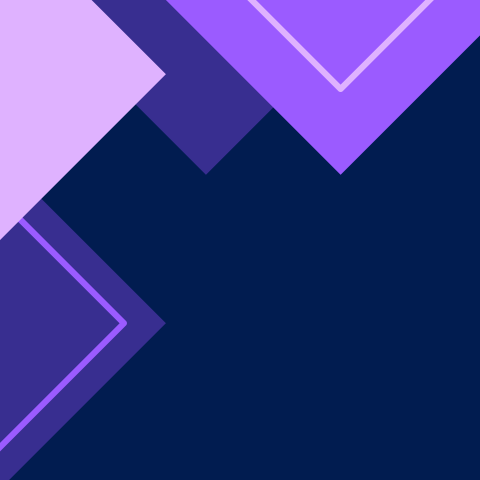
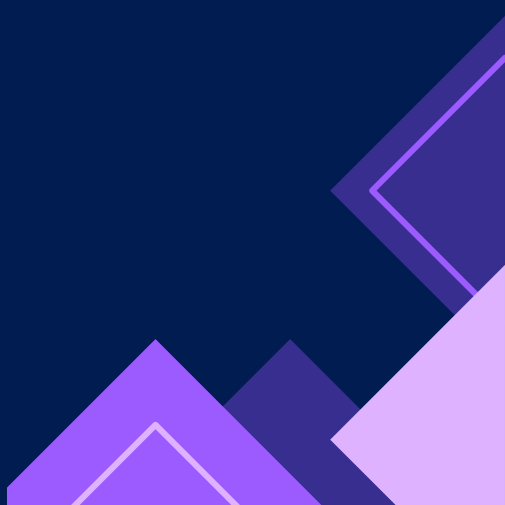




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JANUARY 2025 LEGAL PRECEDENT REPORT



SUMMARY OF DECISIONS

- **The Date of Receipt, Not the Date of Reading, is Determinative for Electronic Notifications**
 - According to Article 7/a of the Notification Law numbered 7201 and Article 9 of the Electronic Notification Regulation, the electronic notification is deemed to have been notified at the end of the fifth day following the date it reaches the electronic address of the addressee. Therefore, pursuant to the relevant legislation, the notifications using the e-notification method are deemed to have been notified at the end of the fifth day following the date it reaches the addressee's account, not on the day it is opened and read by the addressee (*Official Gazette D. 21.01.2025 and No. 32789 - CC, D. 31.10.2024, App.No. 2021/25150*).
- **Undocumented Excuses May Be Rejected, but Substantial Circumstances Should Be Considered**
 - The courts' rejecting undocumented excuses is not a violation of the right to a fair trial. However, in case of sudden, urgent or critical situations, especially in hearings where essential proceedings are held, undocumented excuses should not be rejected unequivocally. Courts should make an assessment by taking into account the circumstances of the concrete case (*Official Gazette D. 09.01.2025 and No. 32777 - CC, D. 09.10.2024, App.No. 2022/2407*).

- **The Administration is Obligated to Remedy the Damage Arising from Unlawful Acts**

- The administration is obliged to remedy rights violations resulting from unlawful acts. In this context, pursuant to the principle of restitutio in integrum, the administration must restore the individual to the position they would have been in had the unlawful act not been committed. Otherwise, an excessive and extraordinary burden would be imposed on the individual, disrupting the fair balance between public interest and property rights and thereby leading to a violation of property rights (*Official Gazette No. 32789, D. 21.01.2025 – CC, D. 18.09.2024, App. No. 2020/17774*).

- **Interventions in Professional Life Are Evaluated Within the Scope of the Right to Respect for Private Life**

- Not every intervention or measure affecting professional life can be directly evaluated within the scope of the right to respect for private life. For such an intervention to fall under this right, it must have serious and adverse effects on the individual's private life or have a high probability of doing so. In this regard, if a criminal investigation continues for an extended period and reaches a level where it significantly disrupts an individual's professional activities, damages their professional and personal relationships, and severely harms their reputation, it may be assessed within the scope of the right to respect for private life, provided that concrete evidence is presented (*Official Gazette No. 32777, D. 09.01.2025 – CC, D. 04.07.2024, App. No. 2021/1318*).

- **In Lawsuits Filed After Mediation, the Validity of the Non-Settlement Report May Be Examined as a Preliminary Issue**

- In disputes subject to mediation, if a lawsuit is filed following the completion of the mediation process, the court may evaluate the validity of the mediation non-settlement report as a preliminary issue. Therefore, a separate lawsuit for the annulment of the mediation report is not required. Otherwise, the lawsuit will be dismissed on procedural grounds (*Denizli RCA, 4th CC, M. 2024/291, D.. 2025/3, Date: 09.01.2025*).

- **For a Guarantor to Exercise the Right of Recourse, the Debt Must Be Due and Proven**

- In cases concerning the annulment of objections arising from a commercial suretyship agreement, the guarantor may exercise the right of recourse based on the amount paid to the creditor only if the payment is due. Furthermore, the guarantor must provide proof of the payment made to the creditor (*Denizli RCA 4. CC., M. 2024/289 D., 2025/2., D. 09.01.2025*).

- **Assertion of the Right of Preemption by a Co-Owner Who Did Not Object to the Sale in the Case of De Facto Partition Is Contrary to the Principle of Good Faith**

- In joint ownership of immovable property, the existence of a de facto partition does not categorically preclude the exercise of the legal right of preemption. However, according to established case law, if the co-owners have de facto divided the property among themselves and each has been using a specific portion, the exercise of the preemption right by a co-owner who did not object to the sale of the portion used by another co-owner to a third party is considered contrary to the principle of good faith (*Official Gazette No. 32789, D. 21.01.2025 - Supreme Court 7. CC, M. 2022/3608, D. 2022/4946, D. 07.09.2022*).

- **For a Provisional Attachment Order, the Receivable Must Be Due and Proven at Plausible Level of Proof**

- For a provisional attachment order to be issued, the receivable must be due and proven at a plausible level of proof. Plausible proof means that the existence of the receivable is largely substantiated without requiring conclusive evidence. In this regard, the documents submitted as the basis for the provisional attachment request must sufficiently demonstrate the existence and maturity of the receivable. Even if invoices are not objected to within the prescribed period, they do not constitute conclusive evidence of receivable acknowledgment and may not be deemed sufficient on their own to prove the existence and maturity of the receivable. Thus, when assessing a request for provisional attachment, the legal nature and probative value of the submitted evidence must be considered (*Denizli RCA 4. CC., M. 2025/19, D. 2025/19, D. 09.01.2025*).

- **Insurance Company Cannot Avoid Making Payments to the Injured Party**

- Pursuant to Article 95 of the Highway Traffic Law No. 2918, conditions necessitating the reduction or elimination of compensation under an insurance contract or related legal provisions cannot be asserted against the injured party. The insurance company may only invoke such conditions against the insured party, who is a party to the insurance contract. Furthermore, if there are exclusions or recourse provisions specified in the insurance contract and general terms, the insurer may exercise recourse against the insured. However, the insurer cannot reject to compensate the injured party on these grounds (*Denizli RCA, 4. CC., M. 2024/286, D. 2025/33, D. 09.1.2025*).

- **The Primary Obligation to Perform in a Work Contract Rests with the Contractor**

- The fundamental principle in work contracts is that the primary obligation to perform lies with the contractor. The party ordering work may withhold payment until the contractor completes and delivers the work. Additionally, if the work is delivered with defects or deficiencies, the ordering party may deduct the cost of remedying such defects or refuse to make the payment in full. The contractor is entitled to the payment of the contract price only if the work is completed in accordance with construction, technical, and artistic standards and delivered to the ordering party. If these conditions are not met, the contractor cannot demand payment (*Denizli RCA 4. CC., M. 2025/14, D. 2025/18, D. 09.01.2025*).

- **The Jurisdiction of Consumer Courts Depends on the Presence of a Consumer**

- The mere fact that a legal transaction is regulated under the Law on the Protection of Consumers No. 6502 ("Law No. 6502") does not automatically require that disputes arising from such a transaction be heard before a Consumer Court. For a legal transaction to fall within the scope of Law No. 6502, one of the parties must be a consumer. If a transaction serves a commercial or professional purpose, the status of a consumer does not apply. Since the request for the removal of a block placed on a bank account and the refund of the related amount is considered a consumer transaction, and the removal of the block constitutes a judicial act to be resolved by the court, disputes regarding this matter fall within the jurisdiction of Consumer Courts (*Official Gazette No. 32771 D. 03.01.2025 - Supreme Court 3. CC., M. 2024/1162, D. 2024/2654, D. 30.09.2024*).

- **In the Event of the Debtor's Death, Enforcement Proceedings Continue Against the Estate or the Heirs**

- In the event of the debtor's death, the creditor may continue the previously initiated enforcement proceedings against the estate or the heirs. The continuation of the proceedings against the heirs is possible through the attachment or liquidation of pledged assets. If enforcement proceedings were initiated against the debtor through bankruptcy, such proceedings cannot be continued against the heirs by means of bankruptcy. As a general rule, only a single payment order is issued in an enforcement proceeding. Since the proceedings against the heirs are considered a continuation of the original proceedings, there is no need to issue a new payment order in the name of the heirs. However, issuing an additional payment order does not mean that a new proceeding has been initiated; rather, it serves as a notification indicating that the proceedings have been directed toward the heirs (Official Gazette No. 32771 D. 03.01.2025 - Supreme Court 3. CC., M. 2024/1347, D. 2024/2655, D. 30.09.2024).

- **An Owner Subjected to Confiscation Without Expropriation May Demand the Prevention of the Intervention or Payment of the Value**

- Owners whose immovable property has been occupied without expropriation may file an action for the prevention of the intervention against the relevant public legal entity to request the termination of the unlawful occupation. However, if they consent to the occupation, they may alternatively request the payment of the price of the immovable (Official Gazette No. 32789, D. 21.01.2025 - Supreme Court 5. CC., M. 2020/1977, D. 2020/7493, D. 29.09.2024).

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