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# SEPTEMBER 2025 LEGAL PRECEDENT REPORT

# SUMMARY OF DECISIONS

**An Interim Injunction Against General Assembly Resolutions Requires Proof of "Irreparable or Difficult to Remedy Harm"**

In lawsuits seeking annulment of joint-stock company general assembly resolutions, a prima facie evidence alone is insufficient for the issuance of an interim injunction. Pursuant to Articles 389 and 390/3 of the Code of Civil Procedure No. 6100 ("CCP"), the claimant must concretely demonstrate that they will suffer irreparable or difficult to remedy harm if the injunction is not granted. Under Articles 445 et seq. of the Turkish Commercial Code No. 6102 ("TCC"), an annulment judgment has retroactive effect, resulting in nullity ab initio. Therefore, the mere execution of the general assembly resolution does not by itself satisfy the condition for interim relief. In particular, the suspension of resolutions regarding matters such as the non-distribution of dividends, discharge of board members, or payment of attendance fees is only possible where a concrete and specific risk of irreparable or difficult to remedy harm can be established within the meaning of Article 390/3 of the CCP *(Istanbul RCA, 12th Civil Chamber, M. 2025/1119, D. 2025/1242, 01.09.2025).*

**Commercial Courts Have Jurisdiction Over Non-Compete Disputes Arising After Termination of Employment**

Post-termination non-competition obligations derive not from the employee's duty of loyalty but from the special provisions of Articles 444–447 of Turkish Code of Obligations No. 6098 ("TCO"). Consequently, disputes arising from breach of such covenants cannot be considered within the scope of the employment relationship. Therefore, lawsuits concerning breach of post-employment non-competition clauses are under the jurisdiction of commercial courts of first instance, rather than labor courts. This is because the TCC is a special law regulating commercial life, and the Labor Courts Law numbered 7036 contains no provision to the contrary *(Court of Appeal Grand General Assembly for the Unification of Judgments, M. 2023/1, D. 2025/3, 13 June 2025, OG: 17.09.2025, 33020).*

## A Creditor Must Serve a Formal Notice for Default Interest on Invoice-Based Claims

In claims arising from invoices, the due date indicated on an invoice alone cannot be deemed the date of default for claiming accrued interest. Under the TCO, the maturity of a debt and the occurrence of default are distinct concepts. For default to arise, the creditor must serve an explicit notice of default on the debtor.

Article 1530 TCC applies only to contracts concluded for the supply of goods or services, and in such commercial contracts between two traders, the debtor falls into default without notice, thereby entitling the creditor to interest.

However, in sales contracts where no notice of default has been served prior to the initiation of enforcement proceedings, claims for accrued interest cannot be accepted. Thus, acceptance of default-interest claims in enforcement proceedings based on invoices depends solely on the existence of a duly served default notice prior to enforcement. Accordingly, the due date stated on an invoice, by itself, does not suffice to place the debtor in default *(Istanbul RCA, 12th CC, M. 2025/1096, D. 2025/1243, 01.09.2025).*

## Commercial Books and E-Invoice Records Jointly Establish the Existence of the Claim

In invoice-based claims, delivery of the goods or services subject to the invoices must be proven by the claimant seller through written or other lawful evidence. However, where the invoices are duly recorded in the debtor's commercial books and supported by electronic invoice or delivery note records that have not been timely disputed, these entries together constitute proof of the underlying contractual relationship. In this case, the evidentiary value of the invoice is assessed under Article 222 TCC rather than Article 21/2.

Accordingly, the recipient's failure to object or return the invoice within the statutory period indicates a valid contractual relationship based on delivery of goods or services. The debtor must rebut this presumption through written or conclusive evidence. Therefore, where commercial books and e-invoice records are consistent, the existence and amount of the claim are deemed established. In line with this principle, objections raised against enforcement proceedings are overruled, and collection is ordered on the basis of the reconciliation between these records *(Istanbul RCA, 12th CC, M. 2025/1107, D. 2025/1249, 01.09.2025).*

## Failure to Submit Commercial Books Constitutes Evidence Against the Debtor

If the recipient of an invoice fails to object within the prescribed period and records it in their commercial books, this indicates the existence of a valid contractual relationship. If both parties' books are duly kept and consistent, they serve as evidence in favor of the creditor. If the opposing party fails to submit its commercial books upon request, the existing entries are deemed evidence against that party. In such a case, the creditor's duly kept books constitute proof to the detriment of the non-producing debtor, who must disprove liability through written or conclusive evidence (*Istanbul RCA, 12th CC, M. 2025/1057, D. 2025/1262, 01.09.2025).*

**In Full Remedy Actions, the Limitation Period Commences When the Damage or Causal Link Becomes Apparent**

For the administration to be held liable in a full remedy action arising from an administrative act, three elements must coexist: the administrative act itself, the damage, and the causal link between them. While these elements may sometimes be evident at the time of the act, in certain circumstances the administrative nature of the act, the resulting damage, or the causal connection may become ascertainable only after subsequent investigations or criminal proceedings. Commencing the limitation period from the date of the act in situations where these elements cannot yet be determined would effectively deprive the claimant of the right to bring an action and would violate the principle of proportionality. Therefore, where the administrative character of the act, the damage, or the causal link emerges later, the limitation period shall begin to run from that date *(CC, Ayfer Gündoğan and Others, App. No. 2020/12571, 22 Jan 2025, O.G. 17.09.2025 No. 33020).*

**A Mortgage Does Not Secure the Debt of a Surety; the Creditor May Request Provisional Attachment Against the Joint Surety**

A mortgage provides security only for the principal debtor, and does not extend to the surety. Accordingly, the creditor may directly proceed against the joint surety for satisfaction of the debt. Pursuant to Article 586 TCO, the joint surety is liable for the entire debt regardless of whether it is secured by a mortgage. The creditor is not required to await the liquidation of the mortgaged property. Therefore, as long as the existence and maturity of the claim are established through prima facie evidence, the presence of a mortgage does not preclude the creditor from requesting provisional attachment against the joint surety *(Istanbul RCA, 12th CC, M. 2025/1128 D. 2025/1263, 02.09.2025*).

**Retroactive Application of Administrative Sanctions Violates the Principle of Legality and Undermines the Rule of Law**

The principle of legality in offences and penalties ensures foreseeability and legality not only in criminal but also in the imposition of administrative sanctions. Accordingly, no sanction that was not clearly prescribed by law or regulation at the time of the act may be applied retroactively through subsequently enacted provisions. Applying later-enacted and adverse administrative sanctions to prior conduct breaches legality, legal certainty, and the rule of law.

The assessment of legality in this context involves a three-stage analysis: (1) determining the dates of the act and of the regulation’s entry into force; (2) examining whether the sanction was expressly prescribed by law and foreseeable to the addressee; and (3) evaluating retroactive effects against legal certainty and fairness. Interpretations contrary to the non-retroactivity principle undermine legality and foreseeability, rendering individuals’ legal positions uncertain. Such practices are incompatible with the principle of legal certainty *(CC, Mty Delta Denizcilik İç ve Dış Ticaret A.Ş., App. No. 2020/31683, 15 Jan 2025, O.G. 17.09.2025 No. 33020).*

## Misinterpretation of the “White-Collar” Concept Undermines the Right to Unionization and Collective Bargaining

An overly broad interpretation of “white-collar employee” based solely on the absence of manual labor deprives certain groups of the constitutional right to unionize and bargain collectively, violating the rule of law. Determining whether an employee qualifies as “white-collar” should take into account not only job type but also duties, responsibilities, remuneration, workplace status, and managerial powers. Otherwise, a restrictive or erroneous interpretation undermines the essence of collective-bargaining rights.

Article 51 of the Constitution protects the right to unionization not only against State interference but also against obstructions by private parties, particularly employers. The State must adopt deterrent and protective measures against employer practices that hinder union activity and ensure effective remedies. Consequently, excluding employees who do not act as employer representatives or collective bargaining agents from the scope of collective agreements solely because they are categorized as “white-collar” is incompatible with freedom of association and collective bargaining (*CC, Hülya Şimşek, App. No. 2022/18821, 20.03.2025, O.G. 22 Sept 2025 No. 33025).*

**Failure to Compensate Inflation-Related Depreciation of Receivables Violates the Right to Property and the Right to an Effective Remedy**

The Constitutional Court examined a case where the applicant suffered loss of value in collecting a debt from a private bank due to delay. The Court emphasized the State's duty to maintain a fair balance between parties in private-law relations and found that statutory interest rates under the Law No. 3095 on Legal Interest and Default Interest were insufficient to offset inflation loss. It further held that claims for additional damages under Article 122 TCO do not constitute an effective remedy to redress inflation-based losses. Accordingly, the Court found a violation of the right to property and the right to an effective remedy for failure to ensure adequate protection against inflation, and initiated a pilot-judgment procedure to prevent similar violations *(CC, Caner Şimşek, App. No. 2024/41763, 8 July 2025, O.G. 29.09.2025 No. 33032).*

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