Legality

"A seminal publication of Şengün Group"

August - September 2023 | E-Bulletin

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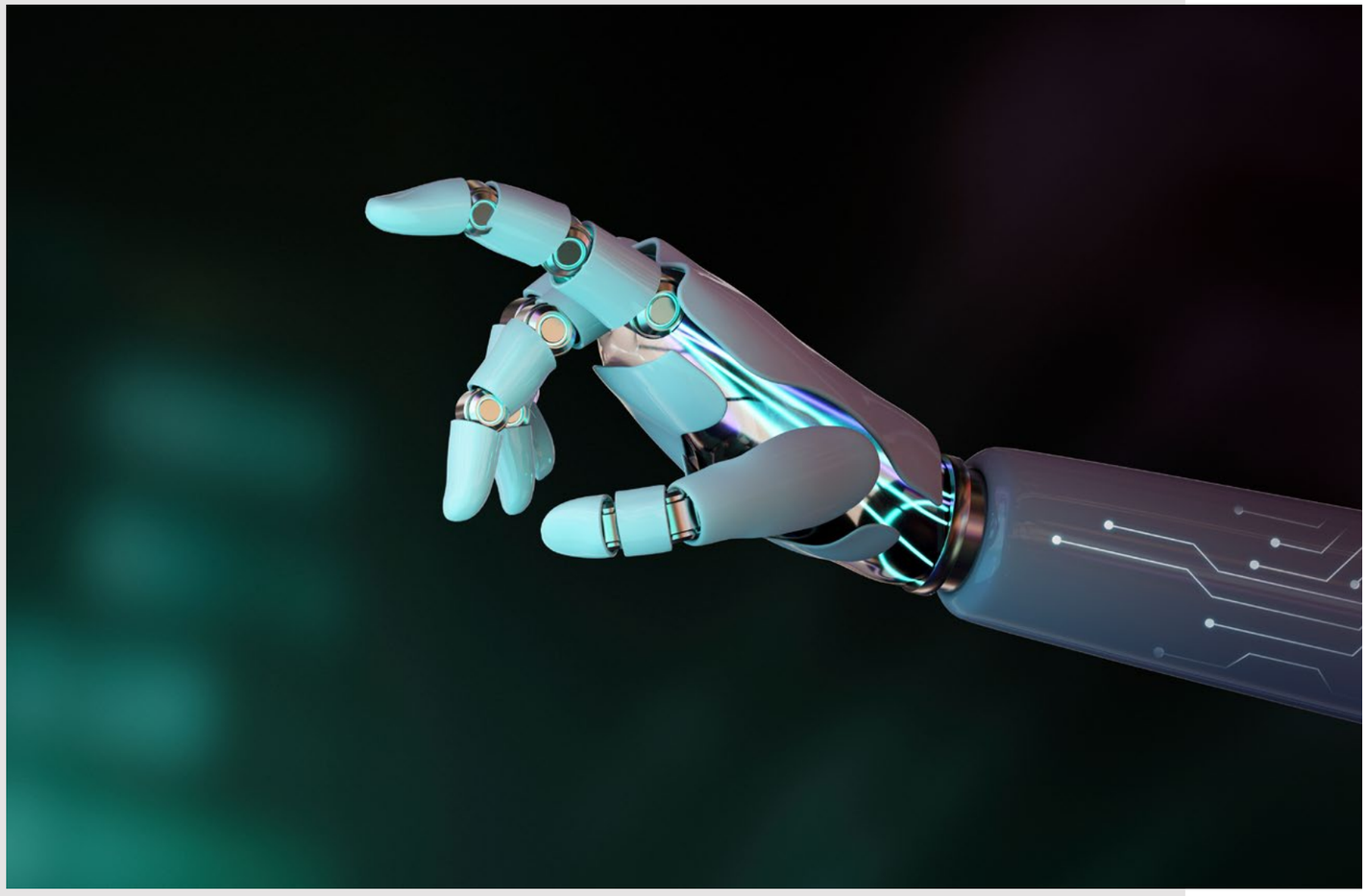

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Editor’s Note

Dear Reader,

We are delighted to reconnect with you through our August-September 2023 issue, where Şengün Academy compiles national and international developments and shares detailed and transparent information tailored to various industries.

Accompanied by articles, we delve into the legal aspects of remote work and employer responsibilities, as well as provide insights into recent developments in the field of artificial intelligence and the law.

As our guest sector of the month, we explore the mining industry, evaluating mining licenses, transfers, and royalty agreements.

In our special day section, we commemorate World Peace Day on September 21st and take a historical journey through its significance.

In our “News to the World” section, we comprehensively review the latest regulations, decisions, notifications, laws, regulations, and amendments related to national and international relations.

In “World News” we present global events with a commitment to transparency.

Under the heading “News from Şengün,” we share updates from our team.

Enjoy reading!

Istanbul, August-September 2023
Şengün Academy

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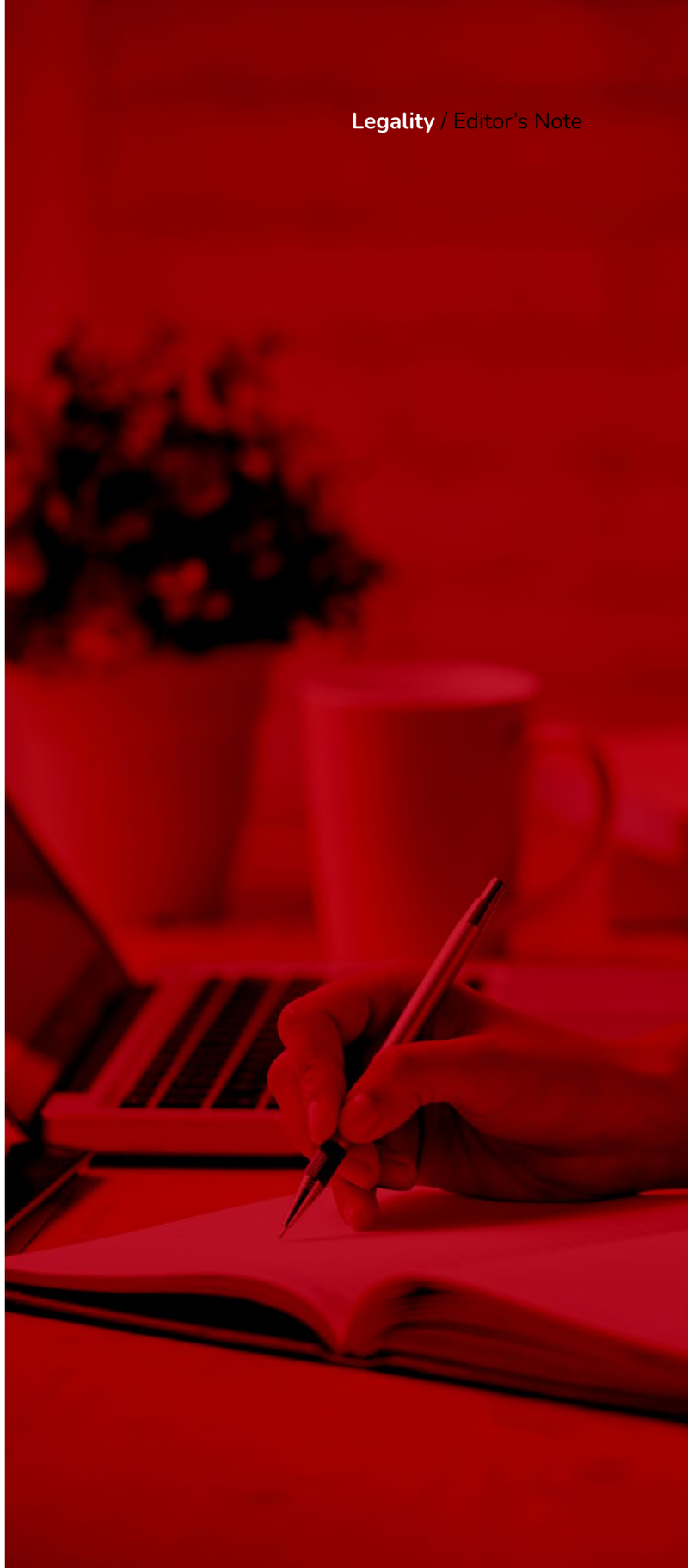

Articles

Article

Legal Dimensions of Remote Working and Obligations of the Employer

Remote working is a working method that allows employees to work from home or a place other than the workplace with technological communication tools.

Remote working is firstly regulated under the title of “On-call work and remote working” in Article 14 of the Labor Law, and in the last paragraph of the said article, it is stated that other issues not regulated in the text of the article shall be determined by regulation. Accordingly, the Regulation on Remote Working issued by the Ministry of Family, Labour and Social Security entered into force after being published in the Official Gazette dated 10 March 2021.

I. Form and Content of the Employment Contract

In Article 5 of the Regulation on Remote Working, in the section titled “Principles and Procedures of Remote Working”, it is stated that employment contracts regarding remote working shall be written. Pursuant to the relevant article, the employment contracts to be concluded for remote working shall include provisions on the definition of the work, the way of performing the work, the duration and location of the work, the wage and issues regarding the payment of the wage, the work tools, equipment provided by the employer and the obligations regarding their protection, the employer’s

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The employment contracts to be concluded for remote working shall include provisions on the definition of the work, the way of performing the work, the duration and location of the work, the wage and issues regarding the payment of the wage, the work tools, equipment provided by the employer and the obligations regarding their protection, the employer’s communication with the employee, and general and special working conditions.

communication with the employee, and general and special working conditions.

The employment contract may be made directly remotely or the existing employment contract may be converted to remote working. However, in any case, it is essential that the contract to be made meets the conditions specified in the Regulation and is in writing.

Pursuant to the regulation, it is essential that the employer provides the materials and work tools required for the production of goods and services for the remote worker, unless otherwise agreed in the employment contract. In case the work tools are provided by the employer, the list of work tools indicating the price of them on the date of delivery to the employee shall be delivered to the employee in writing by the employer, and a signed copy of the document delivered to the employee shall be kept by the employer in the employee’s personnel file.

The exception to the requirement of a list of work tools to be written is regulated in article 7/2 of the Regulation as “If the list of work tools is issued as an annex

to the employment contract within the employment contract or on the date of the contract, it is not required to issue a written document." Therefore, if the list of work tools is made as an annex to the labour contract, it will not be required to be issued in writing.

II. Determination of Working Place and Working Time

The place, time interval and duration of remote working should be specified in the employment contract. Determining the workplace by contract is an issue that reveals the "definition of the workplace" and is important in determining whether the accident is within the scope of work accident in possible work accidents.

The employer is obliged to inform the worker about occupational health and safety measures, to provide the necessary trainings, to provide health surveillance and to take the necessary occupational safety measures regarding the equipment provided, taking into account the nature of the work performed by the remote worker.

The working time shall be regulated on the condition that it adheres to the limitations stipulated in the legislation, and the parties may make changes in the working hours later.

Article 63 of the Labor Law states that "In general terms, the working time is maximum forty-five hours per week. Unless otherwise agreed, this period shall be equally divided and applied to the working days of the week in the workplaces. The working time of workers working in underground mining works is maximum seven and a half hours a day and maximum thirty-seven and a half hours a week.

With the agreement of the parties, the normal weekly working time may be distributed differently to the working days of the week in the workplaces, provided that it does not exceed eleven hours a day. In this case, the average weekly working time of the employee within a two-month period may not exceed the normal weekly working time" and the working time and time interval is limited by this article.

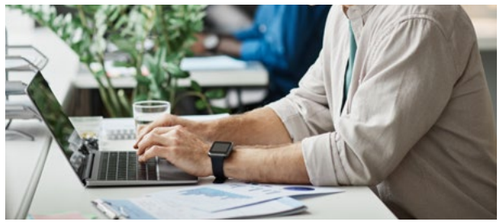
After the working time is determined in accordance with the legal restrictions in the employment contract, if the employer requests overtime work, the employer shall notify the worker of this request in writing. Because, in accordance with the legal regulations, overtime work is only done upon the written request of the employer and with the acceptance of the employee, in accordance with the provisions of the legislation.

III. Protecting Personal Data and Ensuring Work Safety

Article 11 of the Regulation regulates the employer's obligations regarding data protection. According to this; The employer shall inform the remote employee about the protection and sharing of data about the workplace and the work he/she does and take the necessary measures in this direction. The definition and scope of the data to be protected will be determined by the employer within the contract. It is mandatory for the remote employee to comply with the business rules determined under the contract.

In accordance with Article 12 of the Regulation, the employer is obliged to inform the worker about occupational health and safety measures, to provide the necessary trainings, to provide health surveillance and to take the necessary occupational safety measures regarding the equipment provided, taking into account the nature of the work performed by the remote worker.

IV. Jobs that Remote Work Cannot Be Performed



There are some jobs where remote work cannot be performed even if the parties agree on it. These jobs are listed in Article 13 of the Regulation on Remote Working. According to this;

i) Remote work cannot be performed in jobs involving working with dangerous chemicals and radioactive materials, processing these materials or working with the wastes of these substances, working processes that have the risk of exposure to biological factors.

ii) The public institutions and organisations receiving the service shall determine in which of the works carried out by public institutions and organisations through service procurement in accordance with the relevant legislation and the units, projects, facilities or services of strategic importance in terms of national security, remote work cannot be carried out by the public institutions and organisations receiving the service.

V. Transition to Remote Working

While the employment relationship may be established directly with a remote work contract, the employment contract of the employee who is currently working at the workplace may be converted into a remote work contract if the worker and the employer agrees.

With the Regulation, the issues related to the worker's request to work remotely are listed as follows;

i) First, the request from the worker shall be in writing.

ii) The request of the employee shall be evaluated by the employer in accordance with the procedure determined at the workplace. While evaluating the request, the suitability of remote working due to the nature of the work and the worker and other criteria to be determined by the employer will be used.

iii) The result of the evaluation regarding the worker's request shall be notified to the worker within thirty days in the same way as the request was made.

iv) If the request is accepted by the employer, a contract shall be made in accordance with the issues specified in Article 5 of the Regulation.

v) The worker who has switched to remote work may request to work at the workplace again with the same procedures. The employer shall consider the request as a priority.

vi) In the event that remote working is to be implemented in all or part of the workplace due to compelling reasons specified in the legislation, the request or approval of the employee will not be sought for the transition to remote working.

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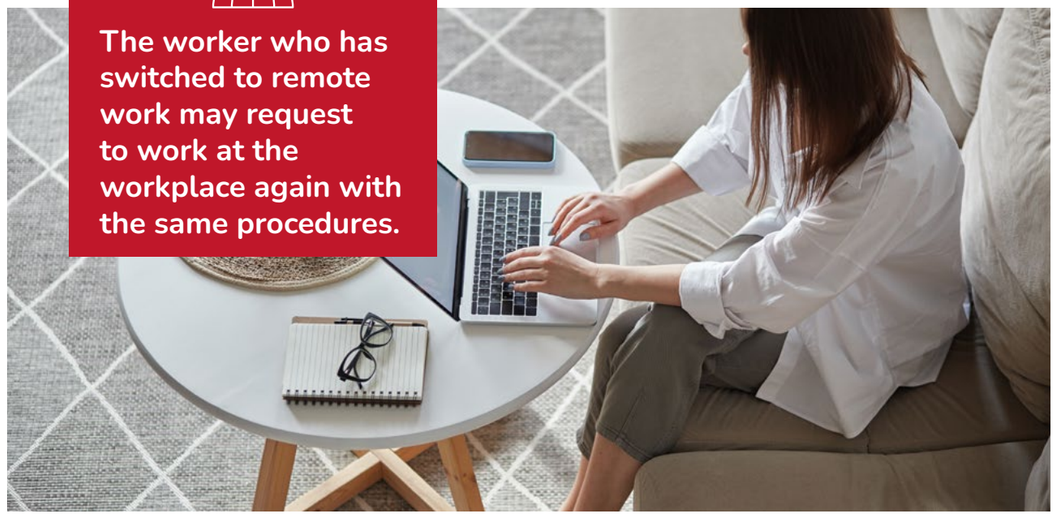

VI. Conclusion

In order for remote working to proceed in an efficient and sustainable manner, first of all, remote working employment contracts shall be arranged in accordance with the Labour Law and the Regulation on Remote Working. The contracts should include detailed and clear information about the working place, working hours, provision and use of work tools. In addition, the contracts should be drafted in accordance with the rules of good faith and the principle of equality, and the employer should not treat the remote worker differently from the equivalent employee unless there is a substantial reason.

Finally, employers shall fulfil all the obligations set out in the Regulation completely and accurately. It would be inevitable that employers who receive the necessary legal support on occupational health and safety and the protection of personal data to have positive effects in remote working business life.

İrem Öztürkmen, Associate

Article

Law 2.0: The Artificial Intelligence Revolution

In an age where technology permeates every aspect of our lives, it is evident that artificial intelligence, the most influential and transformative force in the modern world, also represents the most prominent embodiment of collective imagination. Serving as the central character of the Fourth Industrial Revolution, artificial intelligence is no longer confined to science fiction films. It actively plays a role in various sectors, including healthcare, law, automotive, finance, education, among others, accelerating the transformation of dreams into reality and becoming an integral part of society, much like a cornerstone.

When artificial intelligence is mentioned, it tends to evoke utopian visions and dystopian fears in the minds of people. However, this article will focus on the idea that artificial intelligence is not merely a technological revolution limited to increasing efficiency, streamlining integration processes, and solving complex problems. It is a gateway to unexplored possibilities and the most powerful ally of human progress, yet to be fully recognized.

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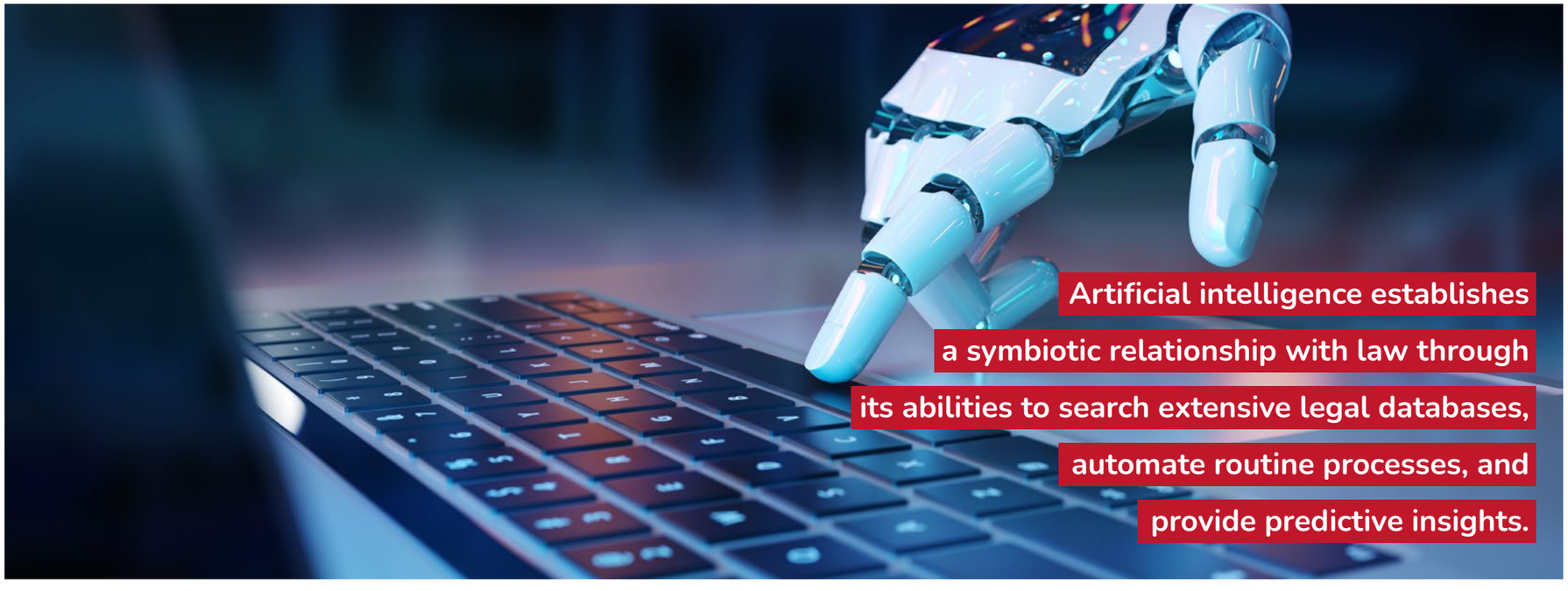
The intersection of law and artificial intelligence is a fascinating and complex point where technology meets justice. Law, which has been built upon centuries of precedents and human judgments and is considered the backbone of society, is now being questioned and undergoing seismic changes thanks to artificial intelligence. The convergence of technology and law, known as 'Legaltech,' not only automates routine tasks but also strengthens the essence of legal applications. Artificial intelligence establishes a symbiotic relationship with law through its abilities to search extensive legal databases, automate routine processes, and provide predictive insights. This relationship presents a transformative alliance that represents the harmony between meticulousness and human judgment, while also raising ethical and regulatory issues, signaling some of the most significant shifts in its history.

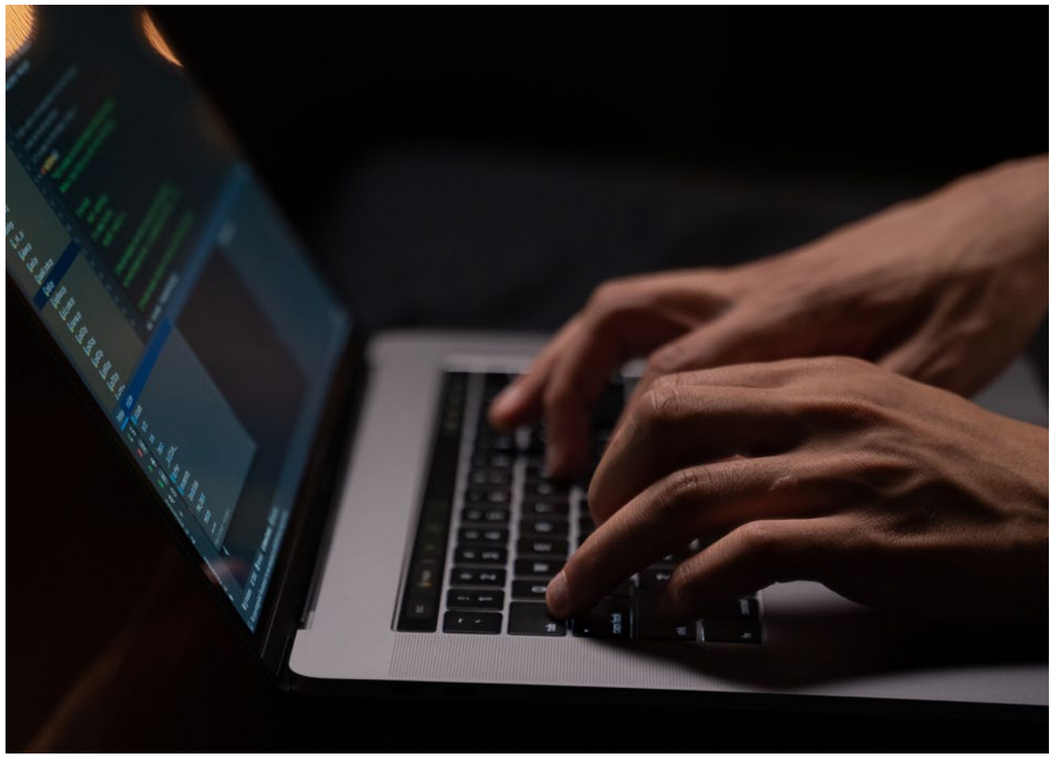
Artificial intelligence has several transformative and innovative applications in the field of law. Undoubtedly, one of the most prominent areas is data research and documentation processes. Law is generally an area where data is heavily processed and documented. When done manually, this process is time-consuming and prone to errors. AI-powered platforms have emerged as a game-changer in this context, using natural language processing and machine learning algorithms to quickly scan, index, and analyze legal data. These platforms can scan decades of precedents, laws, and journals within seconds to provide precise and contextually relevant results, cross-reference information, and highlight potential risks and inconsistencies. They can even automate the creation of contracts and privacy agreements while storing and processing data. AI-powered platforms are frequently used in Alternative Legal



Service Providers (ALSPs), speeding up processes, improving document quality, and making it easier to avoid potential errors.

Another impact of artificial intelligence on law extends to dispute resolution and predictive analytical processes. Traditional dispute resolution methods can be effective but often time-consuming and costly. AI can analyze rich data obtained from past court decisions, settlements, and even social media sentiments to predict the outcomes of legal disputes with considerable accuracy and provide neutral recommendations, optimizing the resolution process.

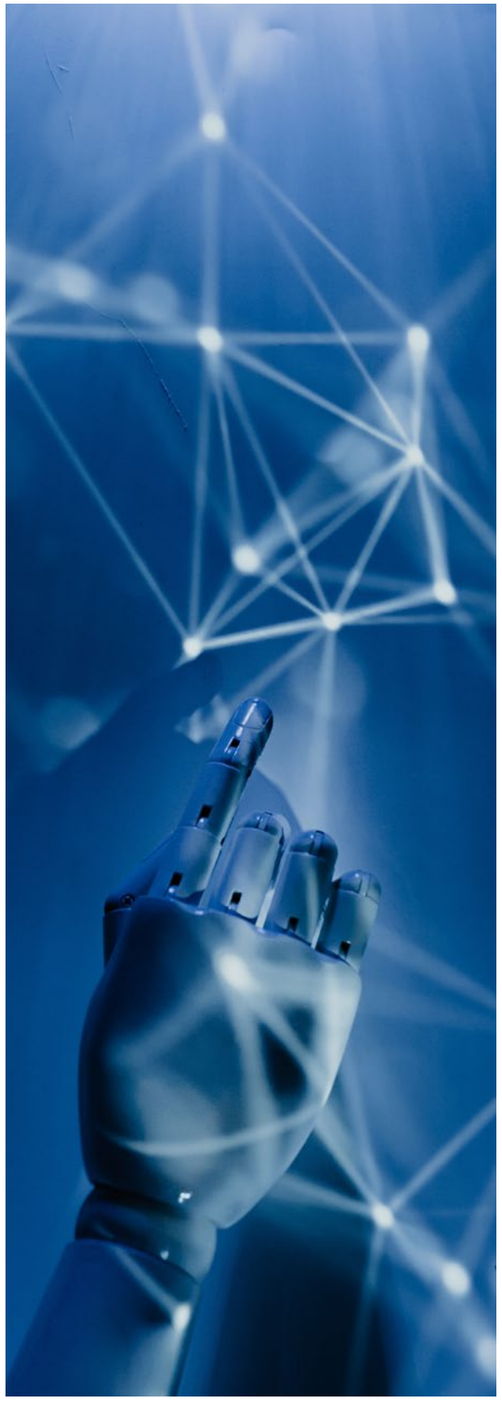
While social dynamics may suggest that AI can only be an assistant to lawyers in this field, its influence in completing tasks and gaining critical insights cannot be denied.



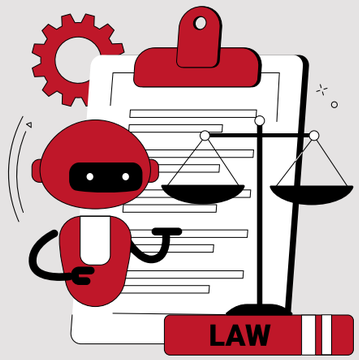
Even alternative dispute resolution methods such as arbitration and mediation are undergoing a transformation through interaction with artificial intelligence. AI can use algorithms to analyze the essence of a party's case, assist arbitrators in identifying crucial issues, evaluating data, and expediting the process. In mediation, tools equipped with emotional intelligence algorithms can help mediators understand party dynamics and predict responses to proposed solutions. Platforms like Smartsettle use AI to create negotiation simulations and suggest optimal settlement points based on parties' preferences and constraints. Some AI platforms even offer virtual mediation services, AI-powered chatbots, and virtual mediators, making faster and more cost-effective resolutions possible. While social dynamics may suggest that AI can only be an assistant to lawyers in this field, its influence in completing tasks and gaining critical insights cannot be denied.

All of these developments have been made possible through Legaltech, which enables the integration of technology into law. Legaltech makes legal processes more efficient, transparent, and accessible, ranging from AI-powered document automation to blockchain-supported smart contracts. For example, platforms like **Lex Machina** apply machine learning to provide legal analysis, helping practitioners identify trends and make informed decisions. Contract management software like **ThinkRiver** and **LawGeex** review and draft contracts, identify potential risks, and ensure compliance with legal standards. Initiatives like **ROSS Intelligence** use natural language processing to understand legal questions and provide instant answers from a comprehensive legal database, making AI a valuable tool for legal research. In the field of e-discovery, platforms like **Relativity** use AI to sort and analyze large volumes of electronically stored information for legal proceedings. Mass funding platforms like **LexShares** use AI to evaluate the potential success of litigation cases. Additionally, the development of 'robot lawyers' like **DoNotPay** has made legal assistance more affordable and accessible, helping users contest parking tickets, schedule appointments, and even navigate small claims courts. Legaltech is not limited to the professional arena alone. AI-powered platforms like **LexisNexis** enhance the learning experience for law students. Legaltech investments come not only from the legal and software industries but also from various connected sectors seeking to automate processes and accelerate them. Therefore, the current developments are just the pioneers of what we cannot even imagine in the years ahead.

While the impact of artificial intelligence in the legal sector is undoubtedly groundbreaking, it is essential to carefully examine the ethical consequences. Legaltech applications raise critical questions about transparency, accountability, bias, and discrimination. The algorithms used in AI training, although effective, can inadvertently perpetuate biases present in the data they are trained on, potentially leading to biased decisions that disproportionately affect specific groups. For example, if an AI system is trained on past court decisions that exhibit racial or gender bias, it may carry these biases into its predictions or recommendations. The often-opaque nature of AI systems, commonly referred to as the 'black box' phenomenon,



further raises concerns by hindering accountability and potentially undermining trust in AI-powered legal tools. To mitigate these risks, there is a growing consensus on the need for clear ethical rules, strict oversight processes, and the development of explainable AI models to ensure transparency and fairness in AI-powered legal applications. In this arena, where justice and fairness are central, being cautious about preserving ethical standards in AI applications is not merely an option but a fundamental necessity.



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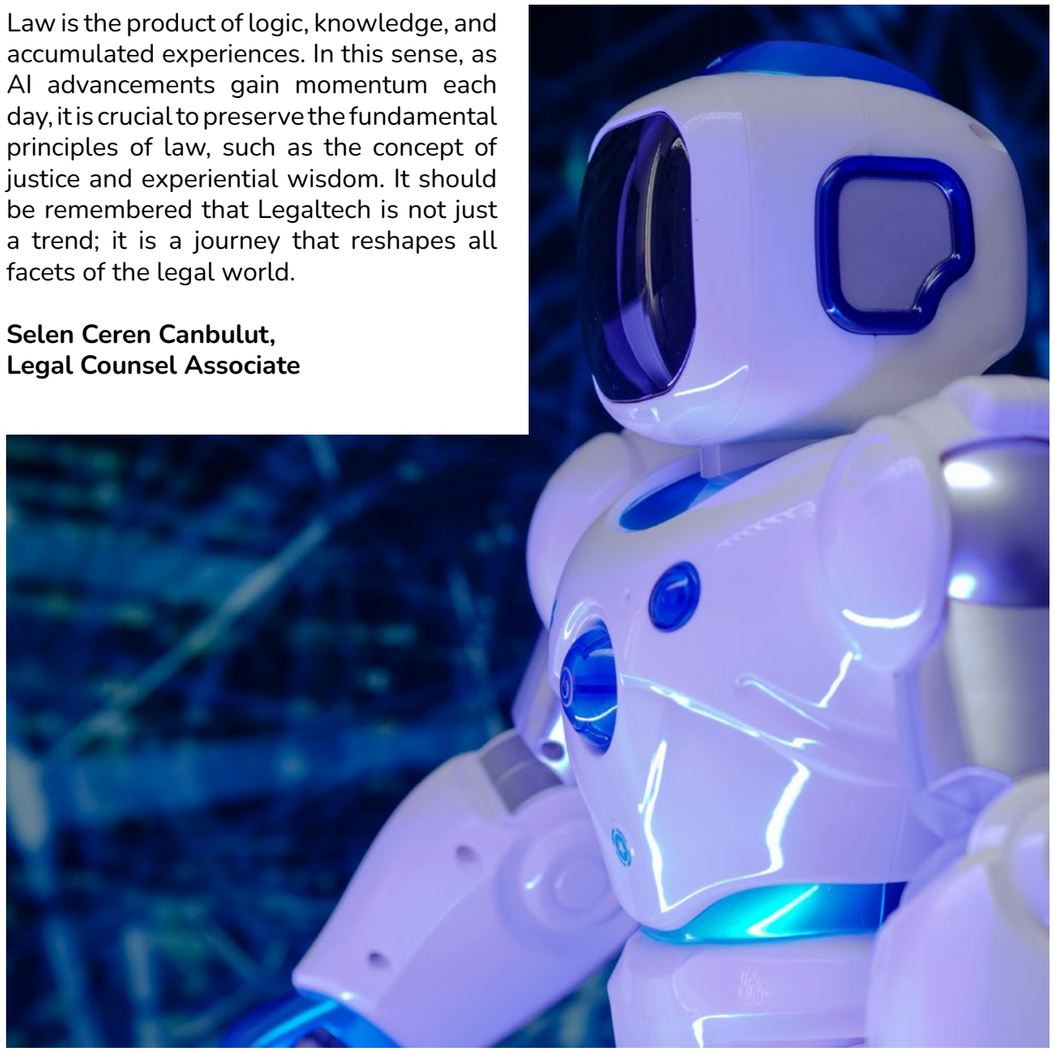
Law is the product of logic, knowledge, and accumulated experiences. In this sense, as AI advancements gain momentum each day, it is crucial to preserve the fundamental principles of law, such as the concept of justice and experiential wisdom. It should be remembered that Legaltech is not just a trend; it is a journey that reshapes all facets of the legal world.

Selen Ceren Canbulut,
Legal Counsel Associate



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Guest Sector

Guest Sector

Mining Licenses, License Transfer and Royalty Agreements

Mine is a mineral of great importance and economic value for all civilizations throughout human history since prehistoric times. Mining, on the other hand, is a process that combines the activities of exploration, extraction and operation of underground minerals with appropriate techniques.

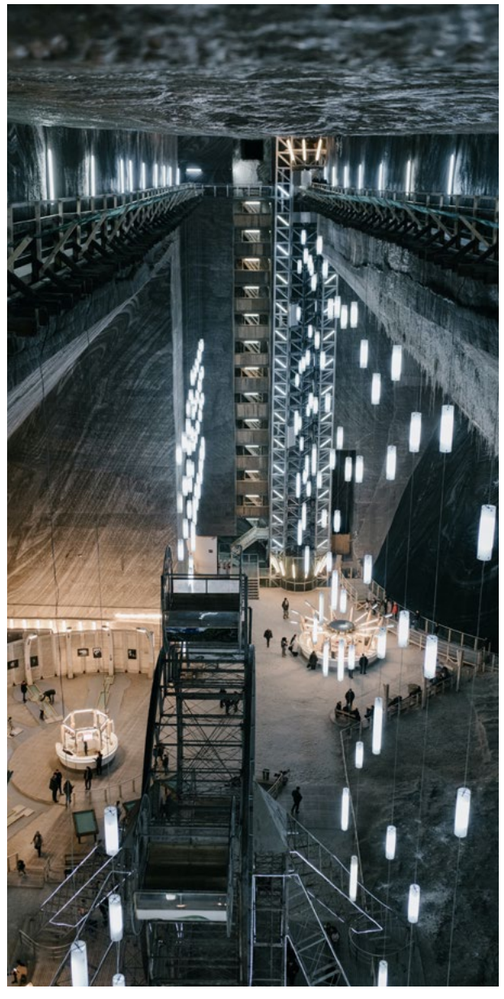
The subject of mining law is the ownership of mines and the mining rights, obtaining and transferring exploration license and operating license, processing, transportation, trade, and EIA process.

In Turkey, Mining Law No. 3213 ("Law") and the Mining Guidelines ("Guidelines") are the most fundamental regulations regarding mining law. Although the Law and the Guidelines contain detailed regulations, disputes arising in practice are resolved by judicial precedents. Since mining law covers activities such as the extraction and sale of minerals, the prevention of environmental pollution, the supply of workers working in these processes and ensuring occupational safety obligations, there is no doubt that mining legislation is intertwined with legislation such as labor law, environmental law, law of obligations and property law.

In this article, we will discuss mining licenses, transfer of mining licenses and royalty agreements.

II. Legal Nature of Mining Licences

License is defined in the Law as "the document issued by the General Directorate for the exploration and operation of mines within the framework of the procedures and principles specified in the regulation". As can be understood from the aforementioned definition, there are two types of licenses. These are exploration license and operation license.



[1] Çitil, B., 2021, Tüm Yönleriyle Maden Hukuku, Seçkin Yayınları, S.61.

A. Exploration License:

Exploration license is defined in the Law as "Authorization certificate given to enable mineral exploration activities within a certain area". The exploration right granted by the exploration license starts from the date of the license and ends with the expiry of the license. The right of exploration is a right that does not require the first understanding of whether the mine will be found and whether it will be economic or not, and more precisely, it is a right that can be granted without the condition of concrete technical data and findings regarding the mine[1].

The provisions regarding exploration licenses are regulated between Articles 16 and 18 of the Law. The Law limits the mines subject to the exploration license and the hectares to be explored according to the mines, and the procedure for granting the exploration license and the required information and documents are regulated in detail in the Regulation.

B. Operating License:

The operating license is defined in the Law as "Authorization certificate given to perform operational activities". Articles 24 et seq. of the Law and Articles 23 et seq. of the Regulation regulates the operating license provisions.

The conditions for granting an operating license are as follows: (i) license requests shall be made within the period specified in the Law, (ii)

the base fee for the operating license and the fee for the operating license must be deposited to be recorded as income in the budget of the General Directorate of Mining Affairs, (iii) the operating project and financial qualification documents shall be prepared by authorized persons, (iv) REM or e-notification address must be provided to the General Directorate of Mining and Petroleum Affairs by the license holder.

Operating licenses are granted in the areas with exploration licenses and it is another important consideration that these areas should be large enough to carry out mining activities.

III. Transfer of Licences

The transfer of mining licenses, types of transfer, transfer to the state, cancellation of the license and measures to be taken in abandoned areas are regulated between Articles 82 and 86 of the Regulation. In this context, there are four types of transfer.

1. Transfer by Contract

Mining licenses and certificates may be transferred to a third party upon fulfilment of the conditions set out in Article 82 of the Regulation. These conditions are as follows: (i) the requests of the licensee and the transferee regarding the transfer, (ii) there is no legal impediment for the transfer, (iii) the transferees meet the conditions such as financial capability, (iv) the transfer is approved by the Minister of Energy and Natural Resources, (v) the payments related to the license are completed, (vi) the transfer is annotated in the mining registry, (vii) the operating activity report and unused dispatch slips for the period until the transfer date are submitted to the General Directorate of Mining Affairs. Upon fulfilment of the conditions, the transferee shall have the mining right.

2. Inheritance

In inheritance transfer, rights and obligations are transferred as a whole and license and certificate rights and rights related to exploration cannot be divided even with the consent of the heirs. The point to be considered in the transfer by inheritance is that the heirs should carry out the transfer procedures within six months from the date of death. If no application is made to the General Directorate for transfer procedures within six months following the date of death, the license shall be cancelled (Article 83/6 of the Law).

3. Transfer by Enforcement

Licenses may be transferred and devolved by selling them through enforcement or bankruptcy. The important point to be considered here is to notify the General Directorate of Mining Affairs of this situation before starting the sale process. The Regulation also determines the conditions that the persons who will participate in the sale should have and real or legal persons who meet these conditions may participate in the sale of the licenses in this way.

4. Cancellation of the License

The Regulation regulates the measures and obligations to be taken in the event that mining licenses are revoked or these areas are abandoned in Article 85. Abandonment of the whole or part of the site can be made within the license period by the licensee or the authorized person who may request abandonment by fulfilling the conditions and obligations specified in the Regulation.

Operating licenses are granted in the areas with exploration licenses and it is another important consideration that these areas should be large enough to carry out mining activities.

IV. What is a Royalty Agreement?

Royalty agreements are defined as “agreements concluded by the licensee for the whole or part of the license area in order to provide third parties or institutions with the right of disposal for the purpose of operation and utilization of the minerals in the license areas”.

In this type of contract, the licensee is under the obligation to make the licensed mining area suitable for the royalty holder’s use and mine production, while the royalty holder is obliged to make payments in the form of rent for the produced mine. The royalty agreement may be made in general written form or concluded before a notary public. In addition, pursuant to Article 101/2 of the Regulation, it is obligatory to annotate these agreements in the licensee register registered in the Mining Registry for information purposes.

Another important issue regulated in the Regulation is the limitations imposed on royalty agreements. Within this scope; (i) royalty agreements may only be concluded for licenses that have entered the operation phase, (ii) sub-royalty agreements cannot be concluded and (iii) royalty agreements cannot be concluded for all mining operations. As a matter of fact, for coal mining licenses where underground mining method is used, it is prohibited to conclude royalty agreements for some or all of the area.

V. Conclusion

Mining is a process that combines the activities of exploration, extraction and operation of underground minerals with appropriate techniques. The subject of mining law is the ownership of mines and the right to operate, obtaining and transferring exploration and operation licenses, processing, transportation, trade of minerals extracted, and the EIA process.

Mining licenses are necessary for mining activities and there are two types of licenses. These are exploration and operation licenses. Mining licenses may be transferred by contract, inheritance, enforcement and cancellation of the license.

Another important type of contract in mining law is royalty contracts, in which the license holder is under the obligation to make the licensed mining area suitable for the royalty holder’s use and mine production, while the royalty holder is obliged to make payments in the form of rent for the produced mine.

Betül Önal, Executive Associate

Legality / Guest Sector

Special Day

Special Day

21 September World Peace Day

The United Nations declared September 1st, the date on which Germany invaded Poland in 1939, as “World Peace Day”, with the aim of not forgetting the destructiveness of a war. However, in the General Assembly held on November 30th, 1981, the date was changed to September 21st.

Unfortunately, the International Day of Peace, also known as World Peace Day, does not imply the absolute attainment of world peace. Even today, we continue to witness wars, armed conflicts, resulting in the loss of hundreds of thousands to millions of lives, injuries, and refugee crises. Moreover, wars often set countries or regions back by years or even decades. Many armed conflicts stem from violations of human rights. Especially in impoverished countries, corruption and similar legal transgressions hinder people from taking their destinies into their own hands.

Despite obstacles such as the increase in refugee numbers, the rise of populism, and nationalism, we believe it is possible to build a culture of coexistence.

The observations of Desiderius Erasmus, a prominent thinker and a major representative of the humanism movement in the 1515 era, are still widely relevant. According to Erasmus, social security, education, or science can only flourish under conditions of peace. Anyone who desires something can only achieve it under predictable circumstances.

Conflicts Should Not Cast a Shadow Over World Peace

Conflicts are necessary components of human coexistence and often emerge as natural consequences of societal change. The goal is not to suppress conflicts but to prevent a violent escalation. Therefore, a policy of peace seeks to eliminate the root causes of unrest. These include unjust distribution of natural resources, both national and global wealth inequalities, suppression of social minorities, human rights violations, and the destruction of natural livelihood resources.

In places where conflicts arise, delicate peace efforts can help improve the strained relationships between conflicting parties and find common solutions. This can lay the foundation for peaceful coexistence. This approach requires long-term and conflict-sensitive commitment. Illicit actions must be identified at an early stage to prevent unlawful acts and enable reconciliation. Therefore, it’s important to involve the affected population intensively in conflict analysis and the development of concepts of peace.

What We Can Do

Everyone can contribute to resolving global conflicts in a more peaceful manner and assist people in living a life of safety and prospects for development. Instead of allowing conflicts to escalate through arms exports and policies that intensify conflicts, you can advocate for stronger cooperation with institutions that promote peace. The more people advocate for peace, the higher the likelihood of peacefully resolving conflicts in the future. At Şengün & Partners Law Partnership, we are doing our utmost to uphold human rights and a culture of peace. We work to implement human rights and a culture of peace.

As Immanuel Kant foresaw (Perpetual Peace, 1795), achieving lasting peace requires us to consider the world as our shared boundary and ensure the possibility of living on it with justice and freedom. This is because the achievement of lasting world peace is an inevitable truth that cannot be discussed without respect for human rights and the overcoming of global poverty.

Hilal Yayla, Associate

News to the World

Legality
News to the World

Compulsory Mediation

Compulsory mediation institution, which is an exceptional arrangement used as a condition of litigation in commercial, employer-employee and consumer disputes in Turkish law; published in the Official Gazette dated 05.04.2023 and numbered 32154 and "7. With the regulation also known as "Judicial Package", it has been extended to be valid from 01.09.2023 in rental disputes.

37 of the Execution and Bankruptcy Law No. 7445 and the Law on Amendments to Certain Laws. a number of innovations have been introduced in the Law on Mediation in Civil Disputes numbered 6325 with its article. The article in question is as follows;

"The following article has been added to the Law No. 6325 to come after Article 18/A.

Mediation as a condition of litigation in some disputes

ARTICLE 18/B- (1) In the following disputes, it is a condition of the case that the mediator has been contacted before the case is opened:

- *Disputes arising from the rental relationship, with the exception of the provisions on the eviction of leased real estate through enforcement without a warrant according to the Law No. 2004.*

- *Disputes related to the allocation of movables and immovables and the liquidation of the partnership.*

• *Disputes arising from the Condominium Ownership Law dated 23.06.1965 and numbered 634.*

• *Disputes arising from the neighbor's right.*

(2) If the parties agree at the end of the mediation process, the agreement document shall be issued in compliance with the limitations set out in the laws and the procedures and principles related to the immovable property.

(3) It is mandatory to obtain an annotation regarding the enforceability of the agreement document issued within the scope of this article, and this annotation is taken from the place where the real estate is located in terms of the agreement documents related to the real estate, and from the place where the mediator works in terms of other agreement documents from the civil court of peace. In the examination that the court will make in terms of the agreement documents related to real estate, it checks the content of the agreement in terms of whether it is suitable for mediation and forced execution and whether the restrictions and procedures and principles contained in the laws related to real estate are complied with; in this context, it may request information or documents from institutions or organizations and open a hearing if necessary.

(4) The provision of Article 18 shall apply to other matters related to the annotation of the enforceability of the agreement document."

Accordingly, in disputes arising from a rental relationship, disputes arising from condominium ownership, neighborly relations and partnership settlement cases will also be covered by compulsory mediation.

For the full Decision, see:

https://www.resmigazete.gov.tr/eskiler/2023/04/20230405-3.htm

Regulation on Inspections and On-Site Inspections Related to Nuclear Energy and Ionizing Radiation

The Regulation on Inspections and On-site Inspections related to Nuclear Energy and Ionizing Radiation, prepared by the Nuclear Regulatory Authority, was published in the Official Gazette dated 11.08.2023 and numbered 32276.

With this Regulation; It is aimed to regulate the procedures and principles about the audits conducted by the Nuclear Regulatory Authority for activities requiring authorization related to nuclear energy and ionizing radiation, as well as the qualifications of the auditor, the form and scope of the audit. In this context;

• Activities related to nuclear energy and ionizing radiation,

• To the persons authorized with the facilities, devices and substances related to these activities

• Audits and on-site inspections of the persons authorized under the authorization regarding the safety, security and nuclear assurance to be carried out for the activities of the contractor, subcontractor, supplier and sub-suppliers of the persons authorized under the authorization it will be realized.

For the full Decision, see:

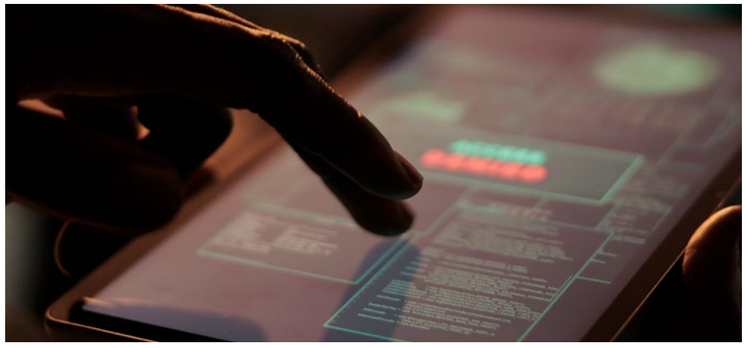
https://www.resmigazete.gov.tr/eskiler/2023/08/20230811-1.htm

Amendment of the Regulation on the Protection of Personal Data Dated 25.07.2023

On 25.07.2023, the “Public Announcement on the Amendment of the Exception Criterion regarding the Obligation to Register in the Data Controllers Registry” was published by the Personal Data Protection Authority. In accordance with the announcement, an amendment has been made to the “annual financial balance sheet total” exception.

Taking into account Article 16 of the Personal Data Protection Law No. 6698 and articles 8 and 16 of the Regulation on the Registry of Data Controllers, it was decided to update the amount of the “annual financial balance sheet total”, which was accepted as a criterion for granting an exception to the obligation to register in the Registry of Data Controllers in accordance with the Board decision dated 19.07.2018 and numbered 2018/87, to 100 million Turkish liras, while it was 25 million Turkish liras, as a result of a re-evaluation in accordance with the economic conditions in our country.

With this amendment; natural or legal person data controllers whose annual number of employees is less than 50 and annual financial balance sheet total is less than 100 million Turkish liras will be exempted from the obligation to register those whose main activity is not processing personal data of a special nature.



For the full Announcement, see: https://www.kvkk.gov.tr/Icerik/7646/Kamuoyu-Duyurusu-Veri-Sorumlulari-Siciline-Kayit-Yukumlulugune-Iliskin-Istisna-Kriterinde-Degisiklik-Yapilmasi-Hakkinda-

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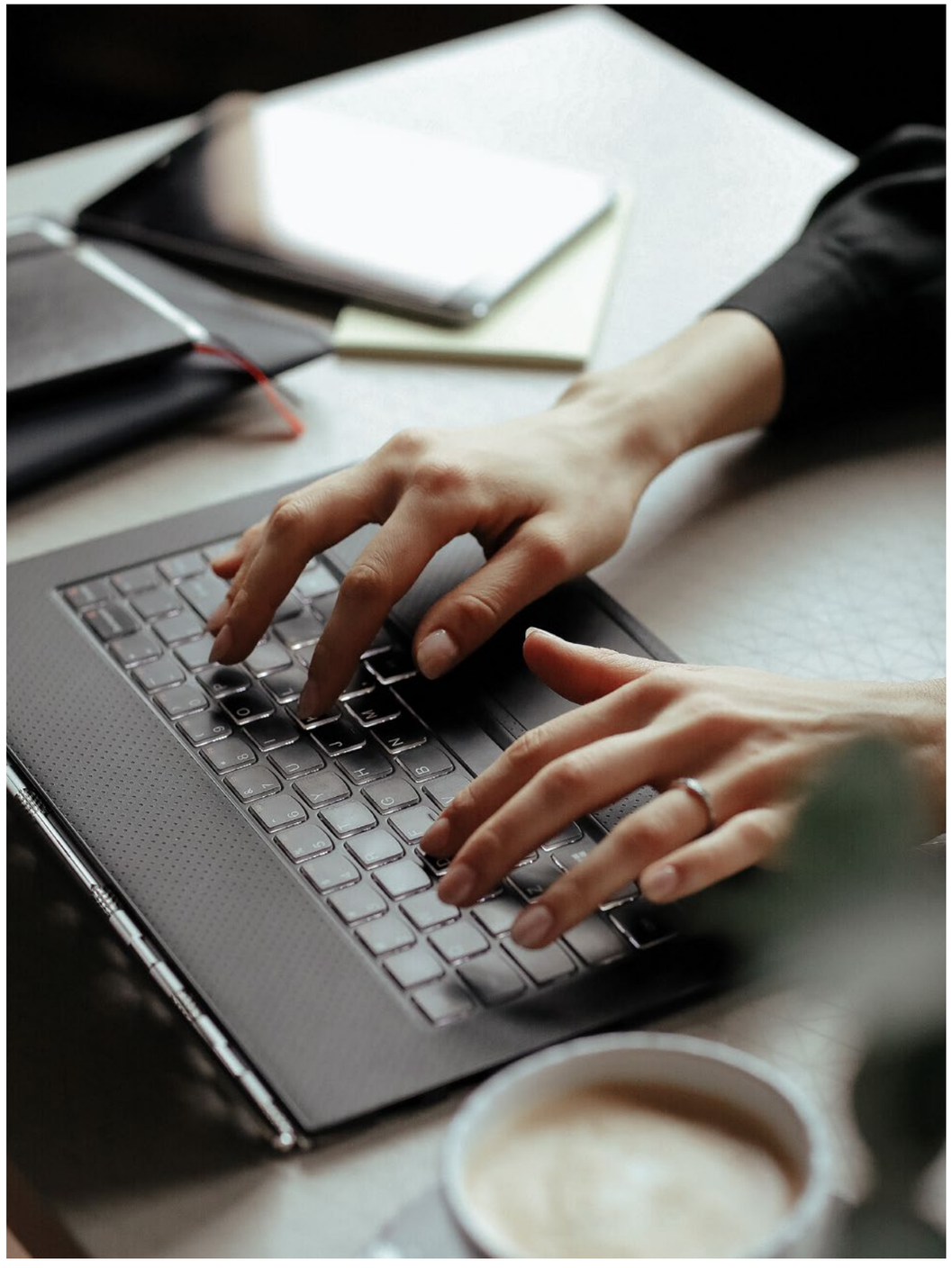

World News

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Tiktok is at Risk of Being Fined in The EU Over The Processing of Children's Data

The Chinese-based social media platform Tiktok is used by more than 150 million people in Europe; the central company ByteDance earned $ 80 million in revenue in 2022. The company; Tiktok! the cases filed against a are within the scope of my EU's data protection authority. Within the scope of the EU's data protection rules, defined as the GDPR, an investigation was launched into whether a violation occurred due to Tiktok's failure to adequately protect the privacy of children between the ages of 13 and 17, which is the age verification limit. The transparency criteria for how children's data is processed are also being investigated in this investigation.

With the decision taken by the European Data Protection Board (EDPB), he may receive a fine due to the method of processing children's data in the EU. With the EDPB's decision, it seems that a serious financial penalty may be imposed on Tiktok by the Irish Data Protection Commission within a month. The amount of the penalty is not yet clear.

The German Federal Labor Court Considered Insulting Messages Written via WhatsApp as a Justified Reason for Termination

How secret is the correspondence in WhatsApp groups? It was decided that people who make offensive, racist or sexist statements about colleagues or Superiors in private groups can be dismissed without notice.

As a result of studying the case of a group of colleagues working at an airline in Hanover, the Federal Labor Court claims that in cases where conversations containing insults and incitement against colleagues and managers become public, the termination of the labor contract is carried out for a justified reason. Thus, it becomes clear that the protection of the confidentiality of communication may not apply in all cases.

“Is a chat Group a kind of fortress, where everything is allowed and a bulwark against labor law sanctions?” the Internet is not a legally free space, it is not a bulwark against the outside world, “ said the employer’s lawyer against the question. BAG ruled that when insulting and inhumane statements were made about supervisors and co-workers in a private WhatsApp chat, workers should expect to be dismissed without notice.

According to the court, only exceptionally, if the employee can safely assume that the chat history will remain confidential, the termination will not be considered justified. If in doubt, members must prove why they trust each other.

Artificial Intelligence-Generated Images Face Copyright Lawsuits

Many artists around the world have noticed that their own artworks are being used to develop artificial intelligence. When Kelly McKernan wrote her own name out of curiosity on an interface used by Stable Diffusion, which offers artificial intelligence-generated visuals, she saw that more than 50 of her Decals had been uploaded here.

Cartoon artist Sarah Anderson, illustrator Karla Ortiz and McKernan sued Stability AI, the company that owns Stable Diffusion. This is not the first case brought against them for infringement of the intellectual property in question. Artificial intelligence firms are increasingly facing copyright infringement claims.

Dutch artist Eva Toorenent,taking five other artists with her, founded an association for the regulation of artificial intelligence in Europe. Toorenent summarizes its goals as “protecting artists and copyright holders against aggressive artificial intelligence firms”.

National Labor Relations Board Reset Election Standards

The National Labor Relations Board (‘Board’) broke away from fifty years of tradition and embarked on a new structuring path. This new structure includes changes in two important areas;

i. What can employers do against union demands?

ii. If an unfair workplace practice is implemented before the election after the applications made to the employer, when can the employer start the bargaining process?

It’s about their subject.

In earlier times, Supreme Court case law was clear and precedent was simple. According to this rule; An employer may not violate the National Labor Relations Act (the Act) by refusing to recognize a union based solely on the union’s claim to represent a majority or workers. An employer may recognize only the union that claims majority support or may choose not to take any active action. Thus, the union could request an election through a process overseen by the Board.

Following the election request, processes are carried out within the scope of “freedom of expression”, but if it is determined that the union or the employer has engaged in illegal behavior during this process, the Board may order the election to be held again.

Again, if the employer determines concrete and unfair workplace practices that indicate that the election will not be fair, and provided that the union shows the support of the majority of the employees, the Board may issue a “bargaining order” without any intervention. Thus, the selection will be made again.

The Board threw out longstanding, established precedent and ruled that an employer has two options when faced with a union’s claim to majority status. He determined these options as follows;

(1) Knowing and negotiating with the union.

(2) To immediately submit a petition to the Board of Directors requesting an election among the employees.

If the employer does not take an active step despite these methods being tried, it will be deemed to have made an unfair business practice. The Board also determined that if an employer seeks to hold an election and then engages in an unfair labor practice that would normally justify setting aside the election results, the Board will now order the employer to recognize and bargain with the union.

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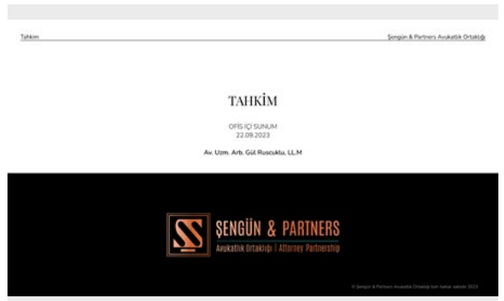

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Şengün & Partners Attorney Partnership continues its in-house academy conferences. Associate N. Korhan Şengün, the Founder of Şengün Group and Şengün & Partners Attorney Partnership, details LLM processes and examples in Türkiye and around the world. Associate Arb. Gül Ruscuklu, one of the Partners of Şengün & Partners Attorney Partnership, shares her knowledge and experiences in arbitration and mediation. Legal Counsel Associate Selin Ceren Canbulut provides insights into legal tech developments and future applications.

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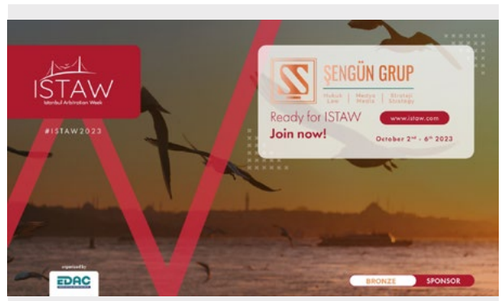
Şengün & Partners Attorney Partnership, one of the pioneers in the paper and corrugated cardboard industry and the market leader in Central and Eastern Europe in terms of sales volume, provided ‘Competition Law Training’ to its clients in the sector, including specific findings, current legislative changes, administrative and judicial decisions. The training started with the opening speech by Associate N. Korhan Şengün, the Founder of Şengün Group and Şengün & Partners Attorney Partnership. Senior Executive Associate Gazali Soysal moderated it.



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Şengün Group announced its participation as a “Bronze Sponsor” in the Istanbul Arbitration Week (ISTAW) 2023 event, which is part of Istanbul Arbitration Week, bringing together domestic and international arbitrators, academicians, lawyers, corporate legal advisors, and leading figures in the business world. ISTAW will be held this year from October 2 to 6 at the Mandarin Oriental Bosphorus.

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N. Korhan Şengün, the Founder of Şengün Group and Şengün & Partners Attorney Partnership, met with members of the Sales Network Leaders Club and HR leaders during a pre-meeting boat trip for the Sales Network Summit event, which will take place on October 4-5, 2023, at Uniq Istanbul. The founder Ergün Güler, arranged a boat tour in which the guests were hosted

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Sources

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