

BİÇER GÜNER

Attorneys-at-Law

JULY 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 July 2024 are provided.

1. According to the decision of the 9th Civil Chamber of the Adana Regional Court of Appeal ("RCA") dated July 5, 2024, and numbered 2021/1139 M., 2024/1158 D., if a bank, as a credit institution, takes a bond to secure a loan it has provided, this bond will be considered a debt instrument. If the loan is not repaid, the bank can initiate legal proceedings using this bond. Any signature placed on the front of the bond, apart from the drawee or the issuer, will be considered an aval, and the signatory will be responsible for the debts indicated in the bond.

2. As stated in the decision of the 9th Civil Chamber of the Adana RCA dated July 5, 2024, and numbered 2021/1041 M., 2024/1160 D., in disputes where the parties are merchants, if two separate agreements addressing the same dispute but containing different elements are made, and if the latter agreement does not explicitly state that it supersedes the former agreement, both agreements will be considered valid.

3. According to the decision of the 3rd Civil Chamber of the Adana RCA dated July 4, 2024 and numbered 2023/878 M., 2024/1648 D., the perpetrator of a wrongful act is considered to be in default for the entire amount of the damage from the moment the damage occurs, without the need for a warning or notice. Therefore, the injured party is entitled to claim default interest from the date of the wrongful act for both the partial lawsuit and any subsequent additional lawsuits or amendments.

4. According to the decision of the 3rd Civil Chamber of the Adana RCA dated July 4, 2024, and numbered 2022/2170 M., 2024/1645 D., in compensation lawsuits filed by individuals who have suffered damages due to death or bodily harm, the insurance company can only make payments under the traffic insurance policy if the event causing the damage was due to the fault of the insured driver. If the driver who purchased the traffic insurance is completely blameless, the insurance company, the driver, and/or the vehicle owner cannot be held liable for the damage caused by the plaintiff's own fault.

5. According to the decision of the 3rd Civil Chamber of the Adana RCA dated July 4, 2024 and numbered 2022/2158 M., 2024/1643 D., if the injured party made a claim to the insurance company before filing a lawsuit following a traffic accident, they are entitled to claim default interest from the date of the wrongful act; if no claim was made before the lawsuit, the default interest can be claimed from the date the lawsuit was filed.

6. As stated in the decision of the 6th Civil Chamber of the Kayseri RCA dated July 3, 2024 and numbered 2024/1423 E., 2024/1447 K., in the negative declaration lawsuit filed before an enforcement proceeding, upon request and against a security deposit, a preliminary injunction to halt the enforcement proceeding can be granted. To obtain a preliminary injunction, the claimant must approximately prove the existence of reasons that endanger the claimed right or significantly complicate or completely make it impossible to obtain the right.

7. According to the decision of the 6th Civil Chamber of the Kayseri RCA dated July 3, 2024 and numbered 2024/1444 M., 2024/1449 D., for the acceptance of a request for provisional attachment, the claim, its amount, and its due date must be proven approximately. In this regard, notary warnings presented to the court will be considered approximate proof and will be sufficient for proving the request for provisional attachment.

8. According to the decision of the 1st Civil Chamber of the Adana RCA dated July 3, 2024 and numbered 2022/1934 M., 2024/1210 D., in mandatory conflicts of interest arising from neighborly relations, the judge will consider the specific circumstances of the case, the locations of the properties, their intended use, their characteristics, local customs, and the natural needs and realities of society to determine whether there is an excessive nuisance beyond the ordinary tolerance and courtesy obligations neighbors owe each other. The judge will find the most appropriate damage-mitigating measures, make unavoidable interventions, and balance the sacrifices.

9. According to the decision of the 9th Civil Chamber of the Adana RCA dated July 3, 2024 and numbered 2021/1359 M., 2024/1139 D., in cases where a claim for pecuniary compensation is completely dismissed, a fixed attorney's fee will be awarded in favor of the defendant based on the tariff provisions in effect on the date of the decision.

10. According to the decision of the 1st Civil Chamber of the Erzurum RCA dated July 2, 2024 and numbered 2024/461 M., 2024/1242 D., in order to be subject to clearing in disputes where the parties are merchants, the receivables to be subject to clearing must be due and payable. In addition, the merchant parties should not object to the invoices stating the receivables subject to clearing within 8 (eight) days. These invoices will only create a presumption that the work was performed, and the burden of proof will pass to the recipient of the invoice.

11. As stated in the decision of the 1st Civil Chamber of the Erzurum RCA dated July 2, 2024 and numbered 2024/699 M., 2024/1198 D., in disputes arising from contracts for work, the jurisdiction to hear the case will be determined by the defendant's place of residence at the time the lawsuit is filed, the place where the contract is to be performed, or the place determined by a valid jurisdiction agreement between the parties.

12. According to the decision of the Constitutional Court with application number 2019/40007 and dated March 3, 2024 published in the Official Gazette dated July 4, 2024 and numbered 32592, in democratic societies, the restriction of lawyers' freedom of expression should be exceptional. Before restricting a lawyer's freedom of expression, it must be examined whether the expressions are misleading or constitute a severe personal attack or have a significant relationship with the events in the trial. Otherwise, it would constitute a violation of freedom of expression.

13. According to the decision of the Constitutional Court dated March 7, 2024, and numbered 2021/16758, published in the Official Gazette dated July 4, 2024 and numbered 32592, in cases filed by a third party, making a decision without ensuring the participation of the third party in the proceedings will mean the prevention of the right of access to the court.

14. According to the decision of the Constitutional Court with application number 2019/25945 and dated March 19, 2024, published in the Official Gazette dated July 8, 2024 and numbered 32596, the current value of amounts adjudicated in the period of the old Turkish lira should not be calculated by merely removing 6 (six) zeros. Inflation must also be considered in the calculation of the current value.

15. Pursuant to the decision of the Constitutional Court with application number 2020/2264 and dated March 19, 2024, published in the Official Gazette dated July 8, 2024 and numbered 32596, imposing disciplinary penalties on individuals for posting posters on the bulletin board of universities within the scope of union activities is considered a violation of freedom of expression.

16. According to the decision of the Constitutional Court with application number 2020/1142 and dated February 28, 2024, published in the Official Gazette dated July 9, 2024 and numbered 32597, the rule of recording the meetings between a convict held in a penal institution for the crime of being a member of a terrorist organization and their lawyer with audio and video by technical devices generally constitutes a violation of the right to respect for private life. However, the rule of confidentiality of communication between a lawyer and a client can be legitimately restricted in situations affecting public order and safety within the context of legitimate means.

17. As per the decision of the Constitutional Court with application number 2020/11509 and dated February 29, 2024, published in the Official Gazette dated July 10, 2024 and numbered 32598, the application of time limits by courts and the dismissal of a lawsuit due to the expiration of the time limit in matters where there is no specific provision regarding the time limit for filing a lawsuit is considered a violation of the right to access the court.

18. As per the decision of the Constitutional Court with application number 2020/14764 and dated May 2, 2024, published in the Official Gazette dated July 18, 2024 and numbered 32605, imposing a travel ban, which is one of the judicial control measures, without examining the individual's familial, personal, and professional connections abroad constitutes a violation of the right to respect for private and family life.

19. According to the decision of the 2nd Civil Chamber of the Supreme Court dated May 13, 2024 and numbered 2024/2396 M., 2024/2776 S. published in the Official Gazette dated July 26, 2024 and numbered 32613, in paternity recognition cases, it is mandatory to investigate whether the child has a lineage relationship with another man.

20. As per the decision of the 3rd Civil Chamber of the Supreme Court dated May 13, 2024 and numbered 2024/587 M., 2024/1650 D., published in the Official Gazette July 26, 2024 and numbered 32613, in disputes regarding the determination of whether the employer is a debtor in enforcement proceedings initiated for the collection of labor claims adjudicated by a court decision, the competent court is the Labor Court.

21. Pursuant to the decision of the 6th Civil Chamber of the Supreme Court dated April 18, 2024 and numbered 2024/789 M., 2024/928 D., published in the Official Gazette dated July 26, 2024 and numbered 32613, the receivables arising from the contract of work, except for the contractor's failure to perform its obligations at all or properly due to its gross negligence, are subject to a five (5) year statute of limitations.

22. As stated in the decision of the 9th Civil Chamber of the Supreme Court dated March 19, 2024 and numbered 2024/3465 M., 2024/5084 D., published in the Official Gazette dated July 26, 2024 and numbered 32613, since the separated case is a separate and independent case from the main case, the trial expenses and attorney fee will be ruled separately in the judgement to be established for this case.

23. According to the decision of the 9th Civil Chamber of the Supreme Court dated March 26, 2024 and numbered 2024/4245 M., 2024/5687 D. published in the Official Gazette dated July 26, 2024 and numbered 32613, in order for a female employee to be entitled to severance pay by terminating her employment contract due to marriage, this right must be exercised within one (1) year after the date of marriage.

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24. Pursuant to the decision of the 9th Civil Chamber of the Supreme Court of dated May 9, 2024 and numbered 2024/5595 M., 2024/8046 D. published in the Official Gazette dated July 26, 2024 and numbered 32613, in disputes over who terminated the employment contract, cases where the employee terminates the employment contract with notice but leaves the workplace without complying with the notice period are important. In the event of such a termination by the employee, the employer's notice of termination due to the employee's failure to return to work and failure to provide a justifiable excuse cannot be valued. It should be accepted that the employment contract is terminated by the employee and an evaluation should be made on the employer's claim for notice compensation.

25. Pursuant to the decision of the 12th Civil Chamber of the Supreme Court dated June 13, 2024 and numbered 2024/3775 M., 2024/6302 D. published in the Official Gazette dated July 26, 2024 and numbered 32613, in the event of a sale for partition and dissolution of the partnership, the sales officer will be determined by the Civil Court of Peace hearing the case. The duty of examining the complaints against the actions of the salesclerk will also belong to the Civil Court of Peace deciding on the dissolution of the partnership.

26. According to the decision of the Constitutional Court with application number 2020/32967 and dated April 18, 2024 and published in the Official Gazette dated July 31, 2024 and numbered 32618, criminal investigations carried out to shed light on the actions of persons who carry out armed activities against security forces must be carried out with reasonable speed in order to maintain the commitment of other individuals in the society to the rule of law and to prevent the appearance of tolerance or indifference to unlawful acts.

27. Pursuant to the decision of the Constitutional Court with application number 2020/32967 dated April 18, 2024 and published in the Official Gazette dated July 31, 2024 and numbered 32618, in order for the termination of the employment contract by the employer due to the words uttered by the employee at the workplace to be considered within the scope of valid reasons arising from the employee's behavior under Article 18 of the Labor Law numbered 4857, it must be demonstrated by the employer with sufficient grounds that the continuation of the employment contract cannot be expected from the employer.

Should you have any queries on the above, please contact us.

Contact



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Founding Partner

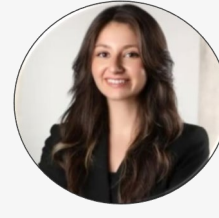
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