Legality

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DECEMBER 2024 - JANUARY 2025

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Editor’s Note

Dear Reader,

Şengün & Partners Attorney Partnership is delighted to present the December 2024-January 2025 issue of its newsletter that covers the latest local and global developments.

Our articles include “Owner’s Wrongful Termination of Construction Contracts” and “Analysis of Illegally Obtained Evidence from the Competition Board’s On-Site Inspections”.

This month, our guest sector is the construction industry, whose historical development we have discussed in detail.

As our special day, we celebrate International Women’s Rights Day, December 5, and underline its importance.

In our “News to the World” section, we compile the latest regulations, decisions, communiqués, laws, arrangements and amendments regarding national and international relations.

In “World News”, we present global events with transparency as our guiding principle.

Finally, “News from Şengün” reveals the latest developments, events and announcements involving our team.

Enjoy reading!

Istanbul, December 2024-January 2025
Şengün Academy

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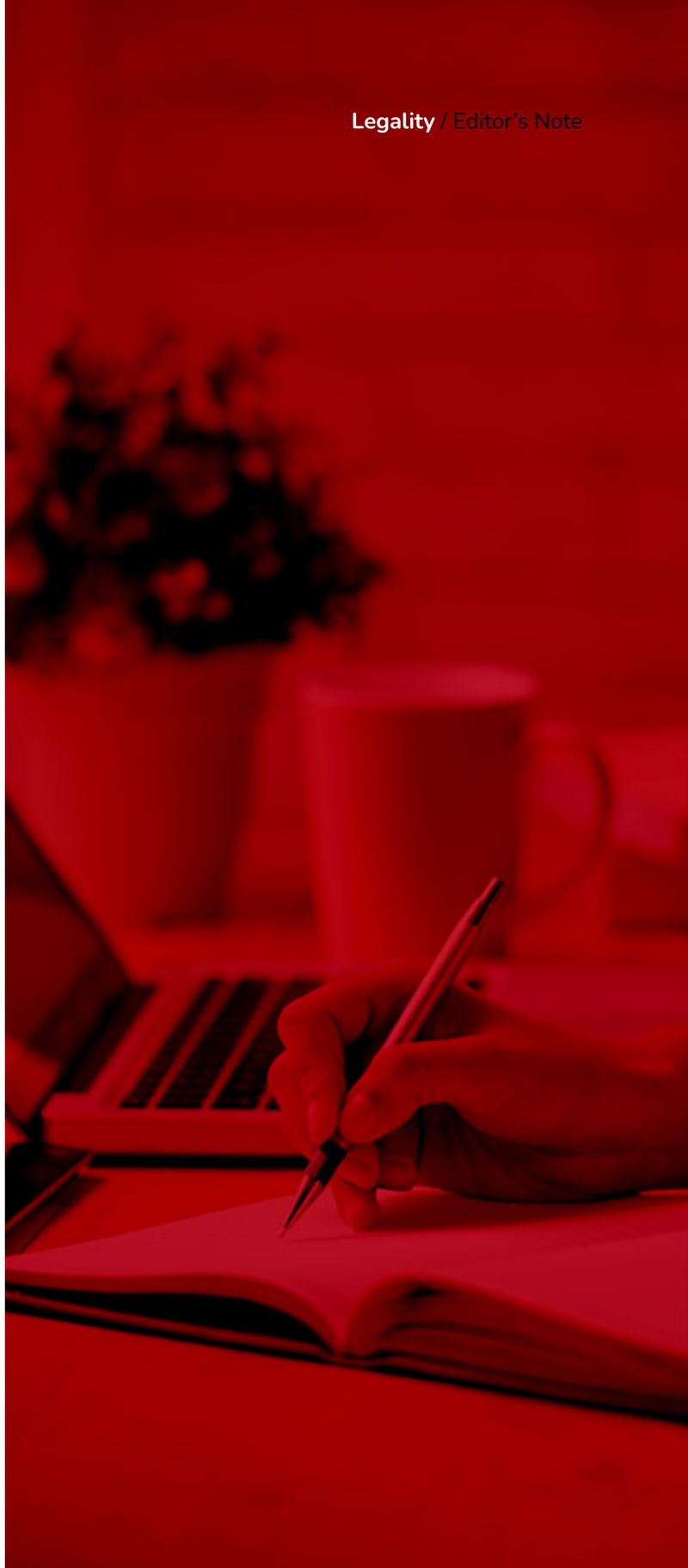

Articles

Article

Owner's Wrongful Termination of Construction Contracts

Introduction

Construction contracts have the characteristics of work contracts since they involve the creation of works. Work contracts are regulated under Article 470 of the Turkish Code of Obligations ("Code no. 6098") and defined as follows: *"A work contract is a contract where the contractor undertakes to create a work, and the owner undertakes to make a payment in return."* Therefore, the parties to this contract are the contractor who commits to produce a work and the owner who compensates the contractor in return.

The basic elements of a work contract are the work description, the payment terms, and the performance schedule.

Nature of Contract Termination

Termination refers to the right to end a continuous liability relationship with prospective effect. Therefore, as a rule, all dealings and acts performed until the termination remain valid. A valid termination takes effect upon being notified to the other party and does not require any declaration of acceptance by the other party.

Owner's Wrongful Termination

The contract between the parties often lays down the terms of rightful termination by the owner. Even if the contract has no such terms, the general rules of Code no. 6098 and the relevant case law may serve as a reference in this respect.

Accordingly, a work contract may be terminated for the following reasons: unreasonable excess of the approximate price, force majeure, impossibility of performance, death or bankruptcy of the contractor, defective performance of the work or delay in the specified delivery period, and termination without cause by way of full compensation by the owner.

Under Article 484 of Code no. 6098, which regulates termination in return for compensation, the owner has the right to terminate a contract without cause by paying compensation. The owner is therefore obliged to pay for the work done up to that point and compensate the contractor for all damages incurred as a result of the termination. Even if at fault, the owner may still exercise the right of termination under the law.

However, in this case, the contractor may claim the damages incurred due to the wrongful termination. These damages include loss of profits arising directly from the termination. In other words, the owner terminating the contract without cause must compensate the contractor for (i) the work completed until termination, (ii) materials, labor and other associated costs, and (iii) damages arising from the loss of profits the contractor would have gained with the completion of the work.

Here, another important point is that the contract must be terminated before the completion of the work. If the work has been completed as per the contract and the owner has not taken delivery of the work, "default of creditor" occurs. In this case, the contractor can receive payment by handing over the work.

The owner is obliged to notify the contractor of its intention to exercise the right of termination under Article 484 of Code No. 6098. The notice of intention must have the nature of termination of the contract. Any declaration that only withdraws or limits some of the contractor's authorizations or warns the contractor does not constitute an intention to terminate, and the contract will be deemed in effect.

Termination is an irrevocable declaration, and once the contract is revoked, this declaration cannot be changed and will have its full effect from the notification. If the owner gives a notice of termination without cause or compensation, it will bear the burden of proof to prove that it has a reason not to compensate.

The Court of Appeals' case law states, "*The owner may terminate the contract with prospective effect, even if it is in return for land share and even if the other party opposes, provided that the owner pays for the work done up to that point and compensates the contractor for all damages. There is no need for a court decision for this.*" Thus, the owner may terminate the contract without a court decision.

In case of termination, the value of the work performed by the contractor will be determined by the method agreed in the contract. If the contract does not specify a method for calculating the remuneration or provides for an estimated cost, the value may be determined as per the law based on the value of the work and its costs. The calculation methods include deduction and addition.

In the deduction method, the savings achieved by the contractor due to ceasing the work (e.g. savings in material and personnel costs) and the profit obtained by finding other work by ceasing the work are calculated, and the compensation is found by deducting this amount from the contractor's total earnings.

In the addition method, the loss is calculated by adding the contractor's actual expenses (such as materials, personnel, etc.) until the time of termination to the net profit that the contractor would have made if the work had been completed.

The owner may demand the delivery of the work done (even if not completed) until termination. In this case, the owner may also request the contractor to deliver the materials for which it has paid but which have not yet been used in the construction.

With the owner's termination of contract, the contractor will be released from the obligation to complete the work and will no longer have the right to demand remuneration for the remaining part of the work. However, in this case, the contractor has the right to claim damages.

However, the owner may not know the exact amount of compensation due to the contractor and the parties may not have reached an agreement in this regard. In this case, disputes regarding the amount of compensation may be resolved in court. Generally, the upper limit of compensation is considered to be the amount that the contractor would be entitled to if the work was completed and delivered in full.

Conclusion

Although the owner may exercise the right to terminate the contract without cause under the law, the use of this right will create an obligation to compensate the damages of the contractor. Therefore, the owner should foresee all possible consequences before making a decision. As such, the parties to a work contract should seek legal assistance at every step.

Birgi Kuzumoğlu, Partner

Article

Analysis of Illegally Obtained Evidence from the Competition Board's On-Site Inspections

On-site inspections are regulated under Article 15 of Law No. 4054 on the Protection of Competition ("Law No. 4054"). These inspections aim to establish, protect and maintain a competitive market. The Competition Board ("Board") is the sole authority to conduct on-site inspections. It performs on-site inspections at undertakings and associations of undertakings when it deems necessary to achieve those aims. In this respect, the Board can inspect all kinds of data and documents kept in undertakings' physical/electronic media and information systems, including company books, meeting notes, agendas, all kinds of documents regarding the company's assets, company computers, and portable devices.

On-site examinations have the potential to interfere with the fundamental rights and freedoms of undertakings and employees of undertakings. Therefore, they are closely related to the issue of illegally obtained evidence. The concept of "Illegally Obtained Evidence" is based on Article 38 of the Constitution of the Republic of Türkiye No. 2709 ("Constitution"), entitled "Principles relating to offenses and penalties". The title of the article may give the impression that the provision only applies to judicial penalties. However, the provisions of the Constitution are fundamental legal rules that are also binding for administrative authorities under Article 11 of the Constitution. Indeed, the **Constitutional Court** previously ruled that this article also applied to administrative jurisdiction. One of its pertinent decisions stated as follows: *"Since Article 38 of the Constitution does not distinguish between administrative and judicial penalties, administrative fines are also subject to the principles in this article."* **(File No. 2023/41, Decision No. 2023/102)** Therefore, the article is also applicable in administrative sanctions. Likewise, the **Constitutional Court** decided elsewhere as follows: *"Paragraph 7 of Article 38 in the Constitution, arising from Article 15 of Law No. 4709 of 03/10/2001, stipulates that 'Findings obtained through illegal methods shall not be considered evidence.' By giving examples from the case law of the Court of Appeals and the State Council, the defendant administration* ***claimed that illegally obtained evidence may be accepted as valid evidence in disciplinary law. However, this provision, given in the second part of the Constitution titled 'Fundamental rights and duties,' applies to criminal jurisdiction, civil jurisdiction and administrative jurisdiction."*** **(Application No. 2014/7738, 13/7/2016)** Therefore, it is clear that the rule stating **"Findings obtained through illegal methods shall not be considered evidence"** is also binding in administrative jurisdiction. We may say that the doctrine often agrees with this view. Since on-site inspections are not judicial procedures, there is controversy about the applicability of the prohibition on illegally obtained evidence to them. However, administrative justice may be sought against the Board's decisions. As a result, the Board is obligated to respect this principle in its on-site inspections. In short, we believe that the prohibition on illegally obtained evidence under Article 38 of the Constitution is also valid for administrative sanctions, regardless of the article's title, in view of the doctrine and the Constitutional Court's decisions.

First of all, the Board must respect the relevant regulations during its on-site inspections. Otherwise, the evidence it gathers will be deemed illegally obtained. This is first and foremost a requirement of the rule of law.

Experts coming to the undertaking to conduct an on-site inspection must have an authorization certificate indicating their credentials, the title and address of the undertaking or association of undertakings to be inspected, and the subject and purpose of the inspection. Evidence obtained during on-site inspections carried out without an authorization certificate will be considered illegally obtained evidence. Moreover, experts may only collect evidence relevant to the subject and purpose of the inspection. Evidence that is not relevant to the subject of the inspection and does not serve the purpose of the inspection may be considered illegally obtained evidence. Apart from this, it is clear that the main purpose of the prohibition on illegally obtained evidence is to protect the fundamental rights and freedoms of individuals. During on-site inspections, some actions infringe certain fundamental rights and freedoms of undertakings and employees of undertakings, especially the right to privacy and the inviolability of domicile. The right to privacy is regulated in Article 20 of the Constitution, where the first two paragraphs state:

"Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated.

Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order,

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prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or ***unless there exists a written order of an agency authorized by law****, in cases where delay is prejudicial, again on the above-mentioned grounds,* ***neither the person, nor the private papers, nor belongings of an individual shall be searched nor shall they be seized****. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall be automatically lifted."*

It is often argued that this provision is not respected in the procedures followed during on-site inspections. In fact, unlike the provision, on-site inspections are sometimes performed without a judge's decision, and almost all documents of undertakings and employees of undertakings are reviewed to this end. Regardless of whether such documents are kept in physical/electronic media or information systems, all of them are included in the scope of inspection. In this context, correspondence exchanged via mobile phones, e-mail applications and platforms (Teams, Outlook, WhatsApp, etc.) may be inspected. Although portable communication devices for personal use (mobile phones, tablets, etc.) are inspected with a quick look, and portable devices for personal use that do not contain data relevant to the undertaking are excluded from the scope of inspection, this action still constitutes a violation of the right to privacy. The rulings of the Constitutional Court are instructive in understanding this controversial situation.

As published in Official Gazette of 30 March 2023, the Constitutional Court reviewed the request for the annulment of the phrase *"take copies and physical samples thereof"*, amended on 16/06/2020, in Article 15 of Law no. 4054, in respect of the privacy and protection of private life. The ground for the request was that the phrase contradicts Article 20 of the Constitution that states, *"... unless there exists a written order of an agency authorized by law, ... neither the person, nor the private papers, nor belongings of an individual shall be searched, nor shall they be seized. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall automatically be lifted."* (File No. 2020/67, Decision No. 2022/139, 9/11/2022) The annulment of the phrase in Article 15/1/[a] of Law No. 4054 was requested on the grounds that (i) it enabled the copying and sampling of all kinds of documents of undertakings without any limitation, (ii) there was no requirement that the representative of the undertaking be present during this procedure, (iii) the rule authorizing access to undertakings' data on trade secrets and customer circles did not provide any safeguards for the acquisition and processing of personal data, and (iv) this situation was incompatible with the principle of legal certainty and was not proportionate. In this case, the Court first referred to Article 20 of the Constitution and stated that personal data could only be processed with the explicit consent of the data subject and in cases stipulated by law. Then, the Court affirmed that the authority granted to the Board, whose annulment was requested, was clear and unambiguous in terms of its subject, scope and limits and that the rule complied with the principle of lawfulness as it fulfilled the criteria of certainty, accessibility and foreseeability. In addition to the assessment of lawfulness, the Court also made a proportionality assessment and concluded that the on-site inspection was proportionate due to the reasons that (i) it was carried out by submitting documents, (ii) the Board did not have the authority to use coercion, (iii) the issues that the parties were not given the right to defense could not be used as a basis for the decision, (iv) the Board was subject to the obligations stipulated in Law No. 6698 on the Protection of Personal Data ("Law No. 6698") and (v) special categories of personal data were subject to stricter conditions. Thus, the Court ruled that the relevant phrase complied with the Constitution. In this decision, the Court assessed the relevant phrase regarding the Board's authority to perform on-site inspections for the protection of competition within the framework of the principles of proportionality and lawfulness. Therefore, this decision may guide the relevant practices. This decision is also important because it implies that legal entities may benefit from the protection in Law No. 6698 and that the Board is subject to the obligations in Law No. 6698.

Another constitutional right that needs to be addressed regarding on-site inspections is the inviolability of domicile, which is regulated in Article 21 of the Constitution. Requiring a judge's decision for entries into dwellings, the article is as follows:

"The domicile of an individual shall not be violated. Unless there exists a decision duly given by a judge on one or several of the grounds of national security, public order, prevention of crime, protection of public health and public morals, or protection of the rights and freedoms of others, or unless there exists a written order of an agency authorized by law in cases where delay is prejudicial, again on these grounds, no domicile may be entered or searched or the property seized therein. The decision of the competent authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his decision within forty-eight hours from the time of seizure; otherwise, seizure shall be automatically lifted."

The Constitutional Court, in parallel with the decisions of the European Court of Human Rights ("ECHR"), stated in its decisions that the concept of domicile also applied to workplaces. Thus, the office where a person performs their profession, the registered headquarters where their company operates, as well as the registered headquarters, branches and other workplaces of legal entities can also be considered as domicile. In the case Niemitz v. Germany, the ECHR ruled that it would be compatible with the main purpose of Article 8 of the European Convention on Human Rights ("ECHR") to interpret the words "private life" and "home" to include professional or commercial activities or facilities. In this context, professional life would also be deemed private life, and a workplace should benefit from the same protection as a home (Application No. 137/1088, 16/12/1992). Likewise, in its well-known Ford Otosan Decision, the Constitutional Court stated that on-site inspections should benefit from constitutional guarantee under Article 21, and that such procedures could only be carried out upon a judge's decision (Application No. 2019/40991, 23/3/2023). The Court recognized that the action could be taken upon a written order of an agency authorized by law in cases where delay was prejudicial, while underlining that the decision should be submitted to the approval of the judge within twenty-four hours. In the case, the Court determined that the applicant company did not attempt to obstruct the on-site inspection, and the inspection carried out without a judge's decision constituted a violation of constitutional rights. Thus, the Court concluded that the on-site inspection power under Law No. 4054 was contrary to the guarantees set out in Article 21 of the Constitution. The Court stated that this violation was caused by the regulation in Law No. 4054. As a result, it ruled for the determination of the violation and the retrial for the redress of the victimization caused by the violation.

Although there are Constitutional Court decisions regarding violations of constitutional rights during on-site inspections, it is still an ongoing practice to perform on-site inspections without a judge's decision under Article 15 of Law No. 4054. This situation suggests that the decisions of the Constitutional Court might not be very effective in practice.

Another issue that should be considered in conjunction with on-site inspections is the attorney-client privilege. During on-site inspections, the experts can review all kinds of data kept in the physical/electronic media and information systems of undertakings. The possibility that this data may include those that should be protected by the attorney-client privilege causes concern. Attorney-client privilege is regulated under Article 130/2 of the Turkish Criminal Procedure Code No. 5271 ("Code No. 5271"), entitled "The search and seizure in attorneys' offices, and seizure of mail," which states:

"If the attorney whose office is searched or the president of Bar or the attorney representing him objects to the search in respect to the items to be seized, at the end of the search, by alleging that those items are related to the professional relationship between the attorney and his client, then those items shall be put in a separate envelope or package and be sealed by the present individuals. In the investigation phase, the judge of peace in criminal matters, or the judge or the Court in the prosecution phase, is to give the necessary decision on this matter. If the judge with venue establishes that the seized items are under the privilege of attorney-client relationship, the seized object shall be promptly returned to the attorney, and the transcripts of the interactions shall be destroyed. The decisions mentioned in this subparagraph shall be issued within 24 hours."

Likewise, Article 36 of Attorneyship Law No. 1136 states, *"Attorneys are prohibited from disclosing information that has been entrusted to them or that they come upon in the course of performing their duties both as an attorney and as members of the Union of Turkish Bar Associations and various bodies of bar associations."*

However, since there is a gap in the legislation regarding whether these regulations are decisive with respect to on-site inspections, the Board's relevant decisions may be guiding.

In its Sanofi Decision, the Board stated that some documents taken during the on-site inspection should be considered as written correspondence that concerns attorney-client privilege (09-16/374-88, 20.04.2009).

In this decision, the Board first indicated that there was no definitive provision in the Turkish legislation that provided an absolute privilege under Competition Law regarding the information and documents arising from the professional relationship between a lawyer and their client, but that universal legal principles and the AM&S and Akzo decisions might be guiding in this respect. Thus, the Board identified two requirements that must be fulfilled in order for the correspondence obtained during an on-site inspection to be considered within the framework of attorney-client privilege: (i) the written correspondence must have been exchanged between a client and an independent lawyer (who does not have a professional relationship with the client), and (ii) the written correspondence must be in the client's interest and within the scope of the right of defense.

In its Dow Decision, the Board reiterated these requirements and emphasized that some documents received during the on-site inspection should be considered as written correspondence within the scope of attorney-client privilege (15-42/690-259,02.12.2015).

The Board addressed the issue in more detail in its Enerjisa decision. As part of the preliminary investigation conducted with Board decision no. 16-39/656-M of 16.11.2016, the Board discussed Information Note no. 2016-1-65/BN of 30.11.2016 prepared for the allegation that some documents obtained during the on-site inspection conducted on 22.11.2016 should be protected within the framework of the principle of confidentiality of attorney-client correspondence. As a result, the Board took decision no. 16-42/686-314 of 06.12.2016. In its Enerjisa Decision, the Board maintained its view on the two requirements stated in its Dow Decision and emphasized that correspondence that was not directly related to the right of defense and that was intended to assist any violation or to conceal an existing or future violation could not benefit from protection, even if it was related to the subject matter of the preliminary investigation, inquiry or inspection. Accordingly, while an independent lawyer's provision of opinion to their client on whether a particular agreement violates Law No. 4054 benefits from the attorney-client privilege, correspondence on how an undertaking may violate Law No. 4054 may not benefit from it.

In conclusion, although on-site inspections carried out under Article 15 of Law No. 4054 are crucial for the protection and maintenance of a competitive market, this procedure raises some concerns in terms of the protection of rights and freedoms. Beyond concerns, this issue is of critical importance, as the assessment of whether evidence gathered during an on-site inspection has been obtained legally or illegally might have very different consequences for undertakings. Even though the Constitutional Court decisions are a significant guide in determining the legal limits of on-site inspections, there are still some shortcomings and uncertainties in practice. In this context, it would be appropriate to establish a clear and detailed legal framework as required by the principle of legal certainty to prevent potential violations that may occur in practice and to eliminate the concerns caused by ambiguity.

Dila Yıldırım, Associate

Guest Sector

Guest Sector
Construction Industry

Construction Industry and Its Characteristics

Construction refers to the economic activity of creating, renovating, repairing or expanding fixed assets, such as buildings, land improvements involving engineering, roads, bridges, dams and other civil engineering structures.

The construction industry is a crucial sector with significant economic benefits and numerous employment opportunities.

The industry plays a vital role in meeting the housing needs of the growing world population. It has transformed from a shelter provider to an investment tool and adopted a key position in the infrastructural development of countries. Its interaction with national economies extends to production, employment, environmental impacts and similar areas. Effective construction policies contribute to economic growth, employment and environmental sustainability.

The construction industry concerns the construction of (i) all kinds of buildings, such as houses, schools, factories, workplaces, and hospitals, (ii) all kinds of infrastructure, such as roads, bridges, and dams, and (iii) all kinds of utilities, such as electricity, water, plumbing, heating, ventilation.

In Türkiye, the industry is a key driver for economic development. It is a leading sector of the Turkish economy for various reasons, including its reliance on domestic industry, the employment opportunities it offers and its interaction with other industries.

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Brief History

Turkish construction industry started with railway lines and water/dam projects. It continued to grow until the onset of liberalization after World War II.

The reason behind the development of the sector in 1950 and 1960 was public investments. The industry gained momentum in those years, supported by Türkiye's admission to the North Atlantic Treaty Organization (NATO) in 1952.

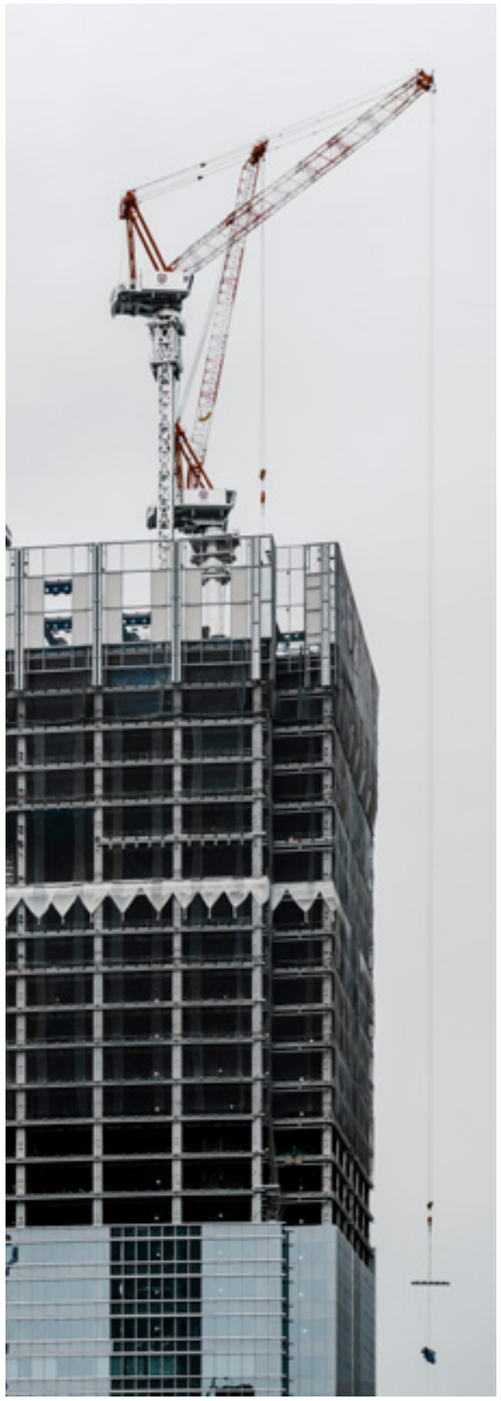
Following economic difficulties and a military coup in 1979-1980, the military junta made significant changes to the constitution and economic policies to solve the country's problems. With the relaxation of sectors, the construction industry achieved high growth between 1980-1987 compared to previous years. During the period of economic recovery and rebalancing after the 1980s, the Turkish economy progressed significantly with rapid growth.

Another factor affecting the Turkish construction industry was the Middle East's political turmoil in the 1990s.

Following the economic crisis at home in 2001, Turkish construction companies started to expand into international markets. In those years, the competitiveness of Turkish companies in pursuit of different markets accelerated the market. Economic crises have always shaped the construction industry.

Sectoral growth was high until the global financial crisis in 2008. Still, the industry continued to grow even after the crisis. A significant factor in this growth was state support, including incentive regulations, tenders, increased efficiency in the relevant institutions, and partnerships with the private sector for infrastructure investments.

Today, some consider the construction industry as the country's "locomotive" sector due to its active role in economic growth and development. This term originates from the fact that the sector requires the goods and services of more than 200 related sub-sectors, making it the " locomotive of the economy".



Challenges of the Industry

The construction industry faces various challenges in Türkiye, including:

- **Economic Difficulties:** Fluctuations in exchange rates directly affect construction costs. The increased prices of imported materials raise the costs of projects and lead to their suspension.
- **Financing Problems:** Construction companies have difficulties in financing. High interest rates and credit costs cause firms to face liquidity shortages.
- **Regulatory and Bureaucratic Problems:** Bureaucratic obstacles regarding construction permits and licenses delay the realization of projects. Significant issues include legal problems and property disputes in urban transformation projects.
- **Problems Arising from Law on Land Development Planning and Control:** Contradictions arising from different interpretations and practices of local administrations and public institutions cause problems in the industry.
- **Safety Issues:** The construction industry is one of the most dangerous business lines in terms of occupational safety. It is among the three sectors specified by the Ministry of Labor and Social Security as part of the program to combat occupational accidents.
- **Labor Shortages:** The construction industry has been facing labor shortages for some time. Labor shortages lengthen project durations and reduce customer satisfaction.

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Construction Industry and Urban Transformation

Urban transformation is a major project to eliminate the long-standing problem of unplanned urbanization in Türkiye. It also facilitates the growth of the Turkish construction industry.

The concept of urban transformation was introduced in “Law No. 6306 on the Transformation of Areas under Disaster Risk”.

Urban transformation is raising housing supply and demand. This increase has a positive impact on certain dynamics of the economy, especially employment and growth.

Urban transformation is also supporting the supply of rental housing. Since most housing sales are financed by mortgages, urban transformation is also boosting the volume of loans in the banking sector. This increased volume of loans facilitates economic growth.

Association of Turkish Construction Material Producers (Türkiye İMSAD) states that the construction industry grew from 6.5% to 6.9% in the second quarter and by 9.2% in the third quarter of 2024 in its latest industry report. The Association underlines that the industry was not affected by the tightening policy in the third quarter and its growth accelerated. The report suggests that reconstruction projects in the earthquake zone along with urban transformation and other construction activities following the local elections boosted the construction industry. Consequently, the industry grew in the last 8 quarters.

The report also indicates that the industry’s costs rose significantly in quarterly periods. Accordingly, construction costs increased by 63.3% compared to the same period of the previous year and reached ₺1.72 trillion in the third quarter of 2024. Inflation and rising construction costs played an important role in this increase. Real construction expenditure increased by 9.4% in the second quarter.

The report states that ₺584 billion was allocated in the 2025 budget for **increasing resilience against disasters** and recovering the earthquake zone. Thus, ₺120 billion was set aside for urban transformation as part of the **Disaster Resilient Cities Project**.[1]

[1] https://www.imsad.org/tr/Yayinlar/ekonomi-raporlari/aylik-sektor-raporlari/

Incentives and Advantages Provided to the Construction Industry

The state provides grants and interest-free loans to many sectors, including the construction industry.

As such, the government offers subsidies up to ₺10 million to construction firms intending to expand their business with the cooperation and coalition project. In this amount, a maximum of ₺3 million is provided on a non-refundable basis.

The state also grants a variety of incentives in numerous fields as follows: employer's share support in SSI premium payments, domestic-foreign fair support, certification support, minimum 50% grant for the purchase of machinery and equipment as part of the project, grant for R&D studies, VAT, customs duty, and interest deduction for those who wish to buy machinery at home or overseas.

In conclusion, the construction industry has a vital place in economic and social systems with its direct impact on the production of various goods and services and its intensive use of labor. The industry activates more than 200 sub-sectors. Therefore, the industry is considered as a leading sector in Türkiye. In an era of globalization and state-of-the-art technologies, the construction industry is crucial for revitalizing the country's economy and increasing employment. In this framework, the resources provided by the industry will help the country thrive.

İremnur Ocak, Associate

Special Day

Special Day
International Women's Rights Day, December 5

Historical Overview of Women's Rights

Women's rights are essential to social development and justice. Women have obtained and improved these rights as a result of great struggle throughout history. The origins of the women's rights movement can be traced back to the French Revolution in the 18th century, when women claimed a place in the ideals of liberty, equality and fraternity. In 1791, Olympe de Gouges published the "Declaration of the Rights of Woman and of the Female Citizen". This was one of the first texts in which these demands were expressed in writing. By the 20th century, the political and legal recognition of women's rights was on the agenda of many countries.

Women's right to vote and be elected was one of the most prominent of these rights. In 1893, New Zealand became the first country to grant women the right to vote. Then, Finland recognized both the right to vote and the right to be elected for women in 1906. Türkiye was among the leading countries with its modernization efforts and reforms granting equal treatment to women.

Women's Rights in Türkiye and Atatürk's Initiatives

Mustafa Kemal Atatürk, the founder of the Republic of Türkiye, recognized that women's rights were indispensable for modern societies and took revolutionary steps in this direction. Women in the country gained the right to vote in the municipal elections in 1930 and the right to vote and be elected in 1934. Thus, Türkiye outpaced many European countries in granting political rights to women. In the general elections held in 1935, 18 women were elected deputies to the Turkish Grand National Assembly, showing that the revolution had become a real success.

Atatürk's vision was to ensure women's presence not only in the political sphere, but also in the social and economic spheres. He underlined the role of women in social development when he said, "If a society is contented with only one of the sexes acquiring the essentials of our century, that society has been weakened by more than half."

Women in Business

Today, women are becoming more and more involved in the business world. However, they still need to overcome serious obstacles. Women's participation in the workforce lags behind that of men worldwide. In addition, women often face challenges in reaching senior management positions and demanding equal pay.

The representation of women in STEM (Science, Technology, Engineering and Mathematics) fields is particularly critical to achieve gender equality. Likewise, eliminating gender-based discrimination in workplaces and promoting flexible working models can increase women's participation in the workforce.

In Türkiye, companies need to adopt more inclusive policies to strengthen women's presence in the business world. Programs promoting women's leadership, mentoring opportunities for female employees and supportive practices for parents are important tools to achieve this goal.

How We Care About Women's Professional Presence at Şengün & Partners

International Women's Rights Day, December 5, serves not only to celebrate our past achievements but also to remind us of our future responsibilities. For 35 years, Şengün & Partners Attorney Partnership has been advocating gender equality as a fundamental value and underlining the potential of women in the business world. With a majority of its team consisting of female employees, the firm continues to emphasize the importance of women's presence in professional domains on many platforms with the aim of strengthening women's presence, power, talents and leadership in business settings.

In this context, Şengün & Partners is committed to taking part in projects that encourage women's participation in the workforce and to developing inclusive and equitable policies. Believing in the power of law to transform society, the firm stands as a defender of women's rights. We believe that the company will continue to inspire us, the women who are part of the team, by striving for a fairer and more equitable world where women can realize their full potential.

Hopes for the Future

As we celebrate the achievements of the past on International Women's Rights Day, December 5, we must not forget our responsibility to create a fairer and more equal world for the future. Our primary mission should be to work together to build a society where women can realize their full potential. At Şengün & Partners, we remain committed to achieving this goal and giving voice to the potential of women in the professional world.

Gizem Sadak, Associate

Legality / Special Day

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Regulation on Aggregation Activities in Electricity Market

The Regulation on Aggregation Activities in the Electricity Market ("Regulation") was published in Official Gazette no. 32755 of 17 December 2024. The Regulation introduces new principles regarding the regulation of aggregation activities in the electricity market.

The goal is to regulate the activities of aggregators in the electricity market and to establish procedures and principles for such activities. The Regulation covers the participation of aggregators in the organized wholesale electricity market and the bilateral agreement market, their agreements with grid users, and how they will carry out their market activities. It also provides detailed rules on the duties, powers and responsibilities of aggregators. Drafted in line with Electricity Market Law No. 6446, the Regulation does not concern unlicensed electricity generation facilities and legal entities holding generation licenses for organized industrial zones.

Among the basic terms in the Regulation, an "aggregator" is defined as a legal entity that operates in the electricity market by combining the production and/or consumption of one or more grid users and holds a supply license. "Aggregation" means that this legal entity enters into agreements with grid users and performs various activities ranging from energy supply to balancing. The regulation also clarifies market concepts such as "secondary services" and "YEKDEM". Thus, it stipulates that aggregators can benefit from certain support mechanisms for production with renewable energy sources.

Under the Regulation, only legal entities holding a supply license can carry out aggregation activities. These legal entities must hold a license as per the Regulation on Electricity Market Licenses. Aggregators can enter into agreements with grid users and manage their electricity generation and consumption. These agreements allow the aggregator to supply electric energy, participate in secondary services and utilize the generation or consumption facilities in its portfolio in market activities. Furthermore, aggregators can perform and report balancing based on market conditions by monitoring the generation and consumption data of grid users in their portfolios.

According to the rules specified in the Regulation, aggregators may include consumption and generation facilities in their portfolios. Licensed electricity generation facilities cannot exceed 100 MW in the aggregator's portfolio, while unlicensed generation facilities must not have a purchase guarantee for ten years. Moreover, electricity storage facilities can be included in the aggregator's portfolio and considered as balancing units. Although participation of consumption facilities is also possible, an agreement with the aggregator is essential for their energy supply.

The total installed capacity of the generation facilities in the portfolios of legal entities carrying out aggregation activities may not exceed 2000 MW. The installed capacity of unlicensed electricity generation facilities is limited to 500 MW. If a portfolio exceeds these installed capacity limits, the aggregator must remove the excess capacity from its portfolio. Otherwise, the Market Operator will step in and impose restrictions on maintaining the balance of the market.

The Regulation also prescribes the participation of aggregators in the organized wholesale electricity market and their ability to participate in secondary services. By engaging in these activities, aggregators can participate in energy supply and transmission services and take part in the market for balancing services. Secondary services entail arrangements for the provision of certain services in the electricity market, and aggregators are required to comply with certain monitoring, certification and payment processes to provide these services.

See the full Regulation at:

https://www.resmigazete.gov.tr/eskiler/2024/12/20241217-27.htm

Communiqué on Classification of Goods and Services for Trademark Registration Applications

Communiqué on Classification of Goods and Services for Trademark Registration Applications ("Communiqué") entered into force after being published in Official Gazette no. 32758 of 20/12/2024. This Communiqué repealed the Trademark Classification Communiqué No. 2016/2 of 30.06.2012.

The Communiqué follows the provisions of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, whose signatories include Türkiye, to establish a classification list of goods and services that will serve as a basis in trademark registration applications. Goods and services added with the new classification Communiqué:

Class 9: Cryptocurrencies, NFT, humanoid robots with artificial intelligence, laboratory robots, robots for education and training, robots for security surveillance.

Class 10: Masks for health purposes.

Class 12: Drones, unmanned aerial vehicles.

Class 37: Electric vehicle charging services, hire of portable charging units.

Class 38: Communication via telephone, computer and other means and services enabling this communication; services for the transmission of audio-visual messages, pictures, videos via computers, mobile telephones, and smart wearable devices; services for the rental of user access time to a global computer network; services for the provision of Internet services; and services for the rental of these communication devices.

Class 39: Health tourism services, services for arranging travel visas and documents.

Class 41: Life coaching (training) services. Event planning services for engagements, weddings, birthdays, etc.

Class 42: Land vehicle auto-expertise services: Checking the vehicle's accident history; internal and external controls, lower part controls, engine controls, detection and reporting of faults, if any, and product design services.

Class 43: Accommodation and reservation services for patients and their companions as part of health tourism.

Class 44: Dental services, psychologist services. Massage services, spa services.

Class 45: Social networking services (including services for finding friends online), astrological counseling services, spiritual counseling services.

The regulation updates the classification list of goods and services to be used in trademark registration applications and aims for applicants to make their applications in accordance with this list.

See the full Communiqué at:

https://www.resmigazete.gov.tr/eskiler/2024/12/20241220-6.htm

Regulation Amending the Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism

The Presidential Decree, published in Official Gazette no. 32763 of 25 December 2024, made significant changes to the "Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism" ("Regulation"). These changes expand obligations to prevent the laundering of proceeds of crime and the financing of terrorism by introducing new financial actors such as cryptoasset service providers ("CASPs") and electronic commerce intermediary service providers ("ECISPs").

Accordingly, in cryptoasset transfers of ₺15,000 and more through CASPs, it is now mandatory to include the transferor's identity information such as name, surname, wallet address and other identifying details in the transfer messages and to confirm the accuracy of such information. Similar information is also required for the transferee, but confirmation of this information is not mandatory.

If a cryptoasset transfer message contains incomplete information, CASPs should request the completion of missing information and return the transfer if the information is not completed. If transfers with incomplete information are consistently received, it is necessary to limit transactions or terminate the business relationship with this service provider. In addition, CASPs should obtain a statement from the client regarding the identity of the transferor or transferee for cryptoasset transfers to or from wallet addresses that are not registered in their systems.

In transfers made with a CASP that is based abroad and is not required to share transferor and transferee details under its own legislation, CASPs must obtain a declaration of identity from the customer regarding the parties to the transfer. In this case, additional information and documents may be requested within the framework of a risk-based approach. The Regulation mandates that CASPs should adopt a risk-based approach and continuously monitor their customers' transactions while fulfilling all these obligations. When they detect suspicious transactions, they should make the necessary notifications and take appropriate measures.

ECISPs are obliged to verify the accuracy of the identity details of their customers in the transactions carried out via their platforms and to keep this information up to date. In addition, they must notify the relevant authorities in case of suspicious transactions.

These regulations aim to ensure the security of the financial system by increasing the responsibilities of cryptoasset service providers and electronic commerce intermediary service providers for the prevention of laundering proceeds of crime and financing of terrorism.

See the full Regulation at:

https://www.resmigazete.gov.tr/eskiler/2024/12/20241225-1.pdf

Guidelines on International Transfers of Personal Data

On 2 January 2025, the Personal Data Protection Authority ("Authority") published the "Guidelines on International Transfers of Personal Data" ("Guidelines") to clarify the rules to be followed and the issues to be taken into consideration by data controllers and data processors in international data transfers.

The Guidelines explain the details of the new regulations on the transfer of personal data abroad and aim to provide guidance on practical procedures. To this end, the Guidelines illustrate how the legal and technical processes related to data transfer should be managed.

The Guidelines first point out that the data processing conditions set out in Articles 5 and 6 of the Law must be met for international transfers of personal data. Then, the country, sector or international organization to which the data will be transferred should be subject to an adequacy decision. Adequacy decision means that the relevant country's level of data protection is equivalent to the standards in Türkiye.

For countries failing an adequacy decision, data can only be transferred if certain "appropriate safeguards" are in place. These safeguards include binding corporate rules, standard contracts, covenants and international cooperation protocols. The Authority's approval is required for transfers to countries without an adequacy decision.

In the absence of an adequacy decision, standard contracts and binding corporate rules stand out among alternative methods for personal data transfers as important tools for the regulation of multinational companies and international data flows. The Guidelines allow "incidental data transfers" in cases that are one-time or non-continuous and provide examples of incidental transfer cases.

The Guidelines elaborate on the obligations of data controllers and processors to ensure security and transparency in personal data transfers. Accordingly, before a transfer, the data to be

transferred should be kept to a minimum and anonymized, and technical-administrative security measures should be taken. The Guidelines provide a roadmap to protect data subjects' rights and ensure the security of business processes.

See the full Guidelines at:

https://www.kvkk.gov.tr/Icerik/8142/Kisisel-Verilerin-Yurt-Disina-Aktarilmasi-Rehberi

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AI Transforms the Banking Industry: 200,000 Wall Street Jobs at Risk

The global banking industry could cut as many as 200,000 jobs over the next three to five years as artificial intelligence (AI) replaces human employees, according to a Bloomberg Intelligence (BI) report.

Information and technology executives surveyed said they expect the workforce to shrink by an average of 3%. Almost a quarter of respondents foresee a decline of between 5% and 10% in the total number of employees.

According to BI senior analyst Tomasz Noetzel, this change will especially affect back office, middle office and operating positions. “Any job involving routine and repetitive tasks is at risk... but AI will not completely eliminate these jobs, it will transform the workforce,” Noetzel said.

The report also foresees a transformation in priority areas such as customer service. Bots managing customer operations and the automation of processes such as “Know Your Customer” (KYC) can radically change the way of doing business in the industry.

BI’s survey included leading players in the financial sector such as Citigroup Inc., JPMorgan Chase & Co. and Goldman Sachs Group Inc.

Offering opportunities for banks to reduce costs and increase operational efficiency, this AI-driven transformation is also likely to bring about a restructuring process with new competencies and roles for employees.

CJEU Finds SNCF's Practice Unlawful

Association Mousse, which advocates for LGBT+ rights in France, was vindicated in its complaint against the national railway company SNCF's request for gender information from passengers who buy tickets online. The Court of Justice of the European Union (CJEU) ruled that SNCF's request for a gender declaration from passengers when purchasing tickets was contrary to the General Data Protection Regulation (GDPR).

Association Mousse had argued that the request for gender information violated the principle of data minimization under the GDPR. However, SNCF responded that this information was necessary to personalize communications with customers and to offer women-only carriages on night trains. In 2021, France's data protection authority CNIL ruled in favor of the railway company and dismissed the complaint. The association then appealed against the decision, and the Council of State referred the case to the CJEU.

In July 2024, Maciej Szpunar, Advocate General of the CJEU, stated that gender declaration was not necessary for commercial purposes. Accordingly, the Court found SNCF's practice unlawful, stating that the company could communicate with its customers in more inclusive ways that were not associated with gender identity. Following the ruling, Association Mousse stressed that citizens could appeal to national courts and that all public and private organizations were obliged to comply with the ruling.

Apple Clarifies Siri Privacy Stance After $95 Million Class Action Settlement

Apple announced that it did not use or sell data from its Siri voice assistant to create marketing profiles. The company denied allegations that Siri was recording inadvertently activated conversations and disclosing this data to third parties, particularly advertisers.

Apple stated that some features of Siri required real-time data from Apple servers to get accurate results, and that this data was only minimally used. It also emphasized that unless users approved voice recordings to improve Siri, these recordings were not stored. The company claimed to remain committed to developing technologies to improve Siri's privacy.

Apple agreed to a $95 million settlement last week. Under the settlement, millions of Apple users will be able to receive up to $20 per device for Siri-enabled device (e.g. iPhone and Apple Watch).

A similar lawsuit is pending in San Jose, California, on behalf of users of Google's Voice Assistant. The same law firms are represented in this case as the plaintiffs in the Apple case.

European Investment Bank Resumes Operations in Türkiye

The European Investment Bank (EIB) is about to resume its activities in Türkiye after the suspension in 2019. According to the statement of the bank services, the European Union (EU) Council and the EU Commission invited the EIB to review its operations in Türkiye.

The activities in Türkiye will focus on areas of mutual interest for Türkiye and the EU, such as climate change, green transformation, post-earthquake recovery, and migration. To date, the EIB has provided more than €30 billion to Türkiye. Following the earthquakes on 6 February 2023, the bank made a financing agreement of €400 million for the restoration of water and wastewater infrastructure in the earthquake-stricken zones.

The EIB started its activities in Türkiye in 1965. In 2019, due to the tensions in the Eastern Mediterranean, EU countries called on the bank to suspend new loan agreements with Türkiye. Recently, European Commission President Ursula von der Leyen stated that they were “exploring opportunities” for the EIB to resume operations in Türkiye and that she looked forward to continuing the Customs Union update negotiations.

Legality / World News

News from Şengün

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News from Şengün

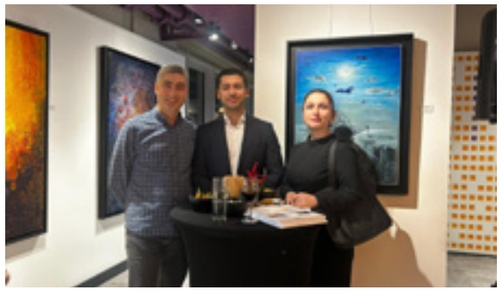
Şengün & Partners Attorney Partnership held a meeting with the trade union Petrol-İş to discuss industrial relations and collective bargaining. At the meeting, the law firm was represented by Nedim Korhan Şengün (Founding Attorney) and Öykü Güldürmez (Associate).

Legality / News from Şengün

In cooperation with Şengün & Partners Attorney Partnership, Şengün Strategic Management Services and Business World and Law Association, the Sustainability and Compliance Center (Sürdürülebilirlik ve Uyum Merkezi, SUM) published its first newsletter covering the latest local and global developments in the field. The Center announced that it would also offer training and seminars in addition to its academic studies.

Legality
News from Şengün

Şengün & Partners announced that Managing Senior Associate Gülşah Güven and Senior Associate Birgi Kuzumoğlu became Partners in recognition of their contributions to the Group with their expertise, achievements and commitment.



Şengün & Partners Attorney Partnership attended to a painting exhibition, “ZİRVE”, organized by Tam Finans’ art initiative Tam Sanat on December 19, 2024. Accepting the kind invitation of Tam Finans, the law firm was represented by Partner Gülşah Güven and Associate Yiğit Okuldaş. As a sponsor of cultural and artistic activities, Tam Finans once again showed that the finance sector is not just about money markets with its painting exhibition where the world of finance intersected with the artistic world.

Legality / News from Şengün

Şengün & Partners Attorney Partnership announced the establishment of Şengün Global. The new organization will leverage the firm’s experience in international activities for over 35 years. Şengün Global will focus on international business, activities and projects. Its goal is to provide clarity and depth to the global vision.

TÜSİAD (Turkish Industry and Business Association) organized a significant event to raise awareness on entrepreneurship, climate crisis and sustainability. Accepting the invitation of TÜSİAD, Şengün & Partners Attorney Partnership participated in the event at the association’s headquarters on January 8, 2025. The firm was represented by Partner Gülşah Güven and Associate Yiğit Okuldaş. At the event, the participants discussed entrepreneur start-up/scale-up processes for sustainability and compliance and the feedback on the project of “Gelecek için Dönüşümü Başlat!” as part of the initiative “Bu Gençlikte İŞ Var!”

Legality

News from Şengün

Şengün & Partners Attorney Partnership held a General Assembly Meeting and Dinner for all its members on January 6, 2025, at Hilton Istanbul Kozyatağı. At the meeting, the speakers made presentations on the organizations of Şengün Group, evaluations for 2024 and key strategies for 2025.

Founding Attorney Nedim Korhan Şengün opened the event with his speech on Şengün Group's achievements and future goals. Then, Prof. Dr. Caner Yenidünya (Şengün & Partners Strategic Partner) took the stage and drew attention to the global transformation of legal systems, underlining how he valued his joint projects with Şengün Group. Then, Gülşah Güven(Partner), Birgi Kuzumoğlu (Partner), Burak Batuhan Birtane (Senior Associate, Istanbul Coordinator), Berfin Nida Gültekin (Senior Associate, Ankara Coordinator) and Betül Önal Payze (Senior Associate) made speeches to share their thoughts and feelings about the longstanding structure and cultural values of the Group.

Following its General Assembly Meeting 2024-2025, Şengün & Partners Attorney Partnership held a pleasant Dinner at Hilton Istanbul Kozyatağı Roof Restaurant. The Dinner started with a speech by Founding Attorney Nedim Korhan Şengün and continued in an enjoyable atmosphere with a cake-cutting ceremony and background music. All members of Şengün Group gave a powerful message of solidarity while celebrating the first event of the year.

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