that the plaintiff could exercise the authority to hire and dismiss employees only with the permission and approval of the headquarters, rather than at their own independent discretion. Accordingly, the plaintiff does not fall within the scope of an employer representative as defined under Article 2 of the Labor Law. Therefore, the first-instance court erred in treating the plaintiff as an employer representative and rejecting the claim for protection under the job security provisions." [4]

As is evident from the settled case law of the Court of Cassation, the status of an employer representative is not determined solely by an employee's job title. Rather, when assessing whether an employee falls outside the scope of job security, the decisive factor is the actual exercise of authority. It is clear that this status may be attributed only where the statutory conditions are demonstrated by concrete evidence in the particular case. Indeed:

"Although the court dismissed the claim on the grounds that the plaintiff, who held the title of 'Business Director' at the Turkish workplace of the Buchanan Group, an international company, and was the only employee in Türkiye, worked under the direct authority of the employer, and qualified as an employer representative excluded from the scope of the job security provisions, this conclusion cannot be upheld. Pursuant to Article 18 of the Labor Law Nr. 4857, in order for an employee to benefit from the job security provisions, the employee must not hold the position of an employer representative or one of their deputies directing and managing the enterprise as a whole, or an employer representative directing and managing the entire workplace who is also vested with the authority to hire and dismiss employees.

Employer representatives who are excluded from the protection afforded by the job security provisions are, first and foremost, those employer representatives and their deputies who direct and manage the enterprise as a whole. Accordingly, general managers and deputy general managers responsible for directing and managing the entire enterprise cannot benefit from the job security provisions. It should be noted, however, that the mere use of the title of general manager or deputy general manager within a workplace does not, in itself, place an employee outside the scope of the job security provisions. What is decisive is whether the individual has been vested with representative authority and is responsible for directing and managing the enterprise as a whole. In this respect, the employee's actual job description and position must be considered.

The second category of employer representatives excluded from the protection afforded by the job security provisions consists of those who direct and manage the entire workplace, rather than the enterprise as a whole, and who are vested with the authority to hire and dismiss employees. Accordingly, persons who direct and manage the enterprise as a whole are considered as employer representatives without any additional requirement.

By contrast, those who direct and manage the entire workplace, but not the enterprise as a whole, may only be regarded as employer representatives within the meaning of Article 18 if they are also vested with the authority to hire and dismiss employees. Thus, the authority to direct and manage the entire workplace and the authority to hire and dismiss employees must coexist cumulatively. Such a workplace may also be a workplace forming part of an enterprise.

Accordingly, a bank branch manager or a factory manager who directs and manages the workplace but does not have the independent authority to hire and dismiss employees at their own discretion cannot be regarded as an employer representative within the meaning of Article 18 of the Labor Law and is therefore entitled to benefit from the job security provisions. Likewise, a human resources manager or personnel manager who is vested with the authority to hire and dismiss employees may still benefit from the job security provisions, as they do not direct and manage the entire workplace. By contrast, an employee who directs and manages the entire workplace of an enterprise and who is also vested with the authority to hire and dismiss employees cannot benefit from the job security provisions. Our Chamber's case law is consistent with this approach. (Decision, bearing the Basis number 2007/35929 and the Decision number 2008/12484 and dated 26.05.2008, of the 9th Civil Chamber of the Court of Cassation)

According to the case file, although the plaintiff was employed by the defendant company under an employment contract with the title of "Business Director", the authorized representatives of the defendant company were foreign nationals, and neither the employment contract contained any provision conferring upon the plaintiff the authority to direct and manage the enterprise as a whole nor was any power of attorney submitted to that effect. Furthermore, no evidence was produced demonstrating that the plaintiff had the authority to hire and dismiss employees. Accordingly, it has not been established by concrete and convincing evidence that the plaintiff was an employer representative or deputy responsible for directing and managing the enterprise as a whole, or an employer representative responsible for directing and managing the entire workplace who was also vested with the authority to hire and dismiss employees. Therefore, it must be concluded that the plaintiff is entitled to benefit from the job security provisions.

"Since the defendant failed to prove, by concrete and convincing evidence, that the termination of the plaintiff's employment contract was based on a valid ground, it must be held that the termination is invalid." [5]

As is evident from the decision, in determining whether an employee qualifies as an employer representative, the courts require concrete evidence demonstrating not only that the employer representative directed and managed the entire workplace, but also that they were vested with the authority to hire and dismiss employees. Since these elements could not be proved, it was held that the plaintiff was entitled to benefit from the job security provisions.

3. RELATIONSHIP BETWEEN DISMISSAL FROM THE POSITION OF EMPLOYER REPRESENTATIVE AND THE TERMINATION OF THE EMPLOYMENT CONTRACT

In this context, the termination of an employer representative's employment contract does not, in itself, extinguish the person's status as an employer representative or the authority to represent the employer.

Where only the employment contract is terminated, the individual ceases to be an employee but, unless formally removed from the position of employer representative, continues to appear as an employer representative and to retain the authority to represent the employer.

Accordingly, since the person's position as an employer representative has not come to an end, a separate decision removing the individual from that position must be duly adopted, and the necessary registration formalities must also be completed.

4. ASSESSING THE TERMINATION OF EMPLOYMENT CONTRACTS OF EMPLOYER REPRESENTATIVES IN REINSTATEMENT CASES

The principal consequence of employer representatives being excluded from job security is that they are not entitled to bring an action for reinstatement. Accordingly, where their employment contract is terminated, they cannot assert any claim based on the invalidity of the termination.

Consequently, they are likewise not entitled to the remedies available in reinstatement actions, including compensation for the period during which the employee remains unemployed and compensation for the employer's failure to reinstate the employee.

Nevertheless, the exclusion of employer representatives from bringing an action for reinstatement does not deprive them of their entitlement to other employment-related claims.

Where the statutory requirements are satisfied, they remain entitled to claim severance pay, notice pay, unpaid wages, overtime pay, and other employment-related receivables.

5. CONCLUSION

Under the Labor Law, the concept of an employer representative is determined not solely by an employee's title or position, but by the authority actually exercised by that employee.

As consistently reflected in the settled case law of the Court of Cassation, holding a senior managerial position is not, in itself, sufficient to exclude an employee from the protection afforded by the job security provisions.

Rather, employer representative status must be assessed in light of the specific circumstances of each case and the scope of the representative's actual authority.

Accordingly, employer representatives who manage the enterprise as a whole, as well as managers who manage the workplace as a whole and possess the authority to hire and dismiss employees, are excluded from the scope of the job security provisions.

By contrast, employer representatives who do not satisfy these statutory requirements remain entitled to the protection afforded by those provisions.

For further information:
Att. Şeymanur Elmas
info@ozgunlaw.com

References:

1. Decision, bearing the Basis number 2020/3073 and the Decision number 2020/11570 and dated 13/10/2020, of the 9th Civil Chamber of the Court of Cassation

2. Decision, bearing the Basis number 2022/3099 and the Decision number 2023/1058 and dated 13.09.2023, of the 11th Civil Chamber of the Regional Court of Appeal of Adana of the Republic of Türkiye

3. Süzek, İş Hukuku (*Labor Law*), 9th Edition, Istanbul, 2013, p. 571.

4. Decision, bearing the Basis number 2022/3099 and the Decision number 2023/1058 and dated 13.09.2023, of the 11th Civil Chamber of the Regional Court of Appeal of Adana of the Republic of Türkiye

5. Decision, bearing the Basis number 2015/20996 and the Decision number 2015/29831 and dated 26.10.2015, of the 9th Civil Chamber of the Court of Cassation

AS CONSISTENTLY REFLECTED IN THE SETTLED CASE LAW OF THE COURT OF CASSATION, HOLDING A SENIOR MANAGERIAL POSITION IS NOT, IN ITSELF, SUFFICIENT TO EXCLUDE AN EMPLOYEE FROM THE PROTECTION AFFORDED BY THE JOB SECURITY PROVISIONS.

THE BANK'S OBLIGATION TO DECLARE A CHEQUE DISHONORED IN CASE OF SIGNATURE DISCREPANCY UPON PRESENTMENT

1. Introduction

As one of the types of negotiable instruments, a cheque is a widely used means of payment in commercial transactions due to its negotiability and the legal protection it provides. However, in practice, banks are observed to refrain from examining whether sufficient funds are available for payment at the time of presentment and from carrying out the "dishonor" procedure where the cheque is unpaid, on the grounds that the drawer's signature on the presented cheque does not correspond to the specimen signature held by the bank. This approach prevents the holder of the cheque from resorting to criminal remedies and results in the emergence of a de facto environment of impunity.

This article examines the obligation of the drawee bank to verify whether sufficient funds are available for payment of a presented cheque and to carry out the "dishonor" procedure where the cheque is unpaid, even in cases where there is a discrepancy between the signature on the cheque and the specimen signature held by the bank.

2. The Legal Nature of the "Dishonor" Procedure in Cheques

Article 5 of the Cheques Law Nr. 5941 reads as follows: *"Upon presentment of a cheque within the statutory period for presentment, calculated according to the date of issue stated thereon, the person who causes the "dishonor" procedure to be carried out in relation to the cheque shall, upon the complaint of the holder, be sentenced to a judicial fine of up to one thousand five hundred days in respect of each cheque. However, the judicial fine to be imposed shall not be less than (…) of the unpaid portion of the cheque amount. The court shall also rule on the prohibition of issuing cheques and opening cheque accounts; and, where such a prohibition already exists, on the continuation of the prohibition of issuing cheques and opening cheque accounts. During the proceedings, the court shall also, ex officio, order the prohibition of issuing cheques and opening cheque accounts as a protective measure.*

The prohibition of issuing cheques and opening cheque accounts shall apply to the real or legal person who is the holder of the cheque account, the persons who issue cheques for and on behalf of such legal person, and, where the dishonored cheque is issued on behalf of a capital company, additionally to the members of the management body and the company representatives registered with the trade registry."

For the offence of "causing the dishonor procedure to be carried out in relation to a cheque", set out under the Cheques Law Nr. 5941, to be constituted, the cheque must be presented to the drawee bank within the statutory period for presentment, and the "dishonor" procedure must be duly carried out on the cheque. Pursuant to Article 3 of the said Law, the "dishonor" procedure is completed by recording the date of presentment, the account status, the amount paid by the bank, and the unpaid amount on the reverse side of the cheque, and by having such records jointly signed by the holder and the bank official.

Following the duly completed "dishonor" procedure, the holder may apply to the criminal court of debt enforcement within three months as of the date, on which the procedure was carried out, and request the imposition of a penalty on the drawer pursuant to Article 5/1 of the Law Nr. 5941. In addition, the holder may initiate debt enforcement proceedings specific to negotiable instruments against the drawer, endorsers, and aval providers.

If the "dishonor" procedure is not carried out by the drawee bank, the holder of the cheque is deprived of the possibility of initiating debt enforcement proceedings specific to negotiable instruments and filing a complaint with the criminal court of debt enforcement. Accordingly, the drawee bank's refusal to carry out the "dishonor" procedure not only creates a de facto state of impunity but also significantly impedes the holder's ability to recover the receivable.

3. The Scope and Limits of the Bank's Obligation to Examine Cheques

At the core of the dispute lies the issue of the scope of the examination that the drawee bank may conduct on a cheque presented to it and the grounds on which it may refrain from carrying out the "dishonor" procedure. The drawee bank's obligation to examine the presented cheque is set out under Articles 780 and 801 of the Turkish Commercial Code Nr. 6102. Accordingly, the bank is obliged to:

- examine whether the cheque contains the mandatory elements (the word "cheque", an unconditional promise to pay a specified amount, the trade name of the drawee, the place of payment, the date and place of issue, the drawer's signature, the bank serial number, and the QR code);

- examine whether the cheque has been presented within the statutory period for presentment;

- examine whether the chain of endorsements is regular.

However, the bank has no obligation to verify the validity of the signatures of endorsers. The bank's authority regarding the examination of signatures is limited to determining whether the cheque contains a handwritten signature affixed by the drawer. This examination should not include subjective assessments, such as whether the signature belongs to the drawer. The authority to determine whether the signature is attributable to the drawer rests not with the bank, but with the judicial authorities. In this context, the bank has no legal basis to refrain from carrying out the "dishonor" procedure on the grounds that "the signature on the cheque does not resemble the drawer's signature" or that "the signature is unclear."

4. The Obligation to Carry Out the Dishonor Procedure in Case of Signature Discrepancy

In practice, it is frequently observed that drawee banks refrain from carrying out the “dishonor” procedure on the grounds that the drawer’s signature on the presented cheque does not correspond to the signature specimens held in their records. Different approaches have emerged among the Criminal Chambers of the Regional Courts of Appeal regarding this issue. In order to resolve this divergence in judicial decisions, the 19th Criminal Chamber of the Court of Cassation examined the matter under its decision, dated 27.01.2020, and bearing the Basis number 2019/35817 and the Decision number 2020/415, and classified the grounds put forward by drawee banks for not carrying out the dishonor procedure into two categories:

“(a) situations where the “dishonor” procedure was not carried out based on objectively justifiable grounds, such as reliance on “a provision of law or a judicial decision”; and

(b) situations where the “dishonor” procedure was not carried out based on grounds considered legitimate by the drawee bank (subjective grounds), such as “the signature on the cheque not corresponding to the drawer’s signature available in the bank’s records or being unclear”, which are not based on any provision of law or judicial decision,

were assessed as not constituting grounds preventing the carrying out of the “dishonor” procedure under Article 3 of the Cheques Law No. 5941, provided that the relevant conditions are satisfied.”

This distinction clearly demonstrates that the bank cannot refrain from carrying out the “dishonor” procedure based on subjective grounds, such as a signature discrepancy. According to the Court of Cassation, the bank is obliged to verify whether sufficient funds are available for payment of the cheque on the date of presentment and, in the absence of sufficient funds, to carry out the “dishonor” procedure pursuant to Article 3/4 of the Cheques Law Nr. 5941.

5. The Consequences of the Bank’s Failure to Carry out the Dishonor Procedure and the Problem of Impunity

The failure to carry out the “dishonor” procedure on the grounds of a signature discrepancy gives rise to various legal consequences, particularly with regard to criminal proceedings.

6. Failure to Satisfy the Objective Condition of Punishability

Under its decision, bearing the Basis number 2019/35817 and the Decision number 2020/415, the 19th Criminal Chamber of the Court of Cassation expressly stated that the “dishonor” procedure constitutes an objective condition of punishability for the offence, as set out under Article 5/1 of the Cheques Law Nr. 5941.

“It has been concluded that, where a cheque subject to criminal proceedings for the offence of ‘causing the dishonor procedure to be carried out in relation to a cheque’ is presented to the bank within the statutory period, and the drawee bank fails to duly carry out the ‘dishonor’ procedure by recording the matters specified in Article 3/4 of the Cheques Law Nr. 5941 on the reverse side of the cheque for ‘any reason’ asserted by the bank, the objective condition of punishability—which is not directly related to the intent and conduct of the person obliged to maintain sufficient funds in the cheque account—will not occur. Accordingly, since the result prescribed by law for the offence will not be realized, it has been concluded that the accused should be acquitted.”

In this case, even though the cheque lacks sufficient funds at the time of presentment, the drawee bank’s failure to carry out the “dishonor” procedure by invoking a signature discrepancy renders it impossible to hold the drawer criminally liable. This exceeds the limits of the bank’s examination authority and creates a de facto area of impunity.

7. Limitation of the Cheque Holder’s Right to Seek Legal Remedies

When the “dishonor” procedure is not carried out, the cheque holder’s right to initiate debt enforcement proceedings specific to negotiable instruments is eliminated.

Article 3/6 of the Law Nr. 5941 reads as follows:

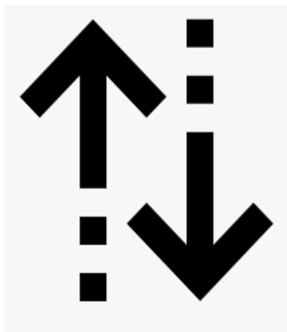
“In the event of partial payment, including the amount that the drawee bank is obliged to pay pursuant to the third paragraph, a certified photocopy of the front and reverse sides of the cheque shall be provided to the holder free of charge. The cheque holder may use this photocopy to apply to recourse debtors or to initiate debt enforcement proceedings under the procedures applicable to negotiable instruments; may attach this photocopy to the petition when filing a complaint with the court of debt enforcement; and may use it as evidence before debt enforcement offices and courts. Upon the request of the court or the debt enforcement office, the original cheque shall be sent to such authorities.”

It is provided that the cheque holder may have recourse against recourse debtors and file a complaint with the court of debt enforcement by using a photocopy of the cheque on which the “dishonor” procedure has been carried out. However, where this procedure is not carried out, the holder is unable to resort to these remedies available for negotiable instruments, and the possibility of recovering the receivable is significantly restricted.

8. The Criminal Liability of the Bank Officials

As per article 7/4 of the Law Nr. 5941;
“The bank officer who fails to carry out the ‘dishonor’ procedure in relation to a cheque that is partially or entirely unpaid, despite a request to do so, shall, upon complaint, be sentenced to imprisonment for up to one year.”

It is provided that the bank officer who fails to carry out the “dishonor” procedure in relation to a cheque that is partially or entirely unpaid, despite a request to do so, shall be subject to punishment upon complaint. Failure to carry out the “dishonor” procedure based on unjustified grounds, such as a signature discrepancy, may also give rise to the criminal liability of the bank officials.



9. Assessment and Conclusion

By its decision, dated 27.01.2020 and bearing the Basis number 2019/35817 and the Decision number 2020/415, rendered for the resolution of the divergence in decisions among the Criminal Chambers of the Regional Courts of Appeal, the 19th Criminal Chamber of the Court of Cassation expressly held that drawee banks cannot refrain from carrying out the "dishonor" procedure based on subjective grounds, such as a signature discrepancy.

10. Conclusion

1. The drawee bank is obliged to conduct an examination of a cheque presented within the statutory period limited to whether the cheque contains the mandatory elements prescribed under the Turkish Commercial Code, whether it has been presented within the statutory period, and whether the chain of endorsements is regular.
2. The bank cannot refuse to pay a cheque that has sufficient funds or refrain from its obligation to carry out the "dishonor" procedure in relation to an unpaid cheque on the grounds that "the signature on the cheque does not belong to the drawer" or that "the signature is unclear". Where the cheque lacks sufficient funds on the date of presentment, the bank is required to carry out the "dishonor" procedure in accordance with the procedure set out in Article 3/4 of the Cheques Law Nr. 5941.
3. Otherwise, despite the absence of sufficient funds for payment of the cheque, the drawer would be exempt from criminal liability, the cheque holder's right to resort to legal remedies would be hindered, and this situation would create an area of impunity that could be deliberately exploited.
4. An allegation of signature discrepancy may only give rise to legal consequences where the falsity of the cheque has been established by a judicial authority. Such determination may only be made through an examination conducted by the court in criminal proceedings to be initiated after the "dishonor" procedure has been carried out.

The case law of the Court of Cassation on this issue is of great importance in ensuring the security of cheques.

The refusal of banks to carry out the "dishonor" procedure based on grounds lacking a legal basis not only causes prejudice to the cheque holder but also undermines confidence in the cheque system.

Therefore, drawee banks are required to act in accordance with the case law of the Court of Cassation and, even in cases of signature discrepancy, verify whether sufficient funds are available for payment of the cheque and carry out the necessary procedures.

For further information:
Att. Buse Gürlek
info@ozgunlaw.com

THE BANK CANNOT REFUSE TO PAY A CHEQUE THAT HAS SUFFICIENT FUNDS OR REFRAIN FROM ITS OBLIGATION TO CARRY OUT THE "DISHONOR" PROCEDURE IN RELATION TO AN UNPAID CHEQUE ON THE GROUNDS THAT "THE SIGNATURE ON THE CHEQUE DOES NOT BELONG TO THE DRAWER" OR THAT "THE SIGNATURE IS UNCLEAR".

References:

1. Decision, dated 27.01.2020 and bearing the Basis number 2019/35817 and the Decision number 2020/415, rendered for the resolution of the divergence in decisions among the Criminal Chambers of the Regional Courts of Appeal, of the 19th Criminal Chamber of the Court of Cassation

NEW REGULATION ON APARTMENT FEE INCREASES AND APARTMENT MANAGEMENT PRACTICES PUBLISHED IN THE OFFICIAL JOURNAL!

The Law Amending the Land Registry Law, Certain Other Laws, and Decree Law Nr. 375 was published in the Official Journal on Thursday, 22 May under the issue number 33261.

The amendments introduced by the Law regarding apartment fee increases are as follows:

The operating budget is approved by the general assembly of unit owners consisting of the residents of the apartment building and housing complex. Accordingly, the Law removes the apartment management's discretion in determining the operating budget, making the votes of the unit owners decisive in setting the amount of apartment fees.

If there is no operating budget approved by the general assembly of unit owners, the apartment manager shall promptly prepare an interim operating budget, which shall remain in effect until the operating budget is approved. The general assembly of unit owners must approve the operating budget within three months at the latest. The amendment also lowers the voting threshold required for the adoption of proposals concerning mixed-use or multi-building residential complexes, allowing decisions to be adopted with a two-thirds majority of the unit owners instead of the previous four-fifths majority.

Where an operating budget is already in place, the amount specified under the temporary operating budget shall be determined in a manner that does not exceed the revaluation rate stipulated under the Tax Procedure Law, effective from the beginning of the calendar year, and shall be submitted to the general assembly of unit owners. With this amendment, uncertainty regarding the rate of fee increases has been eliminated by introducing an upper limit, aiming to prevent unfair and bad-faith practices against unit owners.

Through these amendments, arbitrary determination of fee increases by apartment managers has been prevented, and it has become easier to determine apartment fee amounts through the votes of the unit owners.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/05/20260522-1.htm***

LIFETIME ALIMONY PROVISION ANNULLED BY THE CONSTITUTIONAL COURT!

The Constitutional Court annulled the phrase allowing poverty alimony to be awarded on an “indefinite” basis under the Turkish Civil Code. Following the decision rendered upon the application of the 12th Family Court of Antalya, the obligation to pay alimony for life will be eliminated. On 4 June 2026, the Constitutional Court annulled the phrase “for an indefinite period” contained in paragraph (1) of Article 175 titled “Poverty Alimony” of the Turkish Civil Code Nr. 4721.

The former version of the relevant provision stated: “The party who will fall into poverty due to divorce may request alimony from the other party indefinitely, provided that such party is not more at fault, and in proportion to the other party’s financial capacity.” With this decision, the Constitutional Court demonstrated its intention to end a practice that had long been subject to public debate, particularly due to the lifelong financial burden it imposed on one party even after short-term marriages.

As the Constitutional Court’s reasoned decision has not yet been published, the exact date on which the annulment decision will take effect remains unclear. The Constitutional Court is expected to announce the statutory period granted for the enactment of a new provision together with its reasoned decision.

During this period, the legislative body is expected to prepare a new legal provision, while Article 175 of the Turkish Civil Code will continue to apply in its current form.

Even if the annulment decision formally enters into force, alimony payments that have already been paid and exhausted by that date will not be affected by the amendment. However, the future of existing alimony payments that are still ongoing will be determined based on the new legislative regulation to be enacted by the legislative body.

If a transitional period arises in which the annulment decision has entered into force but the Parliament has not yet enacted new legislation, the question of the duration of alimony in divorce proceedings will come to the forefront. At this stage, Article 1 of the Turkish Civil Code will apply with respect to the duration of alimony. Judges will fill the resulting legal gap by acting within the framework provided by law and will determine the duration of alimony based on the circumstances of each individual case.

Source: ***https://www.anayasa.gov.tr/tr/mahkeme-gundemi/genel-kurul/4-haziran-2026-genel-kurul-gundemi-ve-sonuclari***

THE LEGAL STATUS OF SATURDAYS IN THE CALCULATION OF ANNUAL PAID LEAVE

1. INTRODUCTION

The right to annual paid leave is one of the fundamental rights afforded to employees to enable them to rest physically and mentally after working throughout the year, and it is also guaranteed under the Constitution. Paragraph 3 of Article 50 of the Constitution provides that *"All workers have the right to rest and leisure."*, thereby placing employees' right to rest under constitutional protection and recognizing it as one of the social and economic rights.

Furthermore, paragraph 4 of the said article reads as follows: "Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law.", thereby expressly providing that the principles governing the right to annual paid leave are to be prescribed by the applicable laws. [1] Annual paid leave is a period of rest to which an employee becomes entitled upon completing a certain period of service and during which the employee continues to receive remuneration. Pursuant to Article 53 of the Labor Law, employees are obligated to take annual paid leave for the minimum period prescribed according to their length of service.

Annual paid leave constitutes a period during which the employment contract is suspended. During this period, the employee does not perform any work but continues to receive remuneration. In this respect, annual paid leave is not merely a period of "non-performance of work" but a statutory period of rest protected by law. However, the method of calculating the duration of annual paid leave and determining which days are to be included in that period have given rise to various disputes in practice. In particular, the effect of the weekly rest day and days on which no work is actually performed at the workplace on the calculation of annual paid leave has remained a controversial issue in both legal doctrine and judicial decisions. This article focuses specifically on whether Saturdays on which no work is performed should be deducted from an employee's annual paid leave entitlement.

2. THE EFFECT OF THE WEEKLY REST DAY ON THE CALCULATION OF THE DURATION OF ANNUAL PAID LEAVE

Article 46 of the Labor Law Nr. 4857 expressly sets out the weekly rest day by providing that: *"In workplaces falling within the scope of this Law, employees shall be granted an uninterrupted rest period of at least twenty-four hours within a seven-day period (weekly rest day), on condition that they have worked on the working days prescribed under to Article 63 prior to the rest day."*

Pursuant to this provision, employers are under a statutory obligation to grant employees at least one uninterrupted weekly rest day. In practice, this day is most commonly Sunday. Paragraph 5 of Article 56 of the Labor Law Nr. 4857, entitled 'Implementation of Annual Paid Leave', provides that: *"In calculating the duration of annual paid leave, national holidays, weekly rest days and public holidays coinciding with the leave period shall not be counted as part of the annual paid leave."* As is evident from this provision, and in line with the settled case law of the Court of Cassation, the weekly rest day—which in practice is generally observed on Sunday—is not included in the calculation of the annual paid leave to which the employee is statutorily entitled. In other words, where an employee's weekly rest day coincides with a period of annual paid leave, that weekly rest day is not deducted from the employee's annual paid leave entitlement. This principle has also been affirmed by the Court of Cassation in a decision rendered upon an appeal in the interest of law.

Decision, bearing the Basis number 2025/9525, the Decision number 2026/757 and dated 10.06.2026, of the 9th Civil Chamber of the Court of Cassation reads as follows: *"The dispute concerns whether the plaintiff is entitled to compensation in lieu of unused annual paid leave. Article 59 of the Labor Law Nr. 4857 (the Law Nr. 4857) provides that, upon the termination of the employment contract for any ground, the employee shall be paid, on the basis of the employee's final remuneration, for any accrued but unused annual paid leave. The termination of the employment contract is required for the right to annual paid leave to be converted into a monetary claim. In this respect, neither the manner in which the employment contract was terminated nor whether the termination was based on just cause is of any relevance. The burden of proving that annual paid leave has been granted rests with the employer. The employer must prove that the employee has taken annual paid leave with a signed leave register or an equivalent document. As the burden of proof rests with the employer in this regard, the employer may offer the employee the opportunity to take an oath. In calculating payment in lieu of annual paid leave, it is necessary to take into consideration Article 56(5) of the Law Nr. 4857, which provides that: "In calculating the duration of annual paid leave, national holidays, weekly rest days and public holidays coinciding with the leave period shall not be counted as part of the annual paid leave." In the present case, it is established that, having regard to the plaintiff's period of employment with the defendant, the plaintiff was entitled to a total of 28 days of annual paid leave. The annual leave records contained in the case file demonstrate that the plaintiff took a total of 28 days of annual paid leave during the periods from 12.03.2018 to 26.03.2018 and from … 06.2020 to 15.06.2020. However, those periods included a total of four weekly rest days. Accordingly, the plaintiff is found to have a four days of annual paid leave that had not been used. Therefore, it must be concluded that the plaintiff is entitled to payment in lieu of the outstanding four days of annual paid leave. For the reasons set out above, the appeal in the interest of law must be upheld, and the judgment of the Court of First Instance must be quashed in the interest of law."* [2]

3. THE EFFECT OF SATURDAYS ON THE CALCULATION OF ANNUAL PAID LEAVE IN LIGHT OF THE DISTINCTION BETWEEN "A CONTRACTUAL DAY OFF" AND "THE WEEKLY REST DAY"

One of the most controversial issues concerning annual paid leave is whether Saturdays, like Sundays, should be included in the calculation of annual paid leave. The effect of Saturdays on the calculation of annual paid leave essentially depends on the legal character attributed to that day within the establishment's working arrangements. This is because Saturday is not directly designated as a weekly rest day under the Labor Law Nr. 4857.

Instead, it may be classified under an individual or collective employment agreement, or pursuant to establishment's practice, as a "non-working day", "a contractual day off", or "a weekly rest day".

Accordingly, whether Saturday qualifies as a weekly rest day or merely as a contractual day off forms the basis of the debate as to whether it should be counted as part of an employee's annual paid leave. Pursuant to Article 46 of the Labor Law Nr. 4857, the minimum 24-hour weekly rest period granted to employees may be extended in favor of the employee. Accordingly, the parties may agree, under an individual or collective employment agreement, that the weekly rest period will exceed one day—for example, by providing for two weekly rest days. In such a case, the additional rest day agreed in excess of the statutory weekly rest day is regarded as "a contractual day off". A contractual day off is an additional day of rest expressly agreed upon in the employment contract, separate from the statutory weekly rest day. However, whether such a day is to be treated as a working day or as a weekly rest day should be expressly stipulated in the agreement between the parties. [3]

In other words, where an individual or collective employment agreement provides that work will be performed only five days a week (in practice, typically from Monday to Friday), and the non-working day other than the statutory weekly rest day is not expressly designated as a weekly rest day, that day is deemed to constitute a contractual day off.

In this regard, once it has been determined whether a non-working Saturday constitutes a weekly rest day or a contractual day off, three different scenarios arise regarding the effect of that day on the calculation of annual paid leave.

The first scenario arises where, in addition to Sunday, which is recognized as the weekly rest day, the non-working Saturday is expressly designated as a "weekly rest day" under an individual or collective employment agreement.

In such a case, Saturday, like Sunday, is not taken into account in calculating annual paid leave and therefore is not deducted from the employee's annual paid leave entitlement. For example, where an employee spends one week on annual paid leave, neither Saturday nor Sunday will be counted as leave days. Accordingly, the employee will be deemed to have used only five days of annual paid leave.

However, a different scenario arises where the individual or collective employment agreement expressly provides that Saturday shall be treated as a "working day" or shall be "deducted from the employee's annual paid leave entitlement" or contains words to that effect. In such a case, unlike Sunday, which constitutes the weekly rest day, Saturday is treated as a working day and is not therefore deducted in calculating the employee's annual paid leave entitlement.

Continuing with the previous example, in this second scenario only Sunday is excluded from the calculation of annual paid leave during a one-week period of annual leave, with the result that the employee is deemed to have used six days of annual paid leave. The settled case law of the Court of Cassation likewise adopts this approach.

Decision, bearing the Basis number 2023/1457, the Decision number 2023/4838 and dated 03.04.2023, of the 9th Civil Chamber of the Court of Cassation reads as follows:

"Saturday may also be designated as a weekly rest day. Where individual or collective employment agreements designate both Saturday and Sunday as weekly rest days, neither day shall, pursuant to Article 56(5) of the Labor Law Nr. 4857, be included in the calculation of annual paid leave. In other words, Saturdays and Sundays falling within the period of annual paid leave shall not be counted as part of the employee's annual paid leave entitlement. However, where the individual or collective employment agreement expressly provides that Saturday granted in addition to the weekly rest day shall be treated as a working day in the calculation of the annual paid leave or shall not be deducted from the employee's annual paid leave entitlement, such provision shall be deemed valid. In that case, pursuant to Article 56(5) of the Labor Law Nr. 4857, only Sundays falling within the annual paid leave period shall be deducted from the employee's annual paid leave entitlement." [4]

The third and last of the scenarios discussed above concerns the effect on the calculation of annual paid leave where Saturday is regarded as a "contractual day off".

This situation arises where, under an individual or collective employment agreement, Saturday is designated as a non-working day in addition to Sunday, which constitutes the weekly rest day (without Saturday being expressly designated as a weekly rest day), or where, despite the absence of any express contractual provision governing working days or rest days, Saturdays are not worked in practice. In such cases, in the calculation of the annual paid leave, Saturday is treated as a working day rather than a weekly rest day and, accordingly, is deducted from the employee's annual paid leave entitlement notwithstanding the fact that no work is actually performed on that day. Continuing with the example above, where Saturday is not expressly designated as a weekly rest day but is nevertheless not worked in practice, only Sunday is excluded from the calculation of annual paid leave during a one-week period of annual leave, with the result that the employee is deemed to have used six days of annual paid leave.

A leading decision of the Court of Cassation addressing all three scenarios discussed above is set out below:

Decision, bearing the Basis number 2021/897, the Decision number 2021/5272 and dated 02.03.2021, of the 9th Civil Chamber of the Court of Cassation reads as follows:

"...The issue of how Saturday, where designated as a weekly rest day, should be treated in the calculation of annual paid leave was also examined. In this regard, pursuant to Articles 46 and 63 of the Labor Law Nr. 4857, the weekly rest day

consists of a twenty-four-hour period following the completion of the statutory 45-hour working week. Accordingly, Saturday is, as a rule, a working day. Where Saturday is observed as a contractual day off, it is not treated as a weekly rest day for the purposes of calculating annual paid leave. In other words, where an employee does not work on Saturdays because they are observed as contractual days off, such Saturdays cannot be regarded as weekly rest days in calculating annual paid leave."

"Saturday may also be designated as a weekly rest day. Where an individual or collective employment agreement designates both Saturday and Sunday as weekly rest days, neither day shall, pursuant to Article 56(5) of the Labor Law, be included in the calculation of annual paid leave. In other words, Saturdays and Sundays falling within a period of annual paid leave shall not be counted as part of the employee's annual paid leave entitlement. However, where the individual or collective employment agreement expressly provides that the additional Saturday granted in addition to the weekly rest day shall be treated as a working day for the purposes of calculating annual paid leave or shall not be deducted from the employee's annual paid leave entitlement, such provision shall be regarded as valid. In that case, pursuant to Article 56(5) of the Labor Law, only Sundays falling within the period of annual paid leave shall be deducted from the employee's annual paid leave entitlement." This has been the established approach consistently adopted by this Chamber.

…

"The collective employment agreement sets out that: "Employees shall be given Saturday as a day of rest. Sunday shall be the weekly rest day." Furthermore, Article 25, entitled "Annual Paid Leave," of the said agreement provides that: "In calculating the duration of annual paid leave, national holidays and public holidays falling within the leave period shall not be counted as part of the annual paid leave."

As is apparent from the above provisions of the collective employment agreement, in addition to Sunday, which the parties recognized as the weekly rest day, Saturday was also designated as a day of rest. However, Saturday was neither expressly designated as a "weekly rest day" nor was there any express provision stating that it should be excluded from the calculation of annual paid leave. In light of these findings, it is clear that the judgment of the Court of First Instance was inconsistent with the approach adopted in the settled case law of this Chamber. Accordingly, the decision of the Court of First Instance, rendered without regard to the Chamber's settled case law, must be quashed." [5]

4. CONCLUSION

The right to annual paid leave is one of the social rights, constitutionally guaranteed, that enables employees to rest and recuperate, and is comprehensively set out under the Labor Law Nr. 4857. In practice, however, the determination of which days are to be included in the calculation of annual paid leave has given rise to various disputes, with particular importance attached to the legal character of the weekly rest day and other days on which no work is performed within the establishment.

It is expressly provided by law that days designated by the legislator as weekly rest days are not to be included in the calculation of annual paid leave, and the settled case law of the Court of Cassation has consistently adopted the same approach.

Accordingly, the weekly rest day, which is in practice generally observed on Sunday, is not deducted from the employee's annual paid leave entitlement, thereby ensuring that the employee continues to benefit from this statutory protection. By contrast, the effect of Saturday on the calculation of annual paid leave varies depending on its legal characterization. This is because Saturday is not designated by law as a weekly rest day and may instead be regulated in different ways under an individual or collective employment agreement or pursuant to establishment's practice.

Accordingly, different legal consequences arise depending on whether Saturday is characterized as a weekly rest day or a contractual day off. In this regard, three principal scenarios may be identified. First, where Saturday is expressly designated as a weekly rest day under an individual or collective employment agreement, it will, like Sunday, not be included in the calculation of annual paid leave and therefore will not be deducted from the employee's annual paid leave entitlement. Secondly, where Saturday is expressly treated as a working day, it retains its character as a working day in the calculation of annual paid leave and is therefore counted as part of the employee's annual paid leave.

The third, and most controversial, scenario arises where the agreement does not expressly designate an additional day of rest or, even if it does, does not expressly identify Saturday as a weekly rest day, but Saturday is in practice observed as a contractual day off on which no work is performed. In such a case, according to the settled case law of the Court of Cassation, Saturday is included in the calculation of annual paid leave and is therefore deducted from the employee's annual paid leave entitlement.

In conclusion, there is no single or absolute rule governing the effect of Saturday on the calculation of annual paid leave. Rather, this issue must be determined on a case-by-case basis, taking into account the working arrangements at the establishment, the contractual provisions, and the settled practice. Accordingly, in each case, the legal characterization of Saturday must be determined separately in order to ensure the correct calculation of annual paid leave.

For further information:
Alperen Furkan Balat, Legal Intern
info@ozgunlaw.com

References:

1. Hatice Kübra POLAT, "4857 Sayılı İş Kanunu Çerçevesinde Yıllık Ücretli İzin Hakkı" ("*The Right to Annual Paid Leave under the Labor Law Nr. 4857*"), Marmara University, Institute of Social Sciences, Department of Private Law, Master's Thesis, 2021, p. 4.
2. Decision, bearing the Basis number 2025/9525 and the Decision number 2026/757 and dated 10.06.2026, of the 9th Civil Chamber of the Court of Cassation
3. Nihan Gizem KANTARCI ATEŞ, "Türkiye'de Akdi Tatilin İş Hukukundaki Rolü ve Dinlenme Sürelerinin Yetersizliği" ("*The Role of Contractual Holidays in Turkish Labor Law and the Inadequacy of Rest Periods*"), Nuh Naci Yazgan University, Faculty of Law Journal, Vol. 8, Issue: 1, 2025, pp. 7–8.
4. Decision, bearing the Basis number 2023/1457 and the Decision number 2023/4838 and dated 03.04.2023, of the 9th Civil Chamber of the Court of Cassation
5. Decision, bearing the Basis number 2021/897 and the Decision number 2021/5272 and dated 02.03.2021, of the 9th Civil Chamber of the Court of Cassation

2026 COMPETITION BOARD DECISIONS AND KEY DEVELOPMENTS

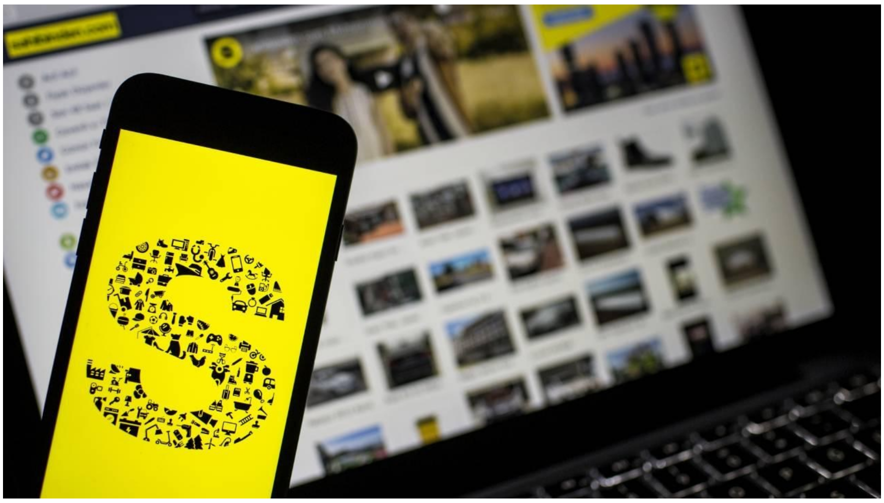
1. Introduction

The year 2026, much like the preceding years, witnessed significant developments relating to the Competition Board's investigations, formal investigations, and commitment procedures across a wide range of sectors. The Board's decisions primarily focused on companies' market conduct, allegations of abuse of dominant position, anti-competitive agreements and practices, and the effective use of the commitment mechanism.

The decisions adopted during this period demonstrate that the Competition Board has continued to address competition concerns not only through findings of infringement and the imposition of administrative monetary fines, but also by making effective use of instruments such as interim measures, settlement procedures, and commitments. Particular attention was paid to companies' positions in the markets in which they operate, their use of data, their commercial strategies, and the potential transfer or leveraging of their market power into adjacent markets. The following section examines a selection of Competition Board decisions announced in 2026 that are of particular significance for the enforcement and development of Turkish competition law.

2. Conclusion of the Investigation Against Sahibinden Through Commitments [1]

The Competition Board decided, by its decision dated 16.01.2025, to initiate a formal investigation to determine whether Sahibinden Bilgi Teknolojileri Pazarlama ve Ticaret AŞ had infringed Article 6 of Law Nr. 4054 on the Protection of Competition. The investigation concerned the relationship between Sahibinden's vehicle listing services and its online second-hand vehicle buying and selling services. In the course of its investigation, the Board examined whether Sahibinden had used the user data obtained through its online platform services provided to corporate and individual customers for vehicle sales activities in the market for online second-hand vehicle buying and selling services. In addition, Sahibinden's substantial advertising expenditures relating to its Otobid service, together with the advantages arising from its existing market power, were also assessed under Article 6 of Law Nr. 4054.



This decision demonstrates that the Competition Board continues to make effective use of the commitment mechanism as a tool for addressing allegations of abuse of dominant position. It also highlights that the use by companies of their commercial advantages, user data, or existing market power in other areas of activity may be subject to close scrutiny under competition law. During the investigation, the Board considered Sahibinden's integration of the user data obtained through its vehicle listing services with its other services to constitute a significant competition law concern. In this context, the Board decided to impose an interim measure pursuant to Article 9 (4) of Law Nr. 4054 in order to prevent irreparable harm pending the adoption of a final decision.

While the investigation was ongoing, Sahibinden requested to submit commitments to address the Competition Board's competition concerns. Following discussions between the parties, the final commitment submitted by Sahibinden was assessed by the Board, which concluded that the proposed commitments were capable of eliminating the competition concerns that had given rise to the investigation.

Under those commitments, Sahibinden undertook not to display or promote the Otobid service on its website or mobile application, not to direct users to the Otobid service during the listing process, not to use non-public data obtained through its vehicle listing activities for the purposes of the Otobid service, and to implement the necessary organizational, operational, administrative, and technical measures to ensure compliance with those commitments. In addition, Sahibinden committed that, once a specified threshold had been exceeded, the revenue generated from the Otobid service would be sufficient to cover the variable costs and advertising expenditures incurred in providing that service.

The Board found that the commitments offered were proportionate to the competition concerns, suitable for eliminating those concerns, capable of being implemented within a short period, and capable of being effectively monitored.

Accordingly, by its decision dated 25.12.2025, the Board decided to conclude the investigation through commitments pursuant to Article 43 of Law Nr. 4054. This decision demonstrates that, when assessing allegations of abuse of dominant position, the Competition Board regards the commitment mechanism not merely as a means of promoting procedural economy, but also as a functional instrument for ensuring the prompt and effective resolution of competition concerns in the market.

Although the Board concluded the investigation without making a determination of infringement, it attached particular importance to ensuring that the commitments offered by the company were capable of addressing the competition concerns and were both implementable and capable of effective monitoring.

The decision further demonstrates that, particularly in the case of companies operating multi-sided platforms, data sets, user bases, brand recognition, and commercial reach may each constitute independent subjects of scrutiny under competition law.

In this regard, although the use of commercial advantages or user data acquired in one market in a neighboring or related market is not, in itself, considered unlawful, the Board closely examines whether such conduct confers a competitive advantage that is not based on competition on the merits and whether it impedes the activities of competing companies.

In this respect, the decision reflects the Competition Board's approach of recognizing that market power may arise not only through pricing practices or exclusivity arrangements, but also through factors such as the use of data, steering mechanisms, platform visibility, and the integration of different services.

Accordingly, when transferring data, user traffic, or commercial advantages across different areas of activity, companies should also assess whether such practices produce exclusionary effects in the relevant markets. Ultimately, the decision demonstrates that the commitment mechanism has become an increasingly prominent solution of resolving allegations of abuse of dominant position.

At the same time, it confirms that the Board accepts this mechanism only where competition concerns can be addressed through commitments that are concrete, measurable, and capable of being implemented within a short period.

The decision also indicates that companies should specifically consider, as part of their competition law compliance processes, practices such as leveraging existing market power into other areas of activity, using user data across different services, and extending platform-related advantages to new business activities.

3. Initiation of a Formal Investigation Against Meta and the Interim Measure Decision [2]

One of the Competition Board's notable decisions in 2026 was its decision to initiate a formal investigation into the Meta economic entity, comprising Meta Platforms, Inc., Meta Platforms Ireland Limited, WhatsApp LLC, and Meta Platforms İstanbul Bilişim Hizmetleri Limited Şirketi. Following its preliminary inquiry, the Board decided, by its decision dated 14.05.2026, to initiate a formal investigation to determine whether the Meta economic entity had infringed Article 6 of Law Nr. 4054 on the Protection of Competition.

The investigation focuses on Meta's integration of its "Meta AI" artificial intelligence service into WhatsApp and on whether this integration prevents any third-party artificial intelligence providers from offering their services through WhatsApp . In this context, the Board is examining whether Meta has used its position in relation to WhatsApp to confer an advantage on its own artificial intelligence service and whether such conduct has made market access more difficult for third-party providers of general-purpose generative AI chatbots.

During the preliminary inquiry, the Board considered that Meta's conduct preventing third-party providers of general-purpose generative AI chatbots or assistants from offering AI services as the primary service through WhatsApp constituted serious indications of an infringement of Article 6 of Law Nr. 4054.

Accordingly, the Board decided not only to initiate a formal investigation but also to impose an interim measure in order to prevent irreparable harm pending the adoption of a final decision.

In this regard, the Board required Meta to establish the conditions necessary to enable third-party providers of general-purpose generative AI chatbots to offer AI services as the primary service through WhatsApp.

The Board further emphasized that those conditions must not make the provision of such services factually or economically more difficult.

Furthermore, it was stated that if Meta fails to comply with the obligations imposed within one month following the service of the reasoned interim measure decision, an administrative monetary fine may be imposed pursuant to Article 17 of Law Nr. 4054.

The Meta decision demonstrates that the Competition Board closely scrutinizes the competitive effects of technology companies expanding their existing strong platforms into new service areas.

The decision also indicates that, as artificial intelligence services become increasingly important within digital ecosystems, issues relating to integration, access restrictions, and self-preferencing in this field are likely to receive greater attention from a competition law perspective.

4. Spotify Decisions: Obstruction of an On-Site Inspection and the Imposition of Daily Administrative Monetary Fines [3], [4]

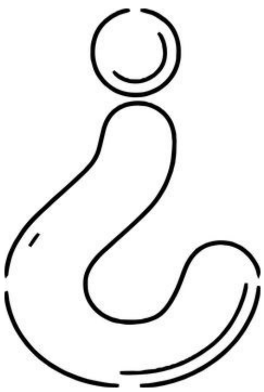
The Competition Board's decisions dated 17.07.2025 and numbered 25-26/634-392, and dated 28.08.2025 and numbered 25-32/759-450, concerning the economic entity comprising Spotify Dijital Yayıncılık Hizmetleri AŞ, Spotify Yönetim Destek Hizmetleri AŞ, and Spotify AB, are significant regarding the effective exercise of the Competition Board's on-site inspection powers under Law Nr. 4054 on the Protection of Competition and the sanctions applicable where such powers are obstructed. This issue is currently the subject of ongoing discussions, particularly in relation to its constitutionality. The process underlying these decisions began with the Competition Board's decision dated 26.06.2025 to initiate a preliminary inquiry into Spotify.

The preliminary inquiry was based on allegations that Spotify had discriminated among artists and content creators on its platform, particularly regarding visibility, hindered the activities of competing companies operating in the online music streaming services market, and/or implemented anti-competitive strategies affecting the distribution of royalty payments.

As part of the preliminary inquiry, Turkish Competition Authority officials sought to conduct an on-site inspection on 02.07.2025 at the address notified as Spotify's headquarters in Türkiye.

However, the Board concluded that, during the inspection process, it encountered various acts on the part of the company that resulted in the obstruction of the on-site inspection.

Accordingly, in its decision dated 17.07.2025, the Board found that the Spotify economic entity had obstructed the on-site inspection and imposed an administrative monetary fine amounting to five per thousand of the company's gross annual revenue for 2024 pursuant to Article 16(1)(d) of Law Nr. 4054.



One of the noteworthy aspects of the decision is that the Board did not merely conclude that the on-site inspection had been obstructed; it also made clear that the company was required to invite Competition Authority officials to enable the inspection to be carried out subsequently. In this regard, the Board stated that failure by the company to ensure the necessary conditions for the conduct of the on-site inspection may result in the imposition of a daily administrative monetary fine pursuant to Article 17 of Law Nr. 4054.

Indeed, the second decision, dated 28.08.2025 and numbered 25-32/759-450, concerns the daily administrative monetary fine imposed for the period until this continuing obligation was fulfilled.

The Board found that Spotify's letter inviting Competition Authority officials to conduct the on-site inspection was received by the Authority on 15.08.2025 and decided to impose a daily administrative monetary fine for the period up to that date pursuant to Article 17(1)(b) of Law Nr. 4054. Accordingly, a total administrative monetary fine of TRY 27,630,373.57 was imposed on Spotify.

Taken together, these two decisions demonstrate that the Competition Board does not regard its on-site inspection powers as being limited to physical access to business premises and the collection of documents.

Rather, it considers all obligations relating to access and cooperation that are necessary to ensure that an on-site inspection is carried out promptly and effectively, in a manner consistent with its purpose, to fall within the scope of those powers.

These decisions are of particular significance for companies with a limited personnel or operational presence in Türkiye that nevertheless conduct their activities in the Turkish market through teams based abroad.

The Board's approach indicates that the complexity of a company's organizational structure, the fact that relevant information and documents are accessible only through employees or systems based abroad, or the existence of limited human resources within its Turkish company does not relieve companies of their obligation to comply with an on-site inspection.

Rather, companies operating in the Turkish market are expected to establish, in advance, internal organizational and compliance mechanisms that enable the Competition Authority to obtain access, within a reasonable time, to the relevant personnel, documents, data, and systems during an on-site inspection.

In this respect, the Spotify decisions demonstrate that the concepts of obstructing or hindering an on-site inspection are interpreted broadly.

Conduct such as remaining passive during the inspection, failing to provide access to the necessary personnel and systems, or delays in identifying the relevant decision-making processes or the relevant employees may, depending on the circumstances of the particular case, be regarded as obstructing or hindering an on-site inspection.

In conclusion, the Spotify decisions demonstrate that the Competition Board continues to make effective use of its powers to request information and conduct on-site inspections under Articles 14 and 15 of Law Nr. 4054, while also imposing the administrative monetary fines provided for under Articles 16 and 17 of the Law in cases where the exercise of those powers is obstructed or hindered.

The decisions are significant in demonstrating that competition law compliance programs should not be limited to compliance with the substantive rules of competition law but should also include clear and practical procedures governing on-site inspections.

For further information:
Att. Melda İz
info@ozgunlaw.com

References:

1.https://www.rekabet.gov.tr/tr/Guncel/sahibinden-bilgi-teknolojileri-pazarlama-329369a1e8f1f01193f40050568585c9

2.https://www.rekabet.gov.tr/tr/Guncel/meta-hakkinda-sorusturma-acilmasina-ve-g-3c21d4cfcb60f11193eb0050568549fa

3.https://www.rekabet.gov.tr/Karar?kararId=ab6a5ce2-e5bd-446b-a24f-21e2bab0c09b

4.https://www.rekabet.gov.tr/Karar?kararId=ba2d32fb-d4cc-43e4-8980-2a8354380b71

ASSESSMENT OF THE PLACE OF COMMISSION OF THE OFFENCE IN RELATION TO ILLEGAL BETTING OFFENCES COMMITTED ON THE INTERNET

1. Territoriality of Criminal Offences

As a preliminary matter, it is necessary to explain the territorial scope of the application of criminal laws. The territorial application of criminal laws refers to the determination of which criminal law applies to an offence committed in a particular place. In this context, it determines the jurisdiction in which a national or a foreigner who commits an offence either within or outside the territory of a state will be prosecuted, as well as the criminal law applicable to that offence.

Under the territoriality principle, the criminal law of the state in whose territory an offence is committed applies. The nationality of either the offender or the victim is of no relevance. It is generally accepted that a system based on territorial sovereignty offers the solution that is most consistent with justice and fairness, as it enables the re-establishment of the legal order, which is presumed to have been disturbed by the commission of the offence, through the application of the law of the place where the offence was committed. It also facilitates the collection of evidence and the conduct of other investigative measures. [1]

Turkish law likewise adopts a mixed system, under which the territoriality principle constitutes the general rule. Accordingly, Turkish criminal law applies to all offences committed within the territory of Türkiye, irrespective of the offender's nationality. However, Turkish criminal law may also apply to certain offences committed abroad, regardless of the nationality of the offender. Offences committed outside the territory of Türkiye are regarded as having been committed in a foreign state. Article 8 of the Penal Code defines the territorial boundaries of Türkiye and specifies the places in which offences are deemed to have been committed within Turkish territory.

As a general rule, an offence is deemed to have been committed in the place where its commission began, continued, or was completed. [2] Article 8(1) of the Penal Code provides that: *"Where the act is committed wholly or partly in Türkiye, or where the result occurs in Türkiye, the offence shall be deemed to have been committed in Türkiye."*

As is clear from this provision, an offence is deemed to have been committed in Türkiye even where the act is committed only partly within Turkish territory. Likewise, even where the act is committed wholly or partly abroad, the offence is still deemed to have been committed in Türkiye if the result occurs there. By treating Türkiye as the place where the offence was committed whenever any part of the act or the result occurs within its territory, the scope of the territoriality principle is broadened, and Turkish courts are vested with jurisdiction. [3]

Offences committed through the Internet also present particular issues with regard to determining the place where the offence is committed. Turkish penal regulations contain no express provision governing this issue. Where data are uploaded to the Internet from within Türkiye, the act is deemed to have been committed in Türkiye and, accordingly, the offence is regarded as having been committed in Türkiye pursuant to the territoriality principle. Likewise, even where the data are transmitted from abroad, if unlawful content is stored on a server located in Türkiye, the offender is considered to have acted directly through that server. Consequently, the offence is regarded as having been committed in Türkiye, and the territoriality principle applies. [1]

2. Examination of Article 13 of the Penal Code

Article 13 governs the prosecution in Türkiye of certain offences committed abroad (expressly listed in the provision). Under this article, no distinction is made according to whether the offence is committed by a Turkish national or a foreign national. Accordingly, Turkish criminal law applies where any of the offences listed in the article is committed abroad, regardless of the offender's nationality. The offences falling within the scope of this rule are provided in the provision. Article 13 of the Turkish Penal Code reads as follows:

"(1) Turkish law shall apply where any of the following offences is committed abroad by a Turkish national or a foreign national:

a) Offences set out in Part One of Book Two.
b) Offences set out in Chapters Three, Four, Five, Six, Seven and Eight of Part Four of Book Two.
c) Torture (Articles 94 and 95).
d) Intentional pollution of the environment (Article 181).
e) Manufacture of and trafficking in narcotic or psychotropic substances (Article 188), and facilitating the use of narcotic or psychotropic substances (Article 190).
f) Counterfeiting currency (Article 197), manufacture of and trafficking in instruments used for the production of currency and valuable stamps (Article 200), and forgery of official seals (Article 202).
g) Prostitution (Article 227).
h) (Repealed: 26/06/2009 – 5918/Art. 1)
i) Hijacking or seizure of maritime, railway or air transport vehicles (Article 223 (2) and (3)), or offences involving damage to such vehicles (Article 152).
(2) (Supplemented second paragraph: 29/06/2005 – 5377/Art. 3) Except for the offences set out in Chapters Three, Four, Five, Six and Seven of Part Four of Book Two, prosecution in Türkiye for the offences falling within the scope of paragraph (1) is subject to a request by the Minister of Justice.
(3) Notwithstanding that a conviction or an acquittal has been rendered in a foreign country for the offences specified in subparagraphs (a) and (b) of paragraph (1), prosecution shall be conducted in Türkiye upon the request of the Minister of Justice."

The offences provided under this Article, which endanger the internal or external security of the state, undermine its international reputation or financial credibility, or constitute an attack on the significant interests of its nationals, shall be subject to criminal proceedings in Türkiye regardless of who committed them. For the offences other than those specified in subparagraphs (a) and (b), criminal proceedings may be instituted in Türkiye only if no conviction or acquittal has previously been rendered in a foreign country. Accordingly, where the offender has already been tried abroad and a conviction or an acquittal has been rendered, criminal proceedings may not subsequently be instituted against that offender in Türkiye under Turkish law.

3. Illegal Betting Offences Committed Through Information Systems

With the rapid advancement of technology, the Internet has become increasingly developed and widespread. This technological development has also given rise to new forms of violations in the field of economic crime. Among these, betting and games of chance have become one of the most prevalent forms of unlawful activity, largely due to the unprecedented growth of the global sports industry.

As a result, numerous national and international companies have been established to offer betting and games of chance to individuals. These developments have made it necessary for states to introduce statutory regulations governing such activities. In Türkiye, this area is primarily regulated by Law Nr. 7258. In addition, Article 228(3) of the Turkish Penal Code criminalizes providing a place or opportunity for gambling through the use of information systems.
Pursuant to Article 228(1) and (3) of the Turkish Penal Code;

"(1) Any person who provides a place or opportunity for gambling shall be sentenced to imprisonment for a term of one to three years and to a judicial fine of not less than two hundred days.[96]

(3) (Supplemented: 15/08/2017-Decree Law Nr. 694/Art. 139; Enacted without amendment by Law Nr. 7078 dated 01/02/2018, Art. 134.) Where the offence is committed through the use of information systems, the offender shall be sentenced to imprisonment for a term of three to five years and to a judicial fine ranging from one thousand to ten thousand days."

For an offence to be established under the Turkish Penal Code, it is necessary that a place or opportunity for gambling be provided through the use of information systems. This offence is a pure conduct offence in terms of its result. In other words, no particular result is required for the offence to be completed. Pursuant to Article 5(1)(b) of Law Nr. 7258:

"(b) Any person who enables fixed-odds or pari-mutuel betting, or games of chance based on sporting events organized abroad, to be participated in from Türkiye by providing access via the Internet or by any other means shall be sentenced to imprisonment for a term of four to six years."

For an offence to be established under Law Nr. 7258, the game concerned must qualify as betting or a game of chance. The act constituting this offence consists of enabling betting or games of chance to be played from Türkiye by providing access via the Internet or by any other means. It is stated in legal doctrine that, since the game is made accessible for participation in Türkiye, the offence is deemed to have been committed in Türkiye; however, the offence set out in this subparagraph was introduced in order to eliminate any uncertainty that might arise from the fact that the game is organized abroad.

Accordingly, where a game organized abroad is made available by the offender for participation in Türkiye by providing access via the Internet or by any other means, the offender shall be punished under Article 5(1)(b) of Law Nr. 7258. [4] For the offences of organizing betting and games of chance under this Law to be established, the offender must not possess any authorization or license. Neither of these offences requires the occurrence of any particular result in order to be completed. The commission of any of the acts specified in the relevant statutory provision by the offender is sufficient for the offence to be established. Such offences are classified as pure conduct offences (offences not requiring a result). The offence is completed upon the performance of the conduct prohibited by law, without any requirement that the conduct produce harm or any other consequence in the external world.

As explained above, these offences are, by their nature, pure conduct offences aimed at providing access. Accordingly, the place where the offence is committed cannot be determined by reference to its result. Rather, the place of commission is the place where the act of execution is carried out. Where all acts of execution are performed abroad, the offence must be regarded as having been committed abroad.

4. Conclusion

The offences listed under Article 13 of the Turkish Penal Code are subject to the principle of numerus clausus. As this principle requires an exhaustive enumeration, the offences listed therein cannot be interpreted expansively. Offences relating to illegal betting are not among those listed in Article 13 of the Turkish Penal Code. Accordingly, where such an offence is committed by a foreign national, it cannot be deemed to have been committed in Türkiye. As explained above, Article 13 is subject to the principle of numerus clausus. Furthermore, when assessed in light of the territoriality principle, where the offender, betting websites, servers, and payment systems are all located abroad, the acts of execution must be regarded as having been completed abroad. Since illegal betting offences are, by their nature, pure conduct offences aimed at providing access, the place of commission cannot be determined by reference to the result. Where all acts of execution take place in a foreign country, it becomes difficult to conclude that the offence was committed in Türkiye. To hold otherwise would effectively extend the scope of Article 8 of the Turkish Penal Code beyond its statutory limits. However, the territorial scope of Turkish is expressly defined by the Code. Accordingly, when all these considerations are taken together, it would constitute an erroneous interpretation to conclude that an illegal betting offence has been committed in Türkiye where the relevant conduct has taken place entirely abroad.

For further information:
Fatma Şengün, Legal Intern
info@ozgunlaw.com

References:

1. H. Aydın, Yabancı Ülkede İşlenen Suçlarda Türk Mahkemelerinin Yetkisi (*The Jurisdiction of Turkish Courts over Offences Committed in Foreign Countries*).
2. Taner, p. 204.
3. Zafer, p. 625; Akbulut, Ceza Hukuku Genel Hükümler (*General Provisions of Criminal Law*), p. 129. Hakeri, p. 85; Özen, p. 83.
4. O. Belci, Spor Müsabakalarında Yasadışı Bahis ve Şans Oyunu Suçları (*Illegal Betting and Games of Chance in Sporting Events*).

"12TH JUDICIAL PACKAGE" SUBMITTED TO THE GRAND NATIONAL ASSEMBLY OF TÜRKİYE!

The "Bill on Amending Certain Laws to Ensure the Effective and Efficient Functioning of the Judiciary," known publicly as the "12th Judicial Package," was submitted to the Presidency of the Grand National Assembly of Türkiye on 22 June 2026. The bill consists of a total of 30 articles, including 29 main articles and one temporary article, and aims to ensure that judicial proceedings are completed within a reasonable time and to enhance public confidence in the judiciary.

The bill does not include any provisions regarding a general amnesty, sentence reduction, or changes to the duration of supervised release. The bill will enter into force if it is adopted by the Grand National Assembly of Türkiye and published in the Official Journal. The main amendments set out in the bill are as follows:

The most notable amendment introduced by the bill with respect to the Code of Civil Procedure Nr. 6100 is the abolition of the indefinite claim action. Instead of an indefinite claim action, in partial claims, the amount subject to the claim may be increased once in the same proceedings, without being subject to the prohibition on expanding claims, until the completion of the examination phase. In such cases, the statute of limitations will be deemed interrupted from the date of filing the lawsuit also with respect to the increased portion of the claim. In addition, under the amendments made to the Code of Civil Procedure, the period between hearings may not, as a rule, exceed three months. In mandatory circumstances, the judge may determine a longer period by providing justification.

The bill also introduces significant amendments regarding criminal proceedings. Accordingly, in line with the Constitutional Court's annulment decision, the legal framework for the postponement of the announcement of the verdict has been revised. Under the proposed amendment, such postponement may be applied in cases involving offences punishable by imprisonment of two years or less. However, offences involving torture, torment, and ill-treatment committed by public officials will be excluded from the scope of this provision.

Furthermore, also in line with the Constitutional Court's annulment decision, amendments are proposed to Article 134 of the Code of Criminal Procedure titled "Search, Copying and Seizure of Data on Computers, Computer Programs and Computer Records." Accordingly, data obtained through the application of this measure will be destroyed in the presence of the public prosecutor after 15 years from the date on which a decision of non-prosecution or a court judgment becomes final. This matter will be recorded in an official report to be kept in the case file. The relevant persons may request the deletion of such data from the judge or the court if the purpose requiring the retention of the data ceases to exist during this period or if there is a justified reason.

In the field of administrative jurisdiction, the scope of cases to be resolved by a single judge in administrative and tax courts is being expanded. Accordingly, annulment and full remedy actions with a subject matter value not exceeding TRY 486,000 in 2026, as well as certain disputes concerning students and public officials, will be decided by a single judge.

Under the bill, in cases where a decision for the dissolution of co-ownership is rendered, it is proposed that the first public auctions concerning the immovable property be conducted exclusively among the heirs.

The bill also includes provisions regarding amendments to the Notary Public Law to facilitate electronic access to documents by judicial authorities; the imposition of a warning penalty in cases where an expert is appointed for matters that can be resolved through the legal knowledge required for the profession of judge or prosecutor; the objection authority of the Chief Public Prosecutor of the Court of Cassation; the electronic sale of the assets of persons under guardianship; and appointment requirements and terms of office under the legislation governing the Council of Forensic Medicine. Detailed transitional provisions regarding the implementation of the amendments have also been introduced. The final version of the bill will become clear upon completion of the legislative process.

Source: ***https://www.tbmm.gov.tr/Haber/Detay?Id=f613369e-6185-4b47-913f-019eeec65b37***

Sülün Sok. No:8 34330 1.Levent Beşiktaş / TÜRKİYE
Phone : +90 212 356 3210 (pbx) / +90 212 325 2307 (pbx)
Fax : +90 212 356 3213
E-mail : info@ozgunlaw.com
Webpage: www.ozgunlaw.com

Follow us!