



Legality

"A seminal publication of Şengün Group"
December 2022 - January 2023 | E-Bulletin

Trade Secret under Turkish Law,
and its Analysis with Respect to
Competition Law

What is EYT?
Regulations for EYT

Guest Sector:
Agricultural Technology
and Legal Approaches

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News to the World

News from Şengün



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DECEMBER 2022 - JANUARY 2023

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Legality Editor's Note

Dear Reader,

Şengün Academy is excited to present the first newsletter of 2023 featuring the December-January issue that will highlight the latest local and global happenings. We have lots of ambitions for the new year and a new design for our newsletter.

Our articles will cover the concept of trade secret, its legal basis and importance for competitiveness, as well as people who have not reached full retirement age but have completed the required social insurance and premium periods ("EYT") along with the relevant regulation and the ways to terminate an employment contract in this scope.

This month's industry-in-focus is agricultural technology: Our article will provide an overview of technological solutions and regulations in the field of agriculture.

Special day of the month: As a celebration of the International Human Rights Day, we will outline the origins of human rights and the adoption of the Universal Declaration of Human Rights.

In our "News to the World" section, we will inform you about the latest regulations, decisions, communiqués, laws, requirements and amendments affecting local and international economic relations.

The "News from Şengün" section will announce the latest news from our team. Here, we will be sharing that our Business World and Law Association has released a report on its roundtable discussion titled "Leading Transformation in Human Resources", and lawyers from Şengün & Partners Attorney Partnership attended the "Sustainable Future Summit" and spoke with other attendees, and as the year was drawing to a close, a New Year's party was arranged, with participation from all the employees along with notable guests.

In short, our December-January 2023 issue, which introduces the new design of our newsletter, compiles and presents to our readers the latest trends and team activities.

Enjoy reading!

Istanbul, December 2022-January 2023
Şengün Academy

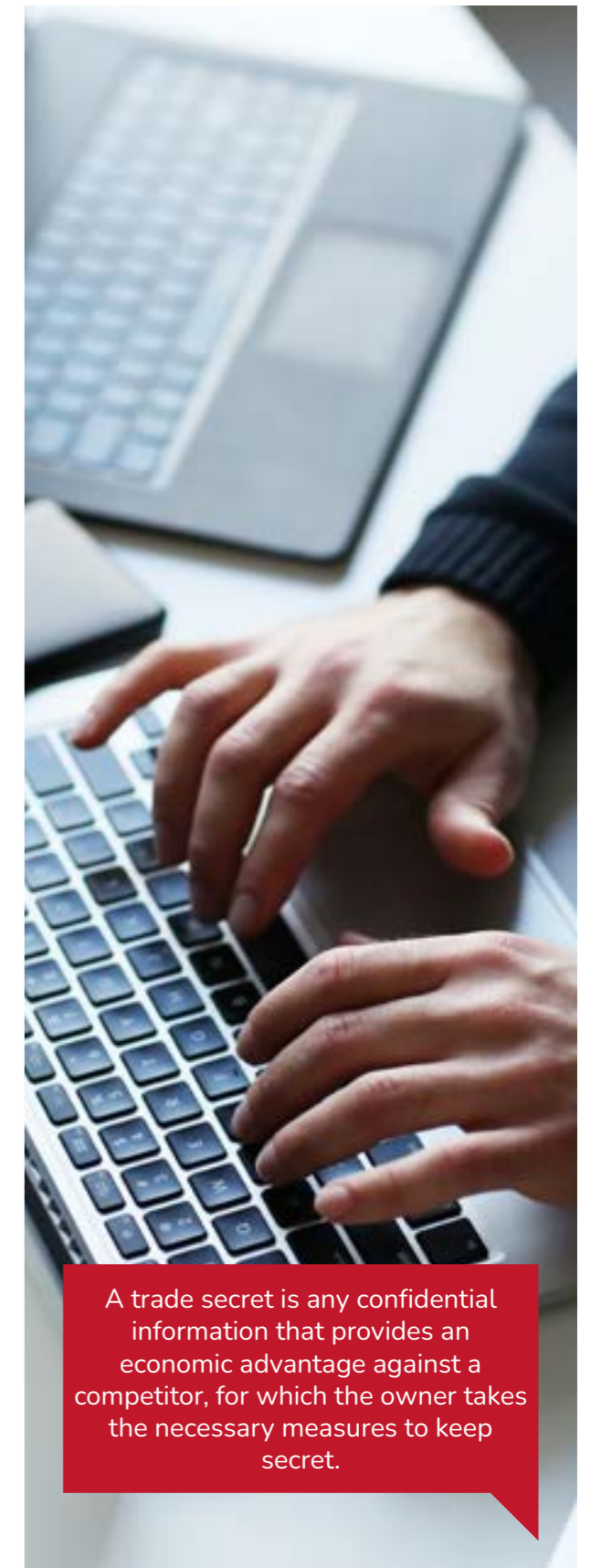


Articles



Article

Trade Secret under Turkish Law, and its Analysis with Respect to Competition Law



A trade secret is any confidential information that provides an economic advantage against a competitor, for which the owner takes the necessary measures to keep secret.

Trade secrets exist whenever there is business. Even in ancient times, merchants attempted to secure confidential information that provided them a competitive advantage.

A trade secret is any confidential information that provides an economic advantage against a competitor, for which the owner takes the necessary measures to keep secret. With respect to competition rules, we may define trade secret as follows: **“all the information, including any formula, order, model, etc., that the trader uses during business to obtain a competitive advantage over the competitors who do not have or cannot use the same information.”**

Agreements signed by the parties to keep certain information confidential constitute a solid legal basis for the protection of trade secrets. Although these agreements intend to limit the disclosure of trade secrets to other parties, how enforceable

they are in practice is debatable. If the parties to these confidentiality agreements act in bad faith, they will be involved in an unethical business practice. Undermining the functionality of competition impedes the intended outcome of the competition.

In Türkiye, trade secrets became a legal concern in the decision of the 11th Civil Chamber of the Court of Appeal (file no. 2004/7827, decision no. 2005/5755, of 02.06.2005), which states: **In Türkiye, trade secrets became a legal concern in the decision of the 11th Civil Chamber of the Court of Appeal (file no. 2004/7827, decision no. 2005/5755, of 02.06.2005), which states:**

To make any judgment about unfair competition, the Court of Appeal required the parties to be rivals with a competitive relationship between them. However, the Turkish Commercial Code refers to the “interests of all the participants”, emphasizing the significance of the interactions between customers and suppliers (Kendigelen, 2011: 64). That phrase broadens the scope of unfair competition by referring to not only the struggle for customers and market share but also the actions that may affect the relationships between competitors or suppliers. Therefore, the new regulation

makes no distinction between whether the action affecting the relationship originates from another competitor or a third party. Here, what matters is that **“the act affects the relations between market participants, thereby being likely to disrupt the appropriate functioning of competition”** (Güven, 2012: 51-52).

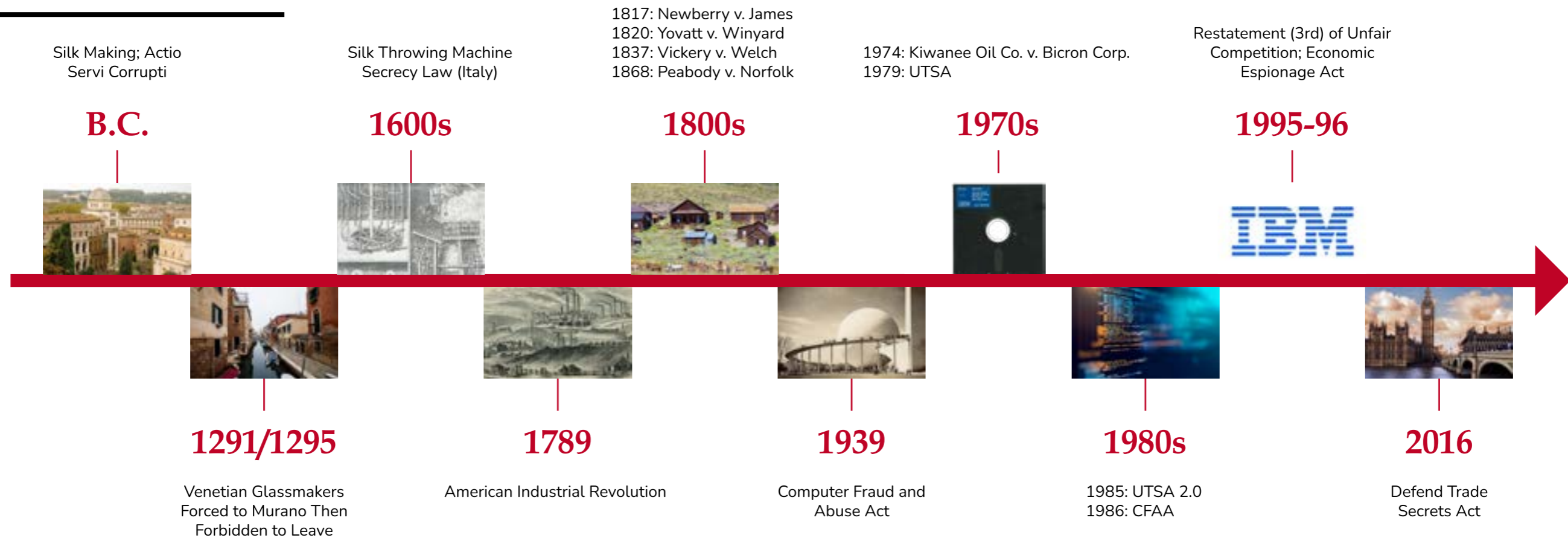
Competition law consists of rules for the protection of competition. These rules serve to ensure and protect a healthy competitive environment. The primary goals of competition law are to prohibit businesses in the goods and services markets from abusing their market dominance, to control merger-takeover activities to maintain market competition, and to promote competition through relevant regulations and audits (İnan and Piker, 2007: 2-3).

Paragraph 2 of Article 54 in the Turkish Commercial Code sets forth the extent of unfair competition as follows: “Deceptive or dishonest behaviors or business practices, which affect the relationships between competitors, or suppliers and customers, shall be considered unfair and illegal.”

The new Turkish Commercial Code makes significant revisions to the provisions governing unfair competition. Unlike

History

Trade Secret Protection



the old regulation, the revised Turkish Commercial Code expands the scope of unfair competition by using the term “participants” instead of competitors. This expansion seeks to consider the interests of all the market participants, including supplier-customer relationships. Given the difficulty of surviving in today’s business world, it is evident that competition does not only affect competitors.

Article 239 of Turkish Penal Code no. 5237 refers to the crime of “**disclosure of confidential information or documents, such as trade secrets, banking secrets,**

or customer secrets”. The subject of this crime is confidential information or documents, such as trade secrets, banking secrets, or customer secrets. The article sets forth: **“Any person who discloses confidential information, or documents, relating to commerce, banking or private customers, which he holds by virtue of his title, duty, profession or trade, to an unauthorized person shall be subject to a penalty of imprisonment for a term of one to three years and a judicial fine up to five thousand days, upon complaint. Where such information or documents are disclosed to an unauthorized**

individual by a person who unlawfully acquired such information or documents, such person shall be subject to a penalty in accordance with this paragraph.”

As these clauses make clear, trade secrets are protected under Turkish Law, and their disclosure is considered as a violation of unfair competition provisions in the Turkish Commercial Code, as well as an economic, industrial and commercial crime under the Turkish Penal Code, with legal and criminal penalties imposed on the disclosing party.

It is typically necessary to go through a lengthy and expensive research and development process to produce information that is a trade secret. Since there is a chance that these efforts may not provide the intended outcome, companies sometimes attempt to benefit from the information discovered by other companies, rather than undergoing this lengthy and risky procedure. Therefore, trade secret protection is vital in Türkiye, just as everywhere else.

Hilal Yayla, Associate

Article

What is EYT? Regulations for EYT

The debate in Türkiye over those who have not reached full retirement age but have completed the required social insurance and premium periods began with the enactment of Law No. 4447 of 8 September 1999 and continues now with Law No. 5510. Those people are referred to as “Emeklilikte Yaşa Takılanlar”, which is abbreviated as “EYT”.

The Law in question amended the retirement conditions for employees benefiting from the social insurance fund, the pension fund for the self-employed, and the state pension fund.

Previously, citizens could retire when they completed the required social insurance and premium periods. However, the amendment increased the duration of those periods and obligated everyone to reach the full retirement age to be able to receive retirement benefits. Thus, those who completed the required social insurance and premium periods could not retire before reaching the full retirement age.

Conditions Applicable Before and After the Amendment

Before the amendment, women who had been insured for 20 years and completed 5000 days of premium payment and men who had been insured for 25 years and completed 5000 days of premium payment were allowed to receive retirement benefits.

After the amendment, men were required either to have completed 7000 days of premium payment and turned 60 or to have completed 4500 days of premium payment, being insured for 25 years, and turned 60 to retire whereas women were required either to have completed 7000 days of premium payment and turned 58 or to have completed 4500 days of premium payment, being insured for 20 years, and turned 58 to retire.

Moreover, the social security reform of 2008 raised the age limit based on the initial date of social insurance registration. Accordingly, among citizens who were insured on 1 May 2008 and afterwards, men were required to have turned 60 and completed 7200 days of premium payment whereas women were required to have turned 58 and completed 7200 days of premium payment to retire. After 2048, people will retire when they have reached the age of 65 and completed 7200 days of premium payment, regardless of their sex.

EYT Regulation

According to the recent statements made by the President Recep Tayyip Erdoğan, the EYT regulation will maintain the validity of the retirement conditions in effect prior to 8 September 1999 for the relevant persons. The goal is to reverse the retrospective terms of the Law at the time of enactment, meaning that the regulation will not concern those who were insured as of 9 September 1999.

According to the last statements, the regulation will not require an age

limit and make no distinction between citizens receiving benefits from the social insurance fund, the pension fund for the self-employed, and the state pension fund with regard to retirement conditions. When the law is in force, everyone who have completed the required premium and employment periods will be able to retire by submitting a pension petition, and those who do not satisfy the requirements will retire after achieving them. Women that have not completed the required premium period will benefit from premium exemption due to childbirth whereas men that have not completed the required premium period will benefit from premium exemption due to military service.

Those who will continue working after retirement by paying the Social Security Support Premium will benefit from an insurance premium incentive, which will reduce the amount of premiums to be paid by the employer. Thus, premiums of regular employees and pensioners will be the same.

Following the regulation, nearly 2,250,000 people will retire; therefore, employers will



benefit from loans backed by KGF funds to assist them in providing severance pay.

Benefiting from the EYT Regulation If Entitled to the Premium Exemption for Military Service or Childbirth

Men who were granted premium exemption due to military service will benefit from the EYT regulation only if they had served before their initial date of insurance registration. If they fulfill that condition, what matters is the date corresponding to the start of the service period before the initial date of insurance registration. If that date is 8 September 1999 or earlier, the person can retire under the EYT regulation, provided that they fulfill the requirements for the premium and insurance periods.

To benefit from the EYT regulation with premium exemption due to childbirth, women must have delivered after internship insurance registration and before the start of their long-term insurance. The relevant period will be exempt from the required premium period, and the start of insurance will be deemed to be earlier.

The premium exemption will also apply to the periods of doctoral education, medical specialization, lawyer internship, and other missing periods corresponding to part-time working months.

However, the EYT regulation will not apply to people who were first insured as an apprentice candidate, apprentice, or intern.

Notice Pay under the EYT Regulation

Pursuant to the decision of the 22nd Civil Chamber of the Court of Appeal (file no.

2016/27701, decision no. 2020/630), “Since notice pay is a compensation to be paid by the party who terminates the employment contract to the other party, the terminating party is not entitled to the notice pay even if they terminate the contract for good cause. Under article 14 of Law no. 1475, the employee may not claim notice pay if they terminate their employment contract for reasons such as retirement, active military service, and marriage. In case of the aforementioned termination, the employer may not also claim notice pay.”

Thus, persons to retire under the EYT regulation will not be required to comply with the notice period.

Termination of Employment Contract under the EYT Regulation

Termination of Employment Contract by the Employee: Pursuant to article 14 of the Amended Labor Law no. 1475, which is still in force, the employee will have the right to leave their job voluntarily and to claim severance pay if they have completed the required premium and insurance periods. However, as is evident in the decision of the 9th Civil Chamber of the Court of Appeal (file no. 2006/2716, decision no. 2006/8549), the employee may not claim severance pay if it is discovered that they have left the job to work somewhere else.

The obligation to pay severance pay will arise after the employee presents a document issued by the Social Security Institution stating that they are eligible to receive severance pay when they quit their job.



Termination of Employment Contract by the Employer: The Labor Law does not list retirement as a good cause for the termination of employment contract.

Moreover, decision no. 18257/17985 of 27.10.2003 of the 9th Civil Chamber of the Court of Appeal states: “Based on the information and documents added to the file, it is evident that the plaintiff was entitled to retirement on the date of contract termination. Thus, there is no cause for dispute. Retirement is not a sufficient cause to terminate an employment contract. There is no regulation stipulating

that retirement will be a good cause to terminate an employment contract.”

Accordingly, if an employee does not choose to step down despite fulfilling the retirement requirements under the EYT regulation, they cannot be forced to retire or dismissed simply for this reason.

Elif Kahya, Legal Intern

Guest Sector



Guest Sector Agricultural Technology and Legal Approaches

One of the significant turning points in the history of humanity was the advent of agriculture, which led to settled life and the rise of civilizations. Developing independently in different regions worldwide, agriculture evolved with the domestication of plants and animals. It became industrialized with the industrial revolution and technological progress as a result of population increase and specialization of labor over hundreds of years.

Throughout history, civilizations have sought methods and practices to boost production to fulfill the food demands of an expanding population. Especially in the 20th century, many advancements were achieved with the help of mechanics, fertilizers, chemical products, and genetics research. Now, modern agriculture seeks answers for various issues, such as rising food demand, dwindling arable land, a decrease in the number of farmers and agricultural workers, environmental issues

and water scarcity brought on by climate change and global warming, waste, and losses, and rising production costs.

Technological Solutions for Agriculture

Concurrent with the sector's growth, agricultural activities now have a more sophisticated infrastructure than in the recent past due to sensors, machinery, and technological advancements, especially information technology. Like the widespread usage of Industry 4.0, autonomous vehicles and robots are becoming more common in smart farming. Data can be collected, analyzed, and processed based on environmental conditions by monitoring agricultural products and equipment with sensors. Genetic engineering, biologicals, formulations, seed treatments with synthetic and natural active ingredients, and practices to improve plant or soil quality boost productivity with the help of genetics research. The ecosystem evolves in every way as marketplaces and supply chains in modern agriculture are reinforced with new technologies. Marketplaces and management platforms that combine supply and demand in a digital environment by facilitating the purchase of agricultural goods and technologies for financial transactions and affairs revolutionize conventional methods



of delivering agricultural products to intermediaries and end users. Thanks to all these advancements, the agricultural sector is moving away from its old structure and becoming a complicated process involving various areas such as cyber security, sustainability, and data management.

Smart farming boosts profitability in the sector by using innovative farming technologies by farmers and other stakeholders to maximize crop yields and earnings. The size of the global smart agriculture market is anticipated to reach \$36,241 million by 2030, with a projected growth rate of 10.80% between 2022 and 2030. Europe is expected to become the second-largest intelligent agriculture market, with an expected market value of \$9,701 million by 2030.¹

As new technologies emerge and become widespread in agriculture, startups that provide market-driven innovations stand out and get more funding on a national and worldwide scale. Venture capital investments for startups promote the rising interest in agricultural technology. According to Pitchbook, in the last five years, \$1.9 billion in the previous year alone.²

Market value by 2030:

36.241 Million \$

Global market size of smart farming

9.701 Million \$

European market size of smart farming

¹ <https://www.globenewswire.com/en/news-release/2022/07/11/2477563/0/en/Smart-Agriculture-Market-Size-is-projected-to-reach-USD-36-24-Billion-by-2030-growing-at-a-CAGR-of-10-80-Straits-Research.html>

² <https://www.pluginandplaytechcenter.com/resources/8-startups-are-revolutionizing-agtech/>

Agricultural Technology and Regulations

Regulations respond to technological advancements, especially regarding business relations and disputes. With the arrival of cutting-edge technologies, new business models, and supply chain developments in agricultural technology, states are compelled to revise the relevant policies, current laws, and legal approaches to technological progress in agriculture.

A sustainable ecosystem should pioneer in systematic investment in information, innovation, and incubators and aim for innovative solutions to function instead of simply existing. Agricultural policies should encourage digital innovation by providing incentives for technology adoption and investments in digital skills, for example.

Among agricultural regulations in Türkiye, the most important one is Civil Code no. 743, which went into effect in 1926, with provisions on the acquisition of real estate, obligations of the real estate owner, and inheritance of agricultural businesses. Regulations adopted over the years, in addition to the code of responsibilities and the commercial code, have established the basis of agricultural policies. Various legislative acts were enacted regarding agricultural labor law, agricultural insurance, organic farming rules, which have been on the agenda recently, intellectual and industrial property rights, and government subsidies.

As part of the preservation and commercialization of technology, genetic engineering and other scientific discoveries regarding plants and animals must be considered within the framework

of industrial property rights. Moreover, in products or services that rely on data given by farmers, the question of data ownership and protection emerges. These data must be protected and handled by copyright laws. Startups, farmers, and investors should discuss an industrial property, data, and product certification issues while negotiating agreements.

Although traditional law continues to apply in agriculture, from the producer to the end user, modern agriculture, transformed by new technology, has come to encompass a variety of topics ranging from data protection to IT law. As a result, a comprehensive legal approach based on agricultural innovations is critical.

İclal Arğuç Demirtaş, Head of Technology and Business Development Departments

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“A comprehensive legal approach based on agricultural innovations is critical.”



Special Day



Special Day

International Human Rights Day

In the course of World War II, which lasted 6 years, nearly 70 million people lost their lives, the atomic bomb devastated Japan, and Germany was divided into two states. During the war, history witnessed one of the most notorious war crimes and crimes against humanity: the Holocaust. The racist policies of the Nazis affected not only Jews but also Gypsies, Poles, and other Slavic people, claiming the lives of 11 to 17 million civilians, directly or indirectly. Therefore, the end of World War II was the beginning of a new world order.

Universal Declaration of Human Rights

As a result of these events, the United Nations was formed on 24 October 1945. Having Türkiye among its founding member states, the organization aimed to uphold peace, foster international cooperation, and defend people's rights and liberties. Thus, the Universal Declaration of Human Rights, drafted by the United Nations Commission on Human Rights, was proclaimed on 10

December 1948. Containing 30 articles, the declaration was described as "the international Magna Carta of all men everywhere" by Eleanor Roosevelt, who was the United States' delegate to the United Nations and the chair of United Nations Commission on Human Rights at the time. After 74 years, we still celebrate that day as the International Human Rights Day.

Human rights are the fundamental rights and liberties that all individuals are born with, regardless of their race, nation, ethnicity, religion, language and sex. They are essential for people to live in dignity, be free from arbitrary state restrictions, and be able to express themselves. These rights are personal; neither the state nor another person may grant them. They emerged with the beginning of human history. Cyrus Cylinder, the Edicts of Ashoka, Magna Carta, the United States Declaration of Independence, the Universal Declaration of Human Rights, and the European Convention on Human Rights are just a few historical texts that refer to human rights. All these texts aim to achieve an ideal society of equality and peace by protecting human rights.



Human rights are the fundamental rights and liberties that all individuals are born with, regardless of their race, nation, ethnicity, religion, language and sex.

Human rights are divided into three generations. First-generation rights are personal and political rights, such as the right to life, the right to integrity of the person, equality before the law, the right to a fair trial, and voting rights. These rights underline personal freedom to protect individuals from state intervention. They enable citizens to play a key role in matters of public interest. Second-generation rights are economic, social, and cultural rights, such as the right to social security, the right to healthcare, the right to organize and to bargain collectively, and the right to free education. These rights support the coexistence of people and societies. Third-generation rights are solidarity rights, such as the right to a healthy environment, and the right to peace. These rights can only be attained with the joint effort of governments and individuals. The existence of fourth-generation human rights is still controversial, with no consensus reached on the topic; still, many people associate this right with living in an information society. These rights may include the right to request the protection of one's personal data, the right to stand against the abuse of science, and the right to sustainability.

Although there are hundreds of documents on human rights, it is up to individuals to defend them. People struggled for these rights throughout history and did not give up until they obtained them. We owe them these rights, which imposes certain obligations on us. As a result, while pursuing our own rights, we must respect and refrain from infringing the rights of others.



First-Generation Rights

Personal and political rights

- Right to life
- Right to integrity of the person
- Equality before the law
- Right to a fair trial
- Voting rights
- ...



Second-Generation Rights

Economic, social, and cultural rights

- Right to social security
- Right to healthcare
- Right to organize and bargain collectively
- Right to free education
- ...



Third-Generation Rights

Solidarity rights

- Right to a healthy environment
- Right to peace
- ...



Fourth-Generation Rights

Rights associated with living in an information society

- Right to request personal data protection
- Right to stand against the abuse of science
- Right to sustainability
- ...

As Mustafa Kemal Atatürk said, “Human rights are the cornerstone of civilizations and the fundamental values of our age, with democracy serving as their anchor.” If we wish to sustain that notion, we must respect others’ rights as much as our own. Only then can we achieve the ideal future, as well as unity, solidarity, and a world in peace.

Happy Human Rights Day!

Elif Kahya, Legal Intern





News to the World

Legality News to the World



Regulation on Environmental Management Services

The Ministry of Environment, Urbanization and Climate Change published the “Regulation on Environmental Management Services” (“Regulation”) in the Official Gazette of 01.11.2022. The regulation aims to set forth the procedures and principles regarding the certification and obligations of environmental management service providers, as well as the conditions that they must meet. Effective as of its publication date, the Regulation repeals the Regulation on Environmental Management Services published on Official Gazette no. 30847 of 30/7/2019. Thus, the new Regulation abolishes the term “environment officer” and establishes certain obligations on businesses such as obtaining compliance certificate, submitting a monthly activity report, forming an environmental management division, or consulting to an environmental consulting firm, submitting an “Office Suitability Letter”, and making contracts with firms by using the “Minimum Price Tariff” established by the Ministry.

The Regulation also specifies the terms, obligations, and working procedures and principles that the environmental management officers, environmental management divisions and environmental consulting firms must comply with pursuant to the Environmental Permit and License Regulation, as well as applications for compliance certificates, and their assessment, granting, inspection, suspension, and decertification.



For the full text and its appendices, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221101-11.htm>



Energy Market Regulatory Authority's Decision no. 11324 of 27/10/2022

During its meeting on 27/10/2022, the Energy Market Regulatory Authority agreed on the Decision Amending the Procedures and Principles Regarding the Determination of Power Plant Areas of Electricity Generation Facilities to Obtain Pre-License or License in the Electricity Market ("Decision") and decided to submit it to the approval of the Presidency before publication in the Official Gazette. The Decision was published in Official Gazette no. 32001 of 2 November 2022. It amends the first paragraph of article 24 in the "Procedures and Principles Regarding the Determination of Power Plant Areas of Electricity Generation Facilities to Obtain Pre-License or License in the Electricity Market", published in the Official Gazette no. 31166 of 25/06/2020, as follows:

"(1) The total mechanical power of units supplied from auxiliary sources that may be installed in multi-source electricity generation facilities shall not exceed:

a) the total electrical installed power of the units supplied from the main source at electricity generation facilities whose total electrical installed power of the units supplied from the main source is 50 MW or below, and

b) the total power to be found by combining 50 MW with the power corresponding to half of the electrical installed power of the main source exceeding 50 MW at electricity generation facilities whose total electrical installed power of the units supplied from the main source is above 50 MW. Except for the generation facilities whose main source of energy is wind energy, the mechanical installed power of units supplied from auxiliary sources, to be installed pursuant to this article, shall not exceed 100 MW in total."

The Decision is effective as of its publication date to be enforced by the Head of the Energy Market Regulatory Authority.

For the full text, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221102-6.pdf>



Penalties to be Imposed under Customs Legislation with the Law Amending the Income Tax Law, Some Other Laws, and Decrees

Law no. 7420 Amending the Income Tax Law, Some Other Laws, and Decrees, published in Official Gazette no. 32008 of 9 November 2022, amends the penalties to be levied under the customs legislation for vehicles whose owners temporarily enter Türkiye but leave without a commitment.

Thus, Law no. 7420 adds the following subparagraph to the sixth paragraph of article 241 in Customs Law no. 4458:

"e) Rights holders who bring vehicles with foreign license plates into the Turkish Customs Territory for personal use under the temporary importation regime but leave the country with no vehicle without notifying the customs administration."

Previously, if a tourist arriving in Türkiye with a vehicle needed to leave the country without it, they had to leave it under customs surveillance or provide proof that it would not be used by anyone else by informing the customs administration or via e-Devlet (the e-government portal). Otherwise, they were required to pay an administrative fine under article 238 of Customs Law no. 4458. With the amendment, the applicable penalty in case of non-compliance will be a special irregularity fine.

The amendment arising from Law no. 7420 adds the following provisional article to Customs Law no. 4458:

"PROVISIONAL ARTICLE 11- If vehicles with foreign license plates are brought into the Turkish Customs Territory for personal use under the temporary importation regime until the effective date of this article, and their owners depart by leaving the vehicles behind and without informing the customs administration, subparagraph (e) of the sixth paragraph of article 241 shall apply. This article shall not apply to cases occurring before its effective date."

For the full text of the Law, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221109-10.htm>



General Communiqué (sequence no. 21) of the Financial Crimes Investigation Board

The General Communiqué (sequence no. 21) of the Financial Crimes Investigation Board published by the Ministry of Treasury and Finance in Official Gazette no. 32016 of 17 November 2022 (“Communiqué”) aims to set forth the strict measures to be applied by the relevant officers for individuals entrusted with important public duties, including natural persons holding important public offices in high positions, board members and senior executives of international organizations, and other persons performing similar duties.

Obligation to identify the related party under the Communiqué and take other reasonable actions lies with financial institutions, crypto-asset service providers, and the following non-financial affairs and occupations: i) Those who buy and sell precious metals, stones or jewelry, and those who mediate these transactions, ii) Those who engage with the buying and selling of real estate for profit, and those who mediate these deals, iii) Notaries, iv) Freelance lawyers (limited to certain affairs) v) Public accountants, certified public accountants and sworn-in certified public accountants working independently from an employer, and vi) Independent audit firms authorized to audit financial markets. The Communiqué provides that if those parties fail to fulfill their obligations under the Communiqué, they shall be subject to various penalties.



For the full text of the Communiqué, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221102-6.pdf>



Administrative Fines to Be Imposed on Foreigners Working and Employed Without a Work Permit in 2023

Pursuant to Article 6 of International Workforce Law no. 6735, foreigners are not allowed to work or be employed in Türkiye without a work permit, and employers and foreigners who violate this rule are liable to administrative fines pursuant to article 23 of the same Law. In 2022, the administrative fine imposed on employers for each foreigner employed without work permit was ₺16,066. That penalty was raised based on the revaluation rate of 122.93% according to General Communiqué on Tax Procedure Law sequence no. 542, published in Official Gazette no. 32023 of 24.11.2022. As a result, in 2023, employers who employ foreigners without a work permit will pay a fine of ₺35,815 for each employee, and the fine will be raised from ₺6,423 to ₺14,318 for foreigners employed without a work permit, and from ₺12,854 to ₺28,655 for foreigners working without a work permit, independently from an employer. Pursuant to article 23 of Law no. 6735, administrative fines will be increased by one-fold in case of repetition of those actions.



For the announcement of the Ministry of Labor and Social Security, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221109-10.htm>



Regulation on Electronic Commerce Service Providers and Intermediary Electronic Commerce Service Providers

The Regulation on Electronic Commerce Service Providers and Intermediary Electronic Commerce Service Providers ("Regulation") was published by the Ministry of Trade in Official Gazette no. 32058 of 29 December 2022 in line with Law Amending the Law on the Regulation of Electronic Commerce no. 7416 ("Amendment"). The Regulation concerns the following: obligations of electronic commerce service providers and intermediary electronic commerce service providers, unfair commercial practices in electronic commerce, fight against illegal content, especially infringement of intellectual and industrial property, the brokerage agreements to be signed by electronic commerce service providers and intermediary electronic commerce service providers, and electronic commerce licenses. In accordance with the Amendment, the Regulation details the obligations of electronic commerce service providers and intermediary electronic commerce service providers. The Regulation refers to unfair commercial practices in electronic commerce and outlines specific instances that may qualify as such in compliance with the provisions of the Turkish Commercial Code on unfair competition. It further states that KEP or the internal communication system may be used to file complaints about infringements of intellectual and industrial property. Another important provision in the Regulation is that intermediary electronic commerce service providers are not allowed to sell their own brands in electronic commerce marketplaces where they provide intermediary services. The majority of the articles in the Regulation will be effective as of 1 January 2023.



For the full text of the Regulation, see:

<https://www.resmigazete.gov.tr/eskiler/2022/11/20221102-6.pdf>



News from Şengün



Legality News from Şengün



Our Business World and Law Association (IDHD) organized a roundtable discussion on digital transformation with focus on human resources and talent management. In the discussion moderated by İclal Arguç Demirtaş (IDHD Board Member), the participants were Bülent Atay (Standard Profil Group Manisa Human Resources Manager and Türkiye Industrial Relations Manager), Çağatay Pancaroğlu (Dunapack Packaging - Prinzhorn Group Human Resources Director), and Nedim Korhan Şengün (Şengün & Partners Attorney Partnership Co-Founder). The report concerning the discussion, titled "Leading Transformation in Human Resources", is now available online.



Birgi Kuzumoğlu and Elif Gür, associates of Şengün & Partners Attorney Partnership, attended to the Sustainable Future Summit held by the Aegean Young Business Association (EGİAD) and made conversations with other attendees. The event focused on the topics of Climate Crisis, Green Deal, Artificial Intelligence, Smart Cities, Paris Agreement, Metaverse, Society 5.0, and Sustainable Development Goals with a variety of presentations and discussions.



Şengün & Partners Attorney Partnership celebrated the new year with the team and special guests. In his opening speech, Nedim Korhan Şengün, the co-founder of Şengün & Partners Attorney Partnership, expressed his joy at celebrating the new year together again after the pandemic and wished everyone a prosperous year in 2023. The event proceeded with a special dinner and live music.

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December 2022 - January 2023 | E-Bulletin