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MAY 2025 LEGAL PRECEDENT REPORT

SUMMARY OF DECISIONS

The Time Limit for Individual Applications to the Constitutional Court Starts from the Date on which the Applicant is Deemed to Have Been Actually Informed of the Decision

The time limit for filing an individual application before the Constitutional Court is thirty days from the date on which domestic remedies are exhausted or, if no remedy is prescribed, from the date the violation is learned. The Constitutional Court acknowledges that such learning is not limited solely to the official notification of the reasoned decision, but may also occur through obtaining a copy of the file, examining hearing minutes, or accessing and reading the decision via the UYAP system. Accordingly, the time limit for individual applications begins to run from the date on which it is established that the applicant was actually informed of the decision. (*Constitutional Court, Cüneyt Hüdür, App. No: 2021/15020, 27.11.2024, OG: 23.05.2025, No. 32908*).

Compensation for Industrial Property Infringements Must Be Deterrent but Must Not Impose an Excessive Burden

In cases of trademark infringement, the compensation claim may be calculated based on the net profit obtained by the infringing party. In this way, not only the actual loss suffered by the trademark holder but also the loss of profit is sought to be compensated. This provision aims to ensure effective protection of industrial property rights and to achieve deterrence against similar infringements, and it falls within the discretionary power of the legislature. Therefore, such compensation is not considered a disproportionate interference with the right to property (*Constitutional Court, App. No: 2024/176, Decision No: 2025/42, 11.02.2025, OG: 06.05.2025, No. 32892*).

Disproportionate Attorney's Fee in Compensation for Inaccuracies in the Land Registry Constitutes a Violation of Property Rights

In legal proceedings concerning the compensation of property loss arising from inaccuracies in the land registry, imposing a disproportionately high attorney's fee on the claimant, to the extent that it significantly reduces the awarded compensation, constitutes a disproportionate interference with the right to property. In such cases, the fair balance to be maintained between the public interest and the individual's right to property is disrupted, and the compensation awarded in favor of the aggrieved party becomes meaningless due to litigation costs. The State's liability arising from its obligation to maintain the land registry properly cannot be interpreted in a manner that imposes an excessive burden on the individual. The right to property must be the primary consideration both in the calculation of compensation and in determining the financial burdens associated with the proceedings (*Constitutional Court, Hasan Durmuş, App. No: 2019/19126, Decision Date: 23.01.2025, Official Gazette: 21.05.2025, No. 32906*).

Disputes Concerning Remittance, Deposit, and Intellectual Property Rights Are Considered Commercial Cases if They Relate to the Commercial Enterprise of Only One Party

As a rule, a case is considered a commercial dispute only if it either falls under the category of absolute commercial cases or concerns the commercial enterprises of both parties. However, in disputes relating to remittance, deposit, and intellectual property rights, it is deemed sufficient for the dispute to concern the commercial enterprise of only one party in order to qualify as a commercial case (*Gaziantep Regional Court of Appeal, 4th Civil Chamber, 2025/884 M. , 2025/1093 D. , 30.04.2025*).

Legal Capacity to be a Party Terminates Upon Death; Heirs Must Be Included in Proceedings Concerning the Deceased's Assets

Pursuant to Article 27 of the Turkish Civil Code numbered 4721, the legal capacity to hold rights of real persons terminates upon death. Accordingly, it is not legally possible to initiate or continue proceedings in the name of a deceased person. Lawsuits pertaining solely to rights that do not pass to the heirs and concern only the deceased become moot upon death. However, lawsuits involving patrimonial rights that are transferred to the heirs do not become moot due to death; in such cases, the proceedings must continue with the inclusion of the heirs. According to Article 55 of the Code of Civil Procedure No. 6100 ("CCP") if the heirs have not yet accepted or renounced the inheritance, the proceedings shall be suspended until the expiration of the statutory period. Issuing a judgment without including the heirs constitutes a violation of the right to be heard, which is protected under Article 27 of the CCP (*Istanbul RCA, 8th CC, 2025/885 M., 2025/651 D., 02.05.2025*).

In a Contract for Work, the Compensation for Incomplete or Defective Works May Only Be Claimed If the Full Contract Price Has Been Paid

In a contract for work, the employer's right to claim positive damages arising from incomplete or defective works is contingent upon proving that the entire contract price has been paid to the contractor. If the contractual amount has not been paid in full or in part, it is not legally possible to claim compensation for the value of the incomplete or defective work. Furthermore, if the employer has terminated the contract, any claim for positive damages becomes inadmissible (*Sakarya RCA, 5th CC, 2025/169 M., 2025/705 D., 02.05.2025*).

Requests for Re-Registration (Revival) of a Company Are Not Subject to Any Time Limitation

Pursuant to Article 547 of the Turkish Commercial Code No. 6102 ("TCC"), in cases where additional liquidation procedures are deemed necessary after the liquidation of a company has been completed and its trade registry has been closed, it is possible to request a court decision for the re-registration of the company. The said article does not stipulate any statute of limitations or preclusive time period for such requests. Therefore, revival claims are not subject to any temporal limitation (*Istanbul RCA, 12th CC, 2025/628 M., 2025/709 D., 02.05.2025*).

The Legal Relationship Between Partners in an Ordinary Partnership Does Not Terminate Until Liquidation Is Completed

Upon the termination of an ordinary partnership, the partnership enters a liquidation phase. The legal relationship between the partners cannot be deemed to have ended until the liquidation is completed. This process entails converting the partnership's assets into cash, settling debts, returning capital contributions, and distributing profits or losses. Liquidation ensures the lawful completion of these procedures. Moreover, the transfer of immovable property during the liquidation of the partnership is not required to be executed in an official form unless the transfer involves the contribution of registered immovable property as capital to the partnership (*Ankara RCA, 24th CC, 2024/1896 M., 2025/884 D., 06.05.2025*).

Payment May Be Prevented by Injunctive Relief in Claims for Restitution of Cheques

Pursuant to Article 792 of the TCC, a claim for restitution of a cheque must be directed against the last holder of the negotiable instrument. In such proceedings, since the claimant asserts a direct right over the negotiable instrument, a restitution claim differs from a declaratory action of non-liability. Accordingly, if the claimant alleges that they are the rightful holder of the cheque and that the instrument left their possession without consent, and can approximately prove that the opposing party acquired the instrument in bad faith or with gross negligence, a preliminary injunction may be granted to prevent payment to the holder-creditor (*Gaziantep RCA, 11th CC, 2025/388 M., 2025/717 D., 06.05.2025*).

Compensation for Loss of Support Is a Personal Claim Independent from Heirship

Compensation for loss of support constitutes a personal claim of the individuals who directly suffered harm due to the death, and is independent from their status as heirs. This type of damage is not affected by the deceased's fault, as the harm directly arises from the deprivation of support caused by death. Accordingly, the wrongful conduct of the deceased does not eliminate the right to compensation. If the damage is not excluded under the insurance policy, the beneficiaries deprived of support may claim compensation directly from the insurer (*Ankara RCA, 35th CC, 2024/448 M., 2025/635 D., 06.05.2025*).

Gratuitous Nature Is Essential for Characterization as Carriage for Courtesy

According to Article 87 of the Highway Traffic Code numbered 2918, where a person is transported gratuitously or where a vehicle is allocated gratuitously for their use, the operator's liability is governed by general provisions. To classify a relationship as "carriage for courtesy," the transported person must have been carried without any consideration, and the carriage must serve their benefit. Otherwise, such a relationship does not qualify as carriage for courtesy. In this respect, determining whose interest and benefit the carriage served is essential. Such benefit may be economic or based on shared social values (*Ankara RCA, 35th CC, M. 2024/342, D. 2025/627, 06.05.2025*).

Compensation May Be Paid to the Insured If Adequate Security Is Provided to the Holder of a Limited Real Right

Although a creditor holding a limited real right over the insured property has priority over the insurance compensation, the compensation may be paid to the insured if the compensation will be used to restore the insured property and sufficient security is provided to protect the rights of the limited real right holder (*Istanbul RCA, 17th CC, M. 2025/556, D. 2025/671, 08.05.2025*).

The 10-Day Period for Enforcement of a Provisional Attachment Order Starts from the Date the Signed Decision Is Finalised on the UYAP System

Under Article 261/1 of the Enforcement and Bankruptcy Code numbered 2004, the phrase *“within ten days from the date the provisional attachment is granted”* must be interpreted not as the date the decision was deliberated or assigned a number in the UYAP system, but rather as the date the reasoned decision is signed via e-signature on the UYAP system and becomes accessible to the parties and the court of first instance. As there is no written decision at the time of deliberation, enforcement cannot legally be requested. Otherwise, the parties would be unable to access the content of the decision and request enforcement within the required time. Therefore, the 10 days period must be deemed to commence on the date the decision is finalised with an electronic signature and becomes viewable on UYAP (*Istanbul RCA, 45th CC, M. 2025/623, D. 2025/517, 07.05.2025*).

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