



Legality

"A seminal publication of Şengün Group"

February - March 2023 | E-Bulletin

Earthquake Risk Assessment of
Buildings, and Objection to Assessment

State's Duty to Protect
the Right to Life

Guest Sector:
Earthquake and Insurance

Special Day:
March 1-7 Earthquake Week
March 8 International Women's Day

News to the World

News from Şengün



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FEBRUARY - MARCH 2023

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EARTHQUAKES AND TÜRKİYE

Our minds are distraught, our hearts are crushed, and we are speechless in agony.

Our wounded nation says “never again”.

Let us bandage our wounds from all sides as best we can.

The heart is still.

Never again.

Nedim Korhan Şengün

Attorney-at-Law and Founding Partner of Şengün & Partners Attorney Partnership

Legality Editor's Note

Dear Reader,

The earthquake that struck Kahramanmaraş, Türkiye, and a number of nearby cities on 6 February 2023, along with its aftershocks, devastated the whole country. We grieve for those who passed away, send our sympathies to their loved ones, and hope the injured get well.

Supporting all kinds of cooperation and mobilization during this process, Şengün Academy dedicates its February-March newsletter to raising earthquake awareness.

In this issue, our article titled "Earthquake Risk Assessment of Buildings, and Objection to Assessment" will address the process of assessing risky buildings, whereas our article titled "State's Duty to Protect the Right to Life" will outline human rights in the context of natural disasters.

This issue's industry-in-focus will be insurance, which will be delineated in the article titled "Earthquake and Insurance".

Special days of this issue are Earthquake Week and International Women's Day, whose origins will be explored.

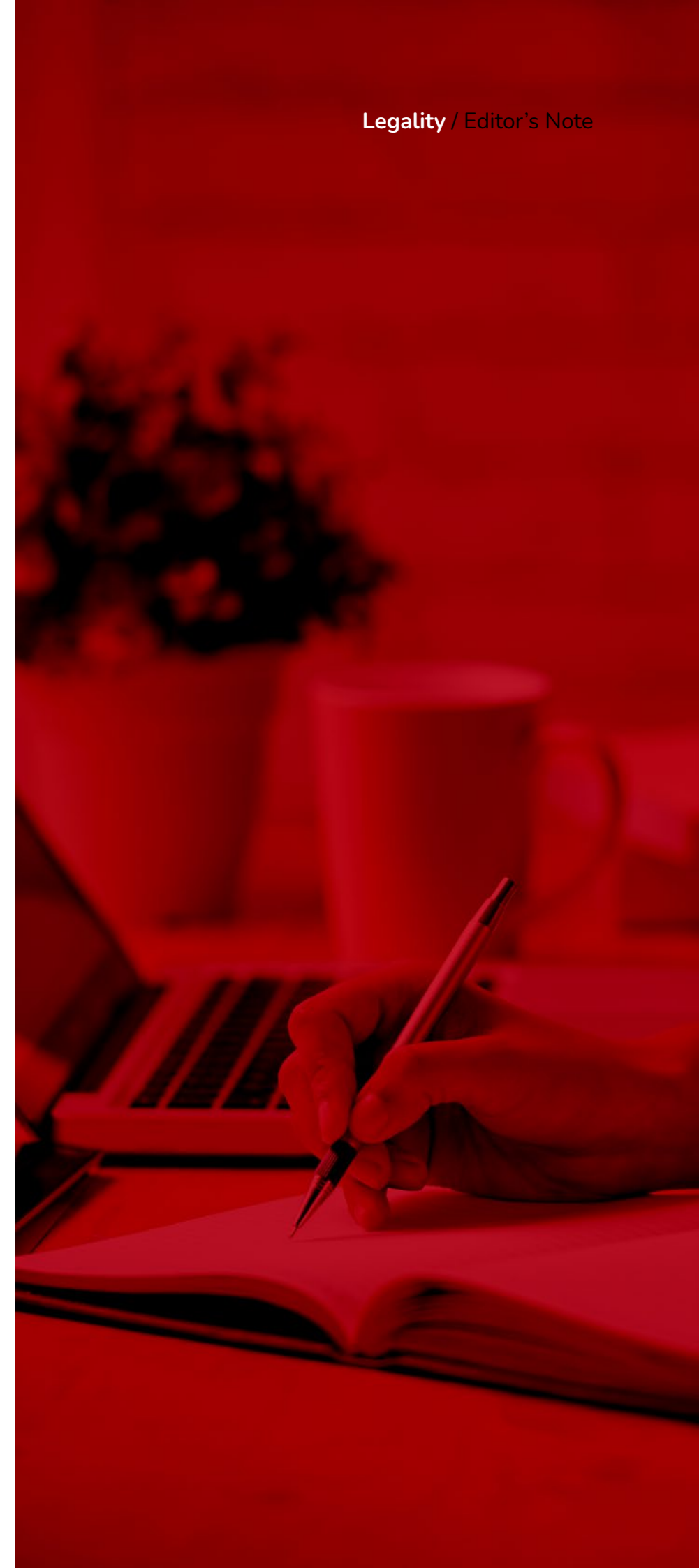
Our "News to the World" section will offer the latest regulations, decisions, communiqués, laws, requirements, and amendments affecting national and international relations.

The "News from Şengün" section will announce the latest news from our team.

Believing in the consolidating power of knowledge, we thus present our February-March 2023 in the aftermath of the earthquake.

Enjoy reading!

**Istanbul, February-March 2023
Şengün Academy**



Articles



Article

Earthquake Risk Assessment of Buildings, and Objection to Assessment

Natural disasters continue to destroy property and take lives in Türkiye, as they have in the past. Therefore, identifying risky buildings is critical for avoiding the majority of the hazards. Authorities may issue a damage assessment report to establish the risks posed by buildings, the required date of demolition, or whether the risk may be reduced by strengthening such buildings. As such, this report is crucial for mitigating the threats.

Although a threat is not certain without the risk assessment of a building, the purpose of this assessment should be kept in mind. In fact, risky building assessment is performed as a preventive measure, providing scientific basis for an imminent danger.

What Is a Risky Building?

Law no. 6306 defines risky buildings as those that have reached the end of their economic lives or are in danger of

collapsing or suffering significant damage based on scientific and technical data.

These buildings include those that can be utilized independently, have a roof, may be entered, and allow people to sit, work, have fun, or relax, such as houses, businesses, places of worship, sports halls, and entertainment venues, as well as those that house animals and items. A building assessed to be damaged and demolished for any reason other than the ones specified in Law No. 6306 may not benefit from the rights under this Law.

Risky Building Assessment

Risky buildings are assessed at several stages. First, a request must be placed for the assessment of a risky building. Upon request, the relevant institution issues a building risk assessment report, which is submitted to the Directorate of Infrastructure and Urban Transformation of the Ministry of Environment and Urbanization, located in the municipality of the building. If the Directorate approves the report, it notifies the directorate of land registry and the relevant Ministry of the result of the building risk assessment. When the Directorate approves and signs the report, the building risk assessment is completed, and the building is officially identified as a risky building.



Upon request for a building risk assessment, licensed institutions and organizations use their software to see if there has been an earlier risk assessment report issued for that building. The building record created on the system is deleted either upon the request of a proprietor or ex officio by the Ministry if the building's risk assessment is not performed within two months or six months, respectively.

If a building is identified to be risky, it is officially recognized as a risky building. Thus, the building records will contain the annotation of "risky building", and

a notice will be sent to the proprietor(s) to fulfill the notice obligation. Following the assessment of the societal risk posed by the building, measures are taken to eliminate that risk. Proprietors decide how to proceed for the elimination of such risks. Accordingly, earthquake-prone buildings may be demolished or strengthened to create more resistant, safe and convenient living spaces.

Who Is Allowed to Request a Building Risk Assessment?

People that can request a building risk assessment are “proprietors” or their “legal representatives”. Pursuant to subparagraph (a) in paragraph 2 of article 7 in the relevant Implementing Regulation, proprietors may decide to request a risk assessment on their building at their own expense. This type of assessment is voluntary.

The Ministry of Environment and Urbanization may also request a building risk assessment. As stipulated in the Law, the Ministry may require the proprietors or their legal representatives to ensure the performance of a building risk assessment within a certain time frame. If this requirement is not fulfilled, the Ministry or the administration may undertake the process. Based on the regulation, the Ministry may request from the administration to assess risky buildings in certain areas.

People who do not own the land of a building but have title to the building itself can also acquire a risk assessment report. If the building on a land belongs to a person (other than the landowners) who has an annotation specifying the structures created later on the property, the building risk assessment must be requested by this person.

However, those who are not proprietors or their legal representatives cannot request a building risk assessment report. In practice, the tenants sometimes request a risk assessment report on the buildings where they reside, and such buildings may be identified as “risky buildings”. Moreover,

despite being illegal, such buildings may be demolished by the administration if the process is not formally supervised. However, tenants do not have the right to request a building risk assessment report for their residence; therefore, a report acquired by them will be legally void.

Those who believe their building to be risky can request its risk assessment as per Urban Transformation Law no. 6306. To this end, a common resolution by the residents or a general assembly is not needed.



Decisions Regarding Building Risk Assessments, and the Decision-Making Process

There are several ways to eliminate risks concerning a building. The proprietors make the initial decision on how to proceed.

A- Objection and Litigation against the Assessment

Objection: Pursuant to Law no. 6306, a proprietor may submit an objection to the relevant Provincial Directorate against the assessment of a building as risk-free by providing documents proving their ownership of the building. Proprietors who disagree the damage assessment report issued for their damaged building have 15 days to appeal to the directorate in charge of the region. The objection will be reviewed and resolved by the Technical Committee as per Law No. 6306.

The Council of State holds that building risk assessments are “objectionable” as a voluntary course of action and makes judgments in this direction. As a result, the 14th Civil Chamber of the Council of State ruled in a case as follows: “...as a result of the objection, which was made on the second day of the fifteen-day objection period, the thirty-day litigation period was suspended. Objection to a building risk assessment, as regulated in Law No. 6306, is a voluntary remedy, and in case of obligatory objections, the litigation term will begin when this remedy is exhausted...”

When the proprietors or their legal representatives make a building risk assessment request at their own expense, institutions and organizations licensed by the Ministry will take the necessary actions

and issue a building risk assessment report. Pursuant to paragraph 3 in article 7 of the Implementing Regulation, a single building risk assessment report can be issued for a building, unless the issuance of a new building risk assessment report is required upon objection or judgment, or the issued report is determined to be false, or a substantial event (other than a deliberate intervention) occurs in a way to affect the risk status of the building.

Action of Nullity: This is an administrative procedure for risk assessment reports. Paragraph 1 in article 125 of the Constitution states, "Recourse to judicial review shall be available against all actions and acts of administration." If an objection to a building risk assessment is rejected, a lawsuit can be filed with the Administrative Courts within thirty days after receiving notice of the risk assessment. This period constitutes the final term.

For proprietors to file a lawsuit against the judgment dismissing their objection to a building risk assessment or directly against the risk assessment, their interests must be at stake.

These interests must be current, legitimate and personal. Clearly, the proprietors have an interest in filing an action of nullity against a building risk assessment. The law does not clarify whether tenants can file an action of nullity against a building risk assessment. However, the Council of State usually rules that tenants cannot request a building risk assessment and file a lawsuit in this regard.

In case of a lawsuit regarding a building identified as risky, the existence of this lawsuit does not impede the execution of

the administration's actions, unless such a lawsuit is resolved with the decision of suspending or cancelling those actions.

B- Strengthening Risky Buildings Rather Than Demolishing Them

If a risky building is requested to be strengthened instead of demolished, the proprietors must prove that strengthening the building is feasible within the period granted to them for its demolition, and the residents must agree on the structural strengthening (with a 4/5 majority) pursuant to the second paragraph of article 19 in the Property Ownership Law for the preparation of a strengthening project and the acquisition of a license as per the zoning legislation.

After the completion of structural strengthening within the period defined by the administration issuing the license, based on the nature of the strengthening operation, an application to the relevant Directorate is necessary to remove the risky building annotation in the land registry.

The decision to strengthen a building prevents the implementation of a prior decision to demolish that building. When a building is strengthened, the proprietors retain their ownership rights, and their loss of rights is minimized, in contrast to a demolition decision.

In this case, requiring a bigger majority for a decision that will revoke the demolition decision than the one required for the demolition decision will contradict the purpose of the law and the regulated institution, rendering the structural strengthening decision ineffective.

A structural strengthening decision cannot always be taken after the identification of a risky building. This decision can be taken only if demolition is not the only option, and if structural strengthening can reduce the danger that the risky building poses.

In addition to serving as places of accommodation, buildings and the surrounding areas also serve as spaces for socialization, employment, and personal development. As a result, all essential actions must be taken as promptly as possible, and all factors that have led to settlement collapse must be addressed. During this process, any loss of rights should be avoided, and ownership rights should be retained.

We hope that all future buildings will be planned and constructed in conformity with the rules of law and science, as well as technical and city planning principles.

Hilal Yayla, Associate



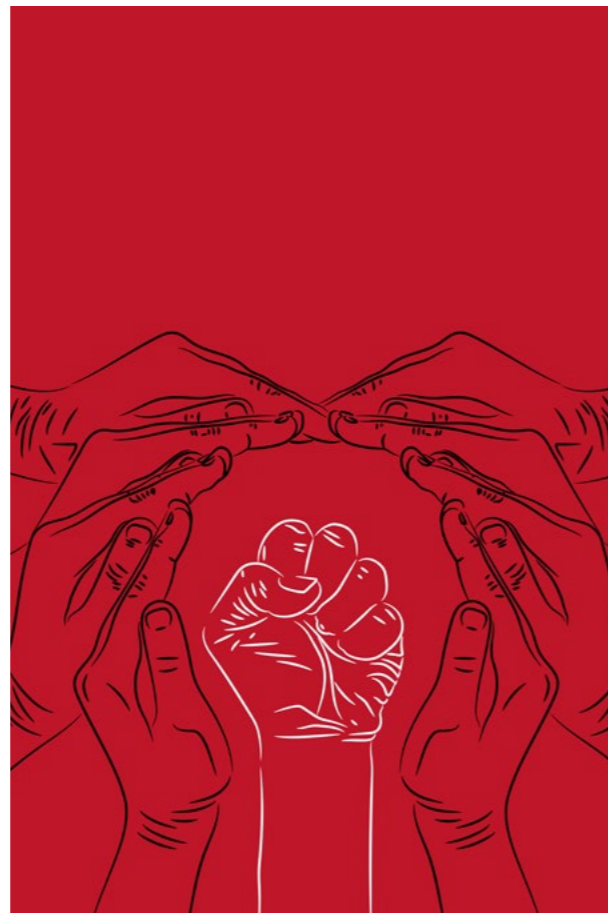
Article

State's Duty to Protect the Right to Life

oneself from potential hazards. It also encompasses the right not to be killed by public authorities and the right to be safeguarded from any dangers and threats to one's life.

We are all endowed with the right to life that is the most important of all our fundamental rights and freedoms. The right to life is an absolute and primary right that protects human life. Since life is a prerequisite for the enjoyment of fundamental rights and freedoms, the right to life cannot be compromised and rules over all other rights. Recognizing and protecting other rights will be futile in the absence of the right to life.

Since the right to life is a fundamental right as well as the foundation of the rule of law, it must be vigorously enforced.² Therefore, the norms protected through this right should be addressed extensively. The right to life may be characterized as an individual's right to survive, be healthy, and have physical integrity, as well as the right to continue living through safeguarding



The right to life is established in several conventions to which Türkiye is a signatory, as well as other legal documents and constitutions. It is stipulated in article 17 titled "Personal inviolability, corporeal and spiritual existence of the individual" in chapter two titled "Rights and duties of the individual" in

"Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence. The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent. No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity."

the 1982 Constitution of the Republic of Türkiye.

The European Convention on Human Rights, undersigned by Türkiye, refers to the right to life in article 2 under the section titled "Rights and freedoms".

Here, the state's duty to protect life is stipulated as follows: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally..."

The United Nations' International Covenant on Civil and Political Rights (ICCPR) states in article 6, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

These articles demonstrate that the state has a responsibility to respect life and to take the necessary steps to effectively defend the right to life.

State in Face of Natural Disasters

Natural disasters pose a significant danger to society and nations due to the loss of lives and property. Because of its geopolitical location, Türkiye is prone to extreme natural disasters, particularly earthquakes. In recent years, tens of thousands of people have perished in earthquakes across the country.

According to Supreme Court rulings, a circumstance may qualify as force majeure if it satisfies the externality, unpredictability, and unavoidability requirements. The administration is immune from liability in case of a force majeure that meets all of these requirements. In a seismic zone, the administration must safeguard people's right to life by taking the appropriate measures against a potential earthquake. In fact, no one can contest the unpredictable nature of earthquakes or the inevitable damage in regions where there is a high danger of earthquakes or where earthquakes have already happened.

¹ Ayşe Özkan Duvan, "Avrupa İnsan Hakları Sözleşmesi 2. Maddesi Çerçevesinde Yaşam Hakkının Korunmasında Devletin Yükümlülüğü", (Marmara University, Law School, Hukuk Araştırmaları Dergisi, Volume 24, Issue 2, December 2018), ISSN 2146-0590, pp. 660-681

States have three obligations, namely positive obligation, negative obligation and procedural obligation. The state has a positive obligation regarding the predictability of earthquakes and the avoidability of potential damages. Moreover, it must take concrete steps to minimize the probability of negligence or willful misconduct endangering human life. Thus, the state must, first and foremost, safeguard human life, enact effective regulations to deter violations of the right to life, and enforce the law. The state has the duty to protect life in any action that threatens human life, particularly when the right to life is endangered by a natural disaster.

The state's positive obligations also include the regulation of dangerous activities and the supervision of their implementation. The state should enact effective regulations to establish a surveillance and control system to identify and eliminate serious flaws. Potential victims should be properly informed regarding risk assessments and protective measures.

The Right to Life as Set Forth in the Judgments of the European Court of Human Rights

The judgments of the European Court of Human Rights (ECHR) establish the state's obligations with regard to the harm caused by natural disasters. A summary of some of the relevant judgments is as follows:

The ECHR's judgment in the case of "Budayeva and Others v. Russia"² is one of the most important rulings of the ECHR on the responsibilities of the state in natural disasters. In the judgment of 20.03.2008, the Court held the state accountable in a natural disaster in relation to a mudslide that occurred in a mountain district and resulted in fatalities and injuries.

In the case of "Öneryıldız v. Türkiye"⁴, the ECHR addressed the violation of the right to life as a result of dangerous activities carried out under the authority of the administration. The Court held that the state was required to enforce the "right to life" and take the necessary steps to preserve the lives of individuals who lived within its borders.

The right to life is one of our most fundamental rights. The state's primary obligation is to establish a legal and administrative framework that will preserve people's right to life and avert any dangers or hazards to this right.

In its judgment regarding the case of "L.C.B. v. United Kingdom"³, the ECHR ruled that the state had to take appropriate steps to safeguard lives of those within its jurisdiction. Since this obligation includes taking the necessary health measures, the judgment concerns the responsibility to take appropriate measures against threats to a patient's right to life in medical facilities.

In its judgment in the case of "Kolyadenko and others v. Russia"⁵, the ECHR held that the positive obligations of the state included enacting the necessary legislative and administrative regulations to avoid dangers to the right to life caused by natural disasters.



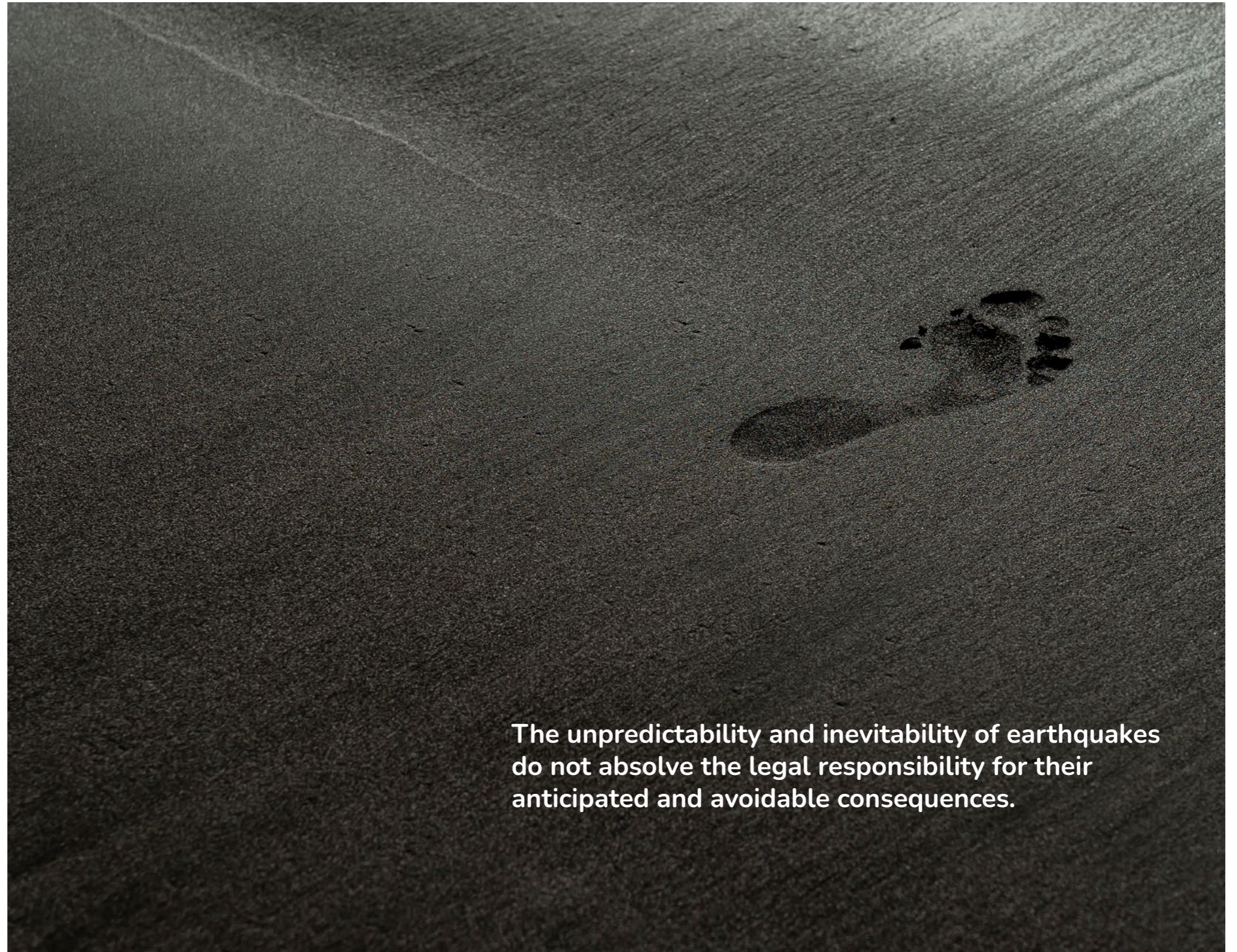
² For details, see: "ECHR, Budayeva and Others v. Russia, Application", Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 20.03.2008
³ For details, see: "ECHR, L.C.B. v. United Kingdom, Application", No. 23413/94, 09.06.1998
⁴ For details, see: "ECHR, Öneryıldız v. Turkey, Application", No.48939/99, 30.11.2004
⁵ For details, see: "ECHR, Kolyadenko and Others v. Russia, Application", Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28.02.2012

A welfare state must “ensure the kind of life that human dignity requires”. The right to life is one of our most fundamental rights. The state’s primary obligation is to establish a legal and administrative framework that will preserve people’s right to life and avert any dangers or hazards to this right.

As seen in the judgments of the ECHR, the state is expected to take all the necessary measures to minimize the risks of natural disasters and to safeguard both human life and property. The unpredictability and inevitability of earthquakes do not absolve the legal responsibility for their anticipated and avoidable consequences. The basic obligation of the state to guarantee the safety of life and property entails averting potential harm and addressing it when needed.

Adopting protective legislation and implementing other measures to defend the right to life are insufficient for a state to fulfill its positive obligations in this respect. A competent judicial system must be formed to enforce the application of such legislation and to punish unavoidable or inevitable violations.

H. Özlem Yıldız, Legal Intern



The unpredictability and inevitability of earthquakes do not absolve the legal responsibility for their anticipated and avoidable consequences.

Guest Sector



Guest Sector Earthquake and Insurance

Türkiye is still working through its recovery after the earthquake that destroyed property and claimed lives in ten provinces (with its epicenter in Kahramanmaraş-Pazarcık) on 6 February 2023.



Meanwhile, there is an ongoing discussion about whether the Turkish Natural Catastrophe Insurance Pool ("TCIP") or private insurance policies will cover the losses of homeowners or tenants whose houses have collapsed or damaged during the earthquake. Recognized as the worst natural disaster of the last century, the earthquake has also implications for the insurance industry, with the exact scale of

the loss of life and property still unknown. Verisk Extreme Event Solutions (formerly AIR Worldwide) released its earthquake loss estimates. The company expects the financial losses to exceed \$20 billion and the losses with industrial insurance to reach \$1 billion. Referring to the report, Bill Churney, the chairman, says, "There are solutions that can promote global resilience efforts, including emergency management, hazard mitigation, public funding for natural disasters, risk pooling, and other government-led risk and loss reduction activities."

In its press release, the TCIP stated that its specialists began working on damage assessment on the first day of the earthquake and that the initial payments were made within the first 24 hours. In this framework, how does damage assessment work, what are the victims' rights, and how much of these losses will be covered by insurers?

We may start with a short description of the TCIP. The TCIP was established in 2000 in the aftermath of the 1999 Marmara earthquake to provide financial protection to insured households against the hazards of earthquakes and fire, explosion, landslide, and tsunami caused by earthquakes by way of the Compulsory



Earthquake Insurance. There are 20 million 32 thousand recorded dwellings in Türkiye, and 10,949,642 of them have compulsory earthquake insurance. In the provinces affected by the earthquake, the rate of houses with the compulsory earthquake insurance varies between 40% and 65%.

The TCIP's fund size is ₺23 billion with solvency worth ₺100 billion. In other words, the TCIP can cover the anticipated losses in the current circumstances. Nevertheless, instead of covering all material damages, the TCIP offers to cover material damages up to the policy limits in cash. In fact, the maximum coverage is the cost of construction, which is up to ₺640 thousand for all types of buildings as of 25 November 2022. However,

insured individuals say that this sum is still not applied in 2023 and that coverage is limited to ₺256 thousand.

The insured may acquire complimentary insurance for sums in excess of the maximum coverage limit. If the remaining sum is covered by private insurance, the insurer will only cover the portion not covered by the TCIP.

The TCIP's specialists visit houses that have compulsory earthquake insurance, ex officio or upon application (requests may be submitted via Alo-Dask 125, e-government portal, or SMS), and identify the damages. The TCIP compensates damages up to the policy limits based on the appraisal in the damage file.

The TCIP provides coverage for the following buildings:

a) Buildings specified in Catastrophe Insurance Law no. 6305 as follows:

- Buildings which were built as dwellings on immovable property, which are registered in the title deeds and are subject to private ownership,
- Independent sections which fall within the scope of the Law on Property Ownership no. 634,
- Independent sections within these buildings which are used for commercial or office space or similar purposes,
- Dwellings built by the State or with loans extended due to natural disasters.

b) Buildings that meet the criteria for the Compulsory Earthquake Insurance, including the ones above:

- Buildings with construction servitude,
- Buildings with no classification of type or classified as “land etc.” in the land registry,
- Cooperative houses with no title deed.

Buildings that are not covered are as follows:

(Although these buildings are not covered by the TCIP, they can be insured voluntarily.)

- Buildings and independent sections which are subject to the Law on Public Housing no. 2946 and dated 9th November 1983 or used as public service buildings,

- Buildings built in and around village settlement areas and in hamlets by those who are registered to the village population and who are permanent residents of the village,
- Buildings used for commercial or industrial purposes,
- Buildings constructed without any construction project or engineering,
- Buildings which are determined to have been modified or weakened in a manner which would adversely affect their structural integrity,
- Buildings constructed in violation of the relevant legislation and the design in a manner which would adversely affect their structural integrity,

”
The key issue for voluntary insurance is the premium-collateral balance.

- Buildings that are required to be demolished by authorized public institutions, as well as neglected, dilapidated or abandoned buildings that are not suitable for residential use.

Voluntary Insurance

(Voluntary insurance may be preferred for buildings that are not covered by the TCIP or for the parts that are covered but exceed the defined limits.)

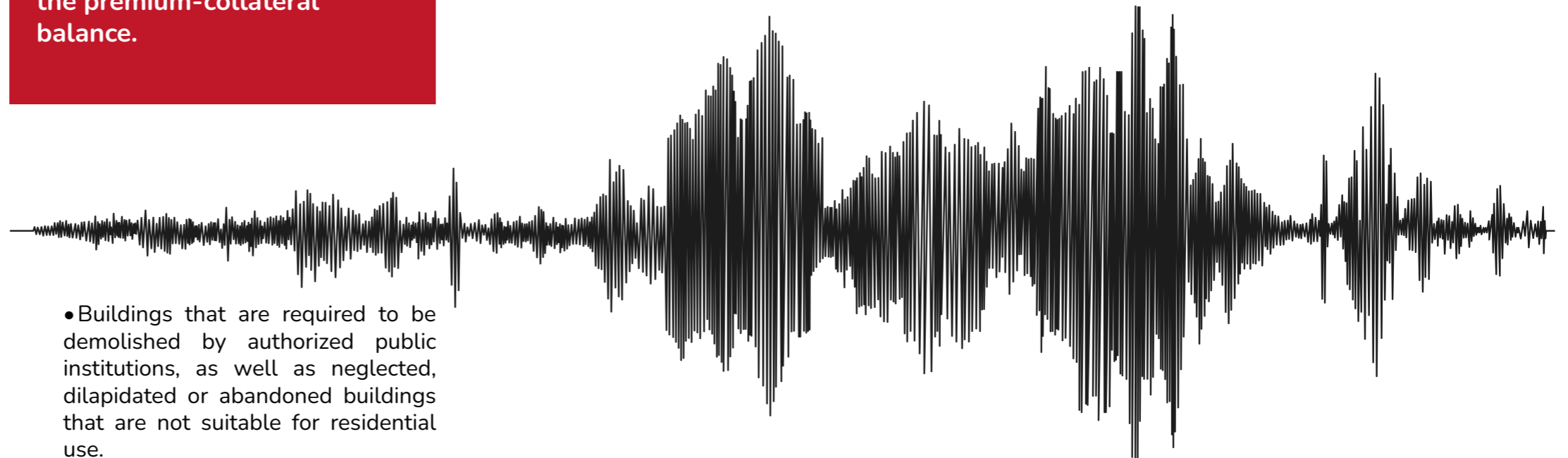
- Voluntary insurance requires an earthquake clause in the policy, monthly premium payments, timely notice to the company, and delivery of the relevant documentation.
- Following the notice, a house damage report is issued. Afterwards, expert advice is taken.
- If applicable, the insurer makes the payment as soon as possible (within 30 days).

The key issue for voluntary insurance is the premium-collateral balance. The insured should pay attention to the coverage in the policy. If a property insurance policy contains an earthquake clause, including the costs of debris removal, etc., the relevant damages can be compensated. Otherwise, the insurer will be under

no obligation to pay. Therefore, policy analysis is crucial for both the insurer and the insured.

Earthquake victims whose buildings are not covered by the TCIP or whose damages exceed the policy limits and who also do not have a voluntary insurance policy should not be dismayed that their losses will not be restored. Insurance is a mechanism that represents and exercises the rights of the insured on their behalf. In place of the insured, the insurers get the relevant receivables from the parties responsible for the damage, and they guarantee the insured from the outset by paying the insured directly against the risk of non-collection. Otherwise, the essence of the right still applies. As a result, the parties may communicate with the individuals or organizations directly accountable for the harm and file a lawsuit to recover damages from them.

Birgi Kuzumoğlu,
Managing Senior Associate



Special Day



Special Day

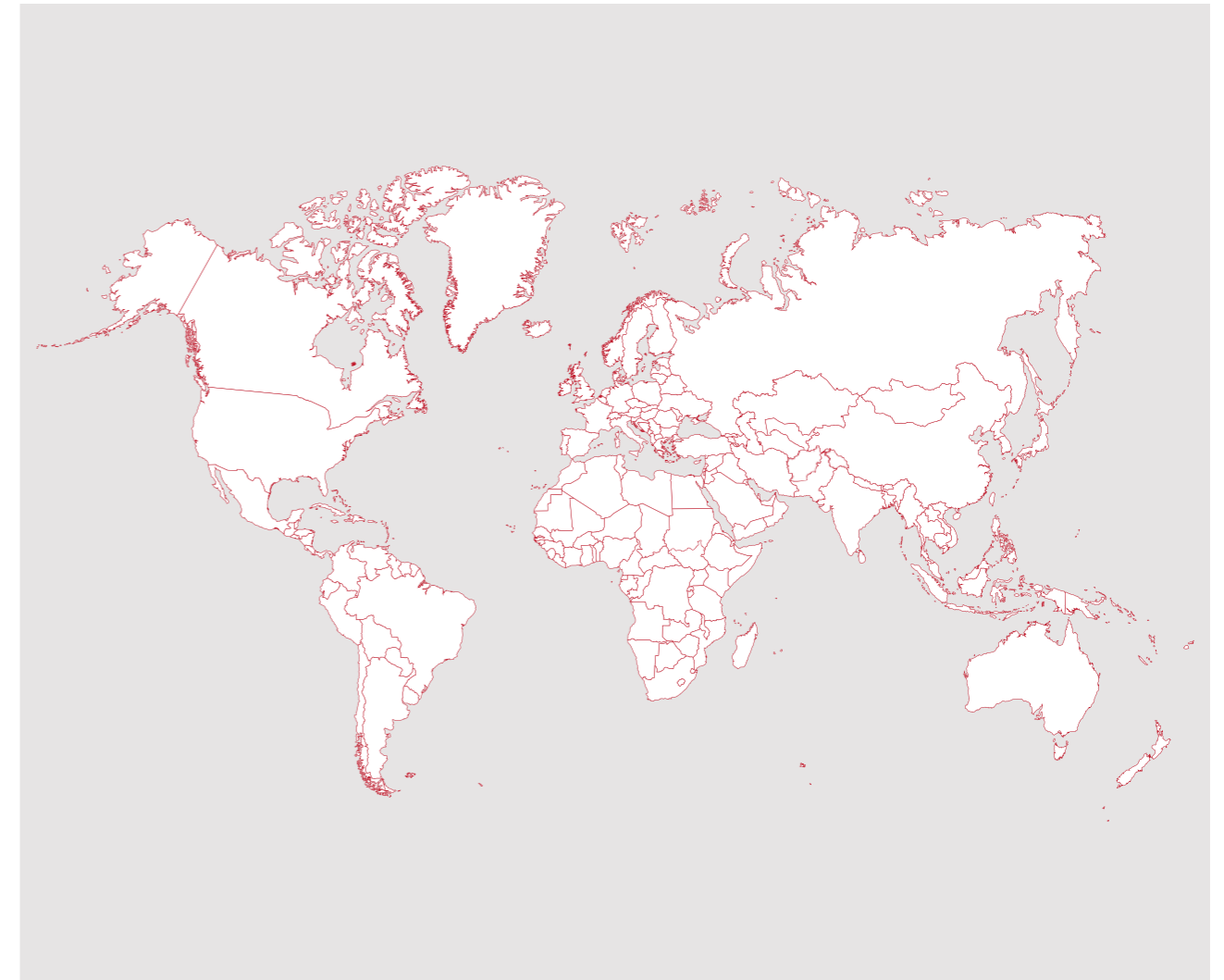
March 1-7 Earthquake Week

The world's major seismic belts are the Circum-Pacific belt, the Alpide belt, and the mid-Atlantic Ridge. A large section of Türkiye is located on the Alpide belt, the second greatest seismic belt. According to data from the Global Seismic Hazard Assessment Program, 80% and 17% of documented earthquakes occur along the Circum-Pacific belt, also known as the "Ring of Fire", and the Alpide belt, respectively.

Having many active faults across the country, Türkiye recognizes March 1-7 as Earthquake Week to draw attention to earthquakes, ensure earthquake readiness through public awareness, even if earthquake prevention is impossible, and limit potential damages.

In addition to Türkiye, Japan, New Zealand, the Philippines, New Guinea, and Mexico are also located along these major seismic belts. Being one of the most prominent nations in terms of earthquake hazards mitigation measures, Japan became recognized for its buildings that survived the 9.1 magnitude earthquake in 2011. In the country that is exemplary for earthquake awareness, the main measures include raft foundations, earthquake-proof high-speed trains, earthquake apps, and disaster preparedness training.

A raft foundation ensures that during an earthquake, the building does not fracture but rather floats on an elastic surface, disconnecting it from the soil with a slab, and thus, reducing the impact of an earthquake. High-speed trains that use autonomous sensors to halt when necessary reduce the risk for passengers on board during an earthquake. An earthquake app provides an earthquake notification five to ten seconds before the earthquake, allowing



time to take measures. More importantly, children are instructed about earthquakes beginning in their early childhood, and schools undertake monthly drills using earthquake simulators.



Earthquakes in Türkiye

As compared to the measures outlined above, Türkiye's efforts are clearly insufficient. Furthermore, unlicensed buildings that were constructed in violation of the Earthquake Regulation were granted amnesty with the recent Construction Amnesty Law, which poses numerous threats. Although earthquakes cannot be prevented, their potential damage must be mitigated via earthquake-resistant construction and careful urbanization. Owing to the elimination of report approval authorizations as a result of amendments to the Law on Land Development Planning and Control, trade associations are no longer permitted to undertake audits; hence, buildings may be erected without complying with technical standards. Despite the likelihood of a great earthquake, the necessary measures are not taken, which exacerbates potential damages.

To prevent this, cities and buildings should be created in topographically appropriate locations, and the completed buildings should be inspected by trade associations at each stage to guarantee that any buildings that do not adhere to the law are refused a license and demolished. Moreover, from an early age, the population should be taught about living in an earthquake zone, with the appropriate training to know what to do and what not to do in case of an earthquake. Thus, people's awareness of living in an earthquake zone will increase, and it will be easier to take the necessary actions.



Individual Measures

In addition to public awareness about earthquakes, individuals and families should also take some measures. Those measures include identifying the house areas where a Triangle of Life can be adopted, mounting items on the wall, determining a location to gather after an earthquake, demanding from the authorities to check the earthquake resistance of buildings, and keeping an earthquake kit at disposal. Earthquakes have both physical and psychological effects on people. Therefore, individuals should avoid panicking and frightening others nearby, especially children, during an earthquake, act reasonably by staying calm and encourage those who are afflicted to seek professional support.

Acknowledging that we live in an earthquake zone, we may take steps to minimize the effects of natural disasters by educating ourselves and people around us on the subject. In light of all this, we would like to convey our condolences to Türkiye in the wake of the devastating earthquake that occurred on February 6, 2023.

Elif Kahya, Legal Intern

Special Day

March 8 International Women's Day

The origins of International Women's Day (March 8) may be traced back to the women garment workers in the United States who were trapped in a factory when they went on strike for equal working conditions, which led to the death of over 130 female workers when a fire broke out.

After this event taking place in 1857, the idea to designate March 8 as International Women's Day was put out by German socialist and women's rights activist Clara Zetkin, who attended the International Socialist Women's Conference held in Denmark in 1910. Today, people continue to draw attention to gender inequality on March 8, International Women's Day.

The first article in the Declaration of the Rights of Woman and of the Female Citizen, published in 1791, states, "Woman is born free and remains equal to man in rights," which summarizes the goals and ideals for women's rights. Women's demands concern public exclusion, forced marriage, denial of access to education, being perceived as physically weak, and a lack of civil rights. Women were not allowed to vote until the nineteenth century, and Finland was the first country to award that right unconditionally in 1906. In Türkiye, women gained the right to vote in municipal elections in 1930 and the right to run in parliamentary elections in 1934. More recently, a law was passed in 1998 to prohibit domestic violence, and the Civil Code was amended in 2002 to raise the age of marriage from 15 to 18 for women and from 17 to 18 for men. The same amendment also stipulated that the spouses were not obliged to seek each



other's consent before working or making a career decision. With the help of such legislation, women were encouraged to pursue their education, discouraged from being married at a young age, and given civil rights.

Despite the fact that we appear to be discussing the past, women and men still do not have equal rights as they should. According to the statistics published on websites, such as Anıt Savaş, created by non-governmental organizations to provide transparent data on femicide in Türkiye, femicide continued to increase from 2011 to 2019. Research by Hacettepe University shows that 26% of women aged 15 to 49 were married as minors in 2013. During the political turmoil in Afghanistan, women's and children's rights have suffered the most. Women were not allowed to enroll in universities and were even made to wear veils in public. Thus, the majority of the rights acquired during a 20-year period were lost in a single year.

As for career, the data by Turkish Statistical Institute show that the employment rate for those aged 15 and above in Türkiye was 42.8% in 2020, with women accounting for 26.3% and men accounting for 59.8%. The labor force participation rate of college-educated women was 65.5%. In addition to data demonstrating that women have a lower employment rate than men, the difficulties that women experience at work also differ from those faced by men. The first sign of inequality is the questions asked to women during job interviews. These questions are meant to ascertain whether or not the woman will use her maternity and nursing leave as provided for by the Labor Law. Although the newborn child has two parents, the law only allows one

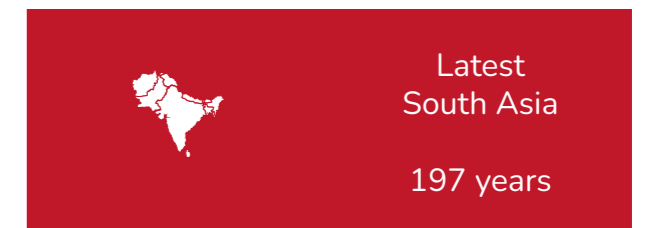


**Increasing social awareness
and valuing women's skills
and abilities will provide long-term benefits.**

World Economic Forum

**Global Gender Gap Report
2022**

Professional equality between men
and women is expected to be achieved:



Worldwide

132 years

parent to take maternity leave and places the woman in responsibility of caring for the child. Another so-called opportunity given to women is the obligation to have female members in the board of directors, which has been embraced by certain corporations lately. This practice makes the female board member appear as if she achieved that position not because her merits, but because of this requirement. Therefore, rather than enforcing such obligations, what is needed is to promote awareness in the workplace and provide equality without impositions in order to develop a fairer system. Increasing social awareness of this issue, as well as recognizing and valuing women's skills and abilities, will provide long-term benefits.

According to global figures for 2022 based on the World Economic Forum's annual Global Gender Gap Report, only 33% of all executives worldwide are women, and professional equality between men and women is expected to be achieved in 59 years in North America at the earliest and 197 years in South Asia at the latest. Worldwide, it will take 132 years to attain such equality.

Considering these data, we may conclude that although there has been progress toward gender equality throughout the years, it has not yet been achieved and will not be attained for at least a century. Therefore, 8 March International Women's Day is as vital as ever. This day honors not only women, but also all those who fight for equality.

Happy International Women's Day!

Elif Kahya, Legal Intern

News to the World



Legality

News to the World



Grand National Assembly of Türkiye Declares a Three-Month State of Emergency in Adana, Adıyaman, Diyarbakır, Gaziantep, Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye and Şanlıurfa

A state of emergency is declared in situations that require extraordinary administration, such as natural disasters, dangerous epidemic diseases, a serious economic crisis, or widespread violence endangering public order. This declaration is regulated under the Constitution and other laws. In Official Gazette no. 32100 of 10 February 2023, the Grand National Assembly of Türkiye's Decision to Declare a Three-Month State of Emergency in Adana, Adıyaman, Diyarbakır, Gaziantep, Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye and Şanlıurfa was published. The decision was passed at the 61st General Assembly of the Grand National Assembly of Türkiye on 09.02.2023, which ratified Presidential Decree no. 6785 of 08.02.2023 regarding the declaration of a three-month state of emergency in the provinces of Adana, Adıyaman, Diyarbakır, Gaziantep, Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye and Şanlıurfa from 01:00 on Wednesday, 08.02.2023, pursuant to article 119 in the Constitution of the Republic of Türkiye and subparagraph (a) of paragraph 1 in article 3 of State of Emergency Law no. 2935.

Article 119 in the Constitution of the Republic of Türkiye is as follows: "In the event of war, the emergence of a situation necessitating war, mobilization, an uprising, strong rebellious actions against the motherland and the Republic, widespread acts of violence of internal or external origin threatening the indivisibility of the country and the nation, emergence of widespread acts of violence aimed at the destruction of the Constitutional order or of fundamental rights and freedoms, serious deterioration of public order because of acts of violence, occurrence of natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis; the President of the Republic may declare state of emergency in one region or nationwide for a period not exceeding six months. The decision to declare state of emergency shall be published in the Official Gazette on the date of the decision and shall be submitted for approval to the Grand National Assembly of Türkiye on the same day. If the Grand National Assembly of Türkiye is in recess, it shall be immediately summoned; The Assembly may reduce or extend the period of, or lift, the state of emergency. The Grand National Assembly of Türkiye may extend the period for a maximum of four months each time at the request of the



President of the Republic. In the event of war, four-month limit shall not apply. The financial, material and labour obligations to be imposed on citizens, the manner of restriction and temporary suspension of fundamental rights and freedoms in line with the principles of the Article 15, and the provisions to be applied and actions to be carried out in the event of state of emergency shall be regulated by law. In the event of state of emergency, the President of the Republic may issue presidential decrees on matters necessitated by the state of emergency, notwithstanding the limitations set forth in the second sentence of the seventeenth paragraph of the Article 104. Such decrees which have the force of law shall be published in the Official Gazette, and shall be submitted for approval to the Grand National Assembly of Türkiye on the same day. Except in the case of inability of the Grand National Assembly of Türkiye to convene due to war or force majeure events, presidential decrees issued during the state of emergency shall be debated and decided in the Grand National Assembly of Türkiye within three months. Otherwise, presidential decrees issued during the state of emergency shall be annulled automatically.”

Article 3 in State of Emergency Law no. 2935 is as follows: “The President: (1) a) May declare state of emergency in one region or nationwide for a period not exceeding six months (...) in the event of one or several of the following: natural disasters, outbreak of dangerous epidemic diseases or emergence of a serious economic crisis. The decision to declare state of emergency shall be published in the Official Gazette and immediately submitted for approval to the Grand National Assembly of Türkiye. If the Grand National Assembly of Türkiye is in recess, it shall be immediately summoned. The Assembly may revise the period of the state of emergency. It may extend the period of the state of emergency for a maximum of four months each time or lift it entirely at the request of the President. After the declaration of the state of emergency, pursuant to subparagraph (b) of paragraph 1 in this article, the President shall confer with the National Security Council before taking a decision on extending the period of, changing the scope of, or lifting the state of emergency. The reasons for declaring the state of emergency, as well as its territory and length, shall be communicated via Turkish radio and television, as well as other media as the President deems necessary.”

For the full Decision, see:

<https://www.resmigazete.gov.tr/eskiler/2023/02/20230210-1.pdf>



Presidential Decree no. 120 on Judicial Measures to Be Taken under the State of Emergency

As per the Presidential Decree published on 11 February 2023 in the duplicate issue of Official Gazette no. 32101:

- a) All the periods regarding the creation, use or loss of a right, including those for filing a lawsuit, initiating enforcement proceedings, applications, complaints, objections, warnings, notifications, submissions, and period limitations, as well as final terms, and obligatory administrative application deadlines;
- b) Periods stipulated for the relevant parties in the Administrative Judicial Procedure Act, the Criminal Procedure Code, the Civil Procedure Code, and other laws referring to legal procedures;
- c) Periods determined by a judge, and periods determined as a result of mediation and reconciliation;
- d) Periods stipulated in the Enforcement and Bankruptcy Law and other laws on proceedings, and the periods determined by a judge or the enforcement and bankruptcy offices, and the periods for all kinds of enforcement and bankruptcy proceedings, except for those regarding alimony, parties and other proceedings, the filing of new enforcement and bankruptcy proceeding requests, and proceedings regarding the enforcement and execution of provisional attachment decisions

have been suspended from 6 February to 6 April to be applicable again from the day following the end of the suspension period. All the necessary precautions will be taken to ensure that enforcement and bankruptcy services are not disrupted during the suspension; however, no action will be taken regarding them.

The suspension will not bind the following: the legal limitation periods for crime and punishment, offences and administrative penalties, disciplinary imprisonment, and preventive detention; the periods for the measures regulated in the Criminal Procedure Code; the periods for proceedings that complete interim injunctions as prescribed by the Civil Procedure Code; and the legal periods regarding elections for the Grand National Assembly of Türkiye and the Presidency.

The provisions will be binding across the country for:

- a) Real persons and legal entities who reside in the provinces where the state of emergency was declared, as of 6 February 2023,
- b) Persons who were in those provinces on 6 February 2023,
- c) Lawyers registered to the bar associations of those provinces as of 6 February 2023,
- d) Lawyers registered to other bar associations but were in these provinces to follow lawsuits and other proceedings on 6 February 2023.

Until 6 March 2023, the provisions will be also binding throughout the country for lawyers registered with the bar associations of other provinces, as well as other law office personnel in other provinces, regarding lawsuits and other proceedings followed by them, if they have relatives by blood or by marriage in those provinces, or if they have arrived in those provinces to rescue the victims, to help with the damages and the losses, or to meet any needs.

The provisions will be also binding across the country for persons who do not reside in those provinces if they have relatives by blood or by marriage in those provinces, or if they have arrived in those provinces to rescue the victims, to help with the damages and the losses, or to meet any needs until 6 March 2023.

The real persons, legal entities and lawyers bound by these provisions will be allowed to carry out enforcement and bankruptcy proceedings, parties and other proceedings, and the enforcement and execution of provisional attachment decisions against real persons and legal entities who do not reside in those provinces. These real persons, legal entities and lawyers will not benefit from the suspension period for such proceedings as of their filing date.

For the full Decree, see:

<https://www.resmigazete.gov.tr/eskiler/2023/02/20230211M1-1.pdf>



Amendments to the Communiqués on the Tax Procedure Law

1 – General Communiqué on the Tax Procedure Law published in Official Gazette no. 32073 of 14.01.2023 (Sequence No: 545)

The Communiqué amends article 1 of Law no. 7421 and subparagraph (10) of the 1st paragraph of the repeated article 257 in Law no. 213 to authorize the Ministry of Treasury and Finance to obtain collateral from taxpayers involved in the trade of motor vehicles as defined in Law no. 4760 for the purpose of guaranteeing the collection of the taxes levied on the goods specified in the list (II) attached to Law no. 4760 on Special Consumption Tax. It was published to stipulate the relevant procedures and principles. Thus, in the Communiqué:

- Individual importers are required to provide collateral pursuant to the provisions of the relevant paragraph. Distributors and Directorate General of State Supply Office, which delivers vehicles to public institutions and organizations, are excluded from the scope.
- Individual importers, who must provide collateral, are obligated to acquire the necessary certificate and provide collateral in accordance with the Communiqué in order to import the relevant vehicles without paying the special consumption tax. Certain conditions are laid down for importers requesting a certificate, apart from the requirement to provide collateral. Among the individual importers who meet these conditions, those that are obligated to provide collateral are allowed to have the certificate if their collateral equals up to the maximum amount valid for the relevant year as specified in the relevant paragraph; however, if they fail to fulfill any of the conditions, they will not receive the certificate.
- It is stated that collateral must be provided before obtaining the certificate. The completion and cancellation of the certificate are regulated.
- The requirements are laid down for the personal import of the goods in the relevant list, and the conditions under which the importer is considered to be involved in the trade of motor vehicles, and the applicable obligations in this case are stipulated, except for the specified exceptions and exemptions.
- The minimum collateral amount is defined for those who are obligated to provide collateral, and the performance of the listed activities is prohibited before the provision of collateral. The applicable procedure for the taxation of the

relevant taxpayers and the procedure to be followed in case of violation of the collateral obligation or any other obligations in the Communiqué are set forth.

- The period during which the specified collaterals will be provided and the tax office that will receive them are indicated.
- The offsetting method for the tax debts of the taxpayers providing collateral, the method of completing the collateral process, and the procedure to be followed otherwise are specified.
- Specific conditions are laid down based on whether the collateral is a bank letter or a surety bond.
- The maximum limits to be considered while determining the amount of the collateral to be requested, and accordingly, the deadline for the submission of the collateral and the procedure to be followed in case of non-submission are defined.
- It is stated that one or several documents that can be issued as collateral can be offered together as collateral. These documents are required to be issued in accordance with the annexes.
- The refund and cancellation of the collateral provided are regulated.
- The notification obligations of individual importers and others who request a certificate and must provide collateral are specified.
- The violations and the penalties to be imposed in case of violation concerning those who must provide collateral are set forth.
- The follow-up of imports and documents, the powers of the Administration, and procedural requirements are regulated.
- The Communiqué's effective date is specified, and the process is defined for the possibility that the certificate is granted in the transition period.

2 – Communiqué (Sequence No: 547) published in Official Gazette no. 32073 of 14.01.2023 Amending the General Communiqué on the Tax Procedure Law (Sequence No: 537)

The amending Communiqué adds new articles to follow article 26 in the General Communiqué on the Tax Procedure Law (Sequence No: 537) published in Official Gazette no. 31835 of 14.05.2022. Thus, in the Communiqué:

- Additional obligations are prescribed for organizations using different accounting methods than those specified in the General Communiqués on Implementing Accounting Systems, and for taxpayers who need to use different accounting methods due to their specific field of activity, even

though they keep books on a balance sheet basis.

- It is stated that the taxpayers who do not have obligations regarding the preparation and reporting of financial statements, as well as the use of a uniform accounting framework, and the planning and operation of accounts, as stipulated in the General Communiqués on Implementing Accounting Systems, will benefit from revaluation specified in Paragraph (Ç) of the repeated article 298 and the provisional article 32 in Law no. 213.
- Procedural obligations are imposed for revaluation. The steps to be taken in the event that these obligations are met in the following term are defined.
- The disposal of the relevant depreciable economic assets is regulated.
- The method for monitoring the created account is established.
- It is required to comply with the procedures and principles set forth in other relevant articles of the Communiqué, in addition to the matters specified here.

3 – General Communiqué on the Tax Procedure Law published in Official Gazette no. 32077 of 18.01.2023 (Sequence No: 546)

The Communiqué was published based on the authorization in article 170/A added as a result of Law no. 7338 of 14.10.2021 in order to prescribe the procedures and principles for treating as notifications made by taxpayers the information that taxpayers are required to disclose under Law no. 213 but which is electronically notified to the Ministry of Treasury and Finance by the Ministry of Trade. Thus, in the Communiqué:

- The provisions of the law are referred to as the Communiqué's legal basis.
- The obligation of notification is repealed for the procedures registered in the trade registry, which are specified in the annex.
- The Ministry of Trade is authorized to announce the annulment of the notification obligation for the information excluded from the annex.
- The procedure for registering branches is regulated.
- The registration periods, violations, and penalties to be imposed in case of violations are set forth. cezalara yer verilmektedir.

For the full Communiqué, see:

<https://www.resmigazete.gov.tr/eskiler/2023/01/20230114-14.htm>

News from Şengün



Legality News from Şengün



Şengün & Partners Attorney Partnership is excited to announce that it is now a member of a collaboration network of the Turkish Airlines, the Terminal Startup Program, in recognition of its high value-added and technology-focused entrepreneurial activities within the ecosystem.



Şengün Academy is adding a new training titled "How Techfin Affects the Legal Industry" to its other training offerings of "Fundamental Laws for Entrepreneurs", "Personal Data Protection Law, and the Board's Latest Decisions", "How Should Companies Terminate an Employment Contract?", and "How the Companies Providing and Receiving Fintech Services Adapt to Competition", where a new training group is created after reaching 10 participants. The goal is to promote embracing a legal approach in corporations' compliance to regulations regarding fintech products.

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