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Attorneys-at-Law

AUGUST 2024 LEGAL PRECEDENT REPORT

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In this note, summaries of the Constitutional Court, Supreme Court and first instance court decisions published in August 2024 are provided.

1. According to the decision of the 7th Civil Chamber of the Sakarya Regional Court of Appeal ("RCA") dated August 15, 2024, and numbered 2024/1504 M., 2024/1085 D., a provisional injunction may only be granted concerning the asset in dispute. A request for a provisional injunction regarding assets not subject to the dispute cannot be accepted.

2. As stated in the decision of the 7th Civil Chamber of the Sakarya RCA dated August 15, 2024, and numbered 2024/1505 M., 2024/1086 D., the party requesting a provisional injunction must explicitly state the reason and type of the injunction in their petition and approximately prove the justification of the case in terms of the merits of the case. The standard of proof required is based on the principle of "approximate proof."

3. According to the decision of the 35th Civil Chamber of the Ankara RCA dated August 8, 2024, and numbered 2024/779 M., 2024/966 D., for a provisional attachment to be granted, the court must be convinced of the existence of the debt. This does not require conclusive proof of the debt according to procedural law, but rather that the existence and maturity of the debt are approximately proven. Accordingly, the creditor must submit evidence sufficient to create a reasonable belief in the existence of the debt and grounds for attachment under the rules of approximate proof.

4. Pursuant to the decision of the Constitutional Court with application number 2021/52333 and dated May 21, 2024 published in the Official Gazette dated August 9, 2024 and numbered 32627, when determining whether a restriction is compatible with the right to freedom of expression, the court must consider the context of the expressions used, and assess the events, writings, and sentences in their entirety.

5. As stated in the decision of the Constitutional Court with application number 2020/22893 and dated April 2, 2024, published in the Official Gazette dated August 2, 2024 and numbered 32620, interference with the right to respect for private life must be based on reasons that are persuasive, relevant, and sufficient, ensuring that such interference is necessary in a democratic society and adheres to the principle of proportionality.

6. As stated in the decision of the Constitutional Court with application number 2020/38588 and dated April 30, 2024 published in the Official Gazette dated August 2, 2024 and numbered 32620, in exceptional cases where overriding public interest is at stake, requests for name changes may be rejected. Administrative and judicial authorities must establish a fair balance between the personal interest of the individual in changing their name and the public interest and provide relevant and sufficient justifications consistent with constitutional guarantees.

7. According to the decision of the 1st Civil Chamber of the Supreme Court dated May 5, 2024 and numbered 2024/810 M., 2024/3356 D. published in the Official Gazette dated August 13, 2024 and numbered 32631, in cases involving claims for annulment of title and registration based on pre-cadastre events, even if the statutory limitation period has expired, the defendant's acceptance of the claim is significant. If the defendant is free to dispose of the property and the acceptance does not violate public order, the defendant's acknowledgment may result in a binding judgment without further inquiry into the validity of the plaintiff's claim.

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8. As stated in the decision of the 3rd Civil Chamber of the Supreme Court dated May 13, 2024 and numbered 2024/247 M., 2024/1649 D. published in the Official Gazette dated August 13, 2024 and numbered 32631, the court hearing the annulment of objection case must first examine the objection regarding the jurisdiction of the enforcement office where the enforcement proceedings are conducted. Whether there is an objection to the court's jurisdiction or not does not affect this outcome. In other words, regardless of whether an objection to the court's jurisdiction has been raised, the court must first review and definitively resolve the objection concerning the enforcement office's jurisdiction. As a result of this examination, the court will also determine whether it has jurisdiction.

9. Pursuant to the decision of the 3rd Civil Chamber of the Supreme Court dated June 6, 2024 and numbered 2024/1085 M., 2024/1864 D. published in the Official Gazette dated August 13, 2024 and numbered 32631, under the right to be heard, the defendant must be given the opportunity to present their explanations and evidence. The court must ensure that the notifications to the defendant are duly made, allowing them to be informed of the proceedings. Otherwise, rendering a decision without granting the defendant the right to be heard or the opportunity to present evidence would constitute a violation of the right to a fair trial and be contrary to the law.

10. According to the decision of the 4th Civil Chamber of the Supreme Court dated June 15, 2024 and numbered 2023/147 M., 2023/8049 D. published in the Official Gazette dated August 13, 2024 and numbered 32631, when the immovable properties of the parties are located within the same building, the land registry records should first be examined to determine whether condominium ownership has been established.

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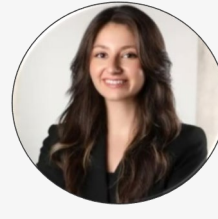
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