

BİÇER GÜNER

Attorneys-at-Law

SEPTEMBER 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 September 2024 are provided.

1. According to the decision of the 3rd Civil Chamber of the Konya Regional Court of Appeals (“RCA”) dated September 2, 2024, and numbered 2024/1073 M., 2024/1203 D., in cases of damage arising from the activities of businesses that pose a significant level of danger, the business owner and, if any, the operator, are jointly and severally liable. The decision emphasized that this liability arises irrespective of whether the business owner or operator is at fault, whether they have fulfilled their duty of care, or whether any malfunctions or deficiencies exist in the business. In many instances, the existence of fault or its role in causing the damage cannot be clearly identified or proven. Furthermore, even if the responsible person or business has taken all necessary precautions and fully met their supervision and oversight obligations, it is not always possible to prevent damage in such enterprises. Therefore, for the liability of a hazardous business to arise, it is sufficient that the damage occurs and that a causal link is established between the damage and the business activities. In other words, when damage results from the operation of the business or its objects, the business owner or operator is liable for compensating the damage.

2. According to the decision of the 12th Civil Chamber of the Istanbul RCA dated September 3, 2024, and numbered 2024/1219 M., 2024/1193 D., cases for the issuance of loss certificates have consequences not only for the plaintiff but also for third parties who are not part of the litigation. Consequently, the investigation should not be confined solely to the plaintiff's claims and evidence. It must be examined whether the documents for which a loss certificate is requested are among those the merchant is obligated to preserve, whether the merchant exercised the necessary care in preserving these documents, whether the books subject to certification were duly certified, whether any investigations or inquiries are ongoing regarding these records, and whether the alleged incident occurred at the places where the merchant operates. These inquiries, along with obtaining the relevant commercial registry records, should ensure that the incident is ascertained without any doubt.

3. According to the decision of the 5th Civil Chamber of the Sakarya RCA dated September 9, 2024, and numbered 2024/1181 M., 2024/1181 D., it was ruled that contracts involving the supply of goods or services, including construction, brokerage, and insurance contracts, are considered consumer transactions. Therefore, since claims arising from life insurance contracts fall under consumer transactions, the competent court for such cases is the consumer court.

4. In the decision of the 43rd Civil Chamber of the Istanbul RCA dated September 19, 2024, and numbered 2024/1320 M., 2024/1258 D., it was determined that legal entities are considered separate and independent legal subjects from the individuals who compose them. Therefore, even if legal entities share common shareholders, they maintain separate personalities and assets. However, in exceptional cases where the legal personality is abused to evade obligations, the corporate veil may be pierced, and the assets of individuals or related entities may be treated as a single entity. The piercing of the legal entity veil is an exceptional case and in order for this situation to be valid, in addition to situations such as the same commercial center and field of activity, the same or close relatives of the company partners, it is necessary to show that there is an economic integrity between the legal entities and the existence of actions such as maliciously smuggling goods or making it impossible to collect receivables by hiding behind the legal entity veil, these facts must be proven.

5. According to the decision of the 4th Chamber of the Council of State dated May 29, 2024, and numbered 2023/10529 E., 2024/3509 K., published in the Official Gazette on September 19, 2024, administrative fines that must be credited to the general budget can only be pursued and collected under the provisions of the Law No. 6183 on the Collection of Public Receivables, provided that the administrative sanction decisions regarding these fines have become final. Therefore, any payment order issued for the collection of an administrative sanction that has not yet finalized as of the issuance date must be annulled.

6. According to the decision of the Constitutional Court dated April 18, 2024, and numbered 2021/5135, published in the Official Gazette on September 18, 2024, in full remedy actions filed for compensation of damages caused by administrative actions, two conditions must be met for the administration to be held liable for compensation: first, there must be an administrative action, and second, there must be damage resulting from this action. Additionally, a causal link must exist between the damage and the administrative action. Furthermore, it is accepted that the statute of limitations for filing a lawsuit will commence from the date when the administrative nature of the action, the damage caused, or the causal link between the action and the damage becomes known or can be demonstrated.

7. According to the decision of the Constitutional Court dated June 5, 2024, and numbered 2021/50842, published in the Official Gazette on September 24, 2024, in order for an employment contract to be terminated on the grounds that the employee is alleged to have links or associations with terrorist organizations, the employer must present personalized, convincing reasons showing that the suspicion towards the employee is serious, strong, and objective. Therefore, for the termination to be justified, the evidence suggesting the employee's potential connection with a terrorist organization must be clearly specified, and a rationale must be provided explaining how this evidence serves as grounds for the termination.

8. According to the decision of the Constitutional Court dated May 2, 2024, and numbered 2020/38733, published in the Official Gazette on September 16, 2024, a fair balance must be struck between the employee's right to freedom of expression and the employer's right to protect their honor and reputation. In assessing this balance, several factors must be considered such as where, with whom, and under what conditions the statements were made, the person's intent, whether the employee acted in good faith, whether the freedom of expression was used merely to harm third parties, the importance of the public debate at issue, the weight of the contribution made by the statements or expressions to the debate, as well as the impact of the expressions on the targeted person's life.

9. According to the decision of the 9th Civil Chamber of the Supreme Court, dated July 4, 2024, and numbered 2024/8322 M., 2024/10578 D., published in the Official Gazette on September 14, 2024, even if the right to a receivable exists, the statute of limitations will only begin to run from the date on which the right becomes enforceable.

10. According to the decision of the 9th Civil Chamber of the Court of Cassation, dated June 27, 2024, and numbered 2024/7673 M., 2024/10230 D., published in the Official Gazette dated September 14, 2024, and numbered 32662, in employment contracts containing a foreign element, even if the applicable law has been chosen, if the contract is signed in a language that the employee cannot prove they understand, this will not be binding on the employee in terms of the applicable law.

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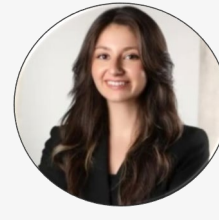
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