



Legality

"A seminal publication of Şengün Group"

June - July 2023 | E-Bulletin

The Rights of Consumers
Against Contractors

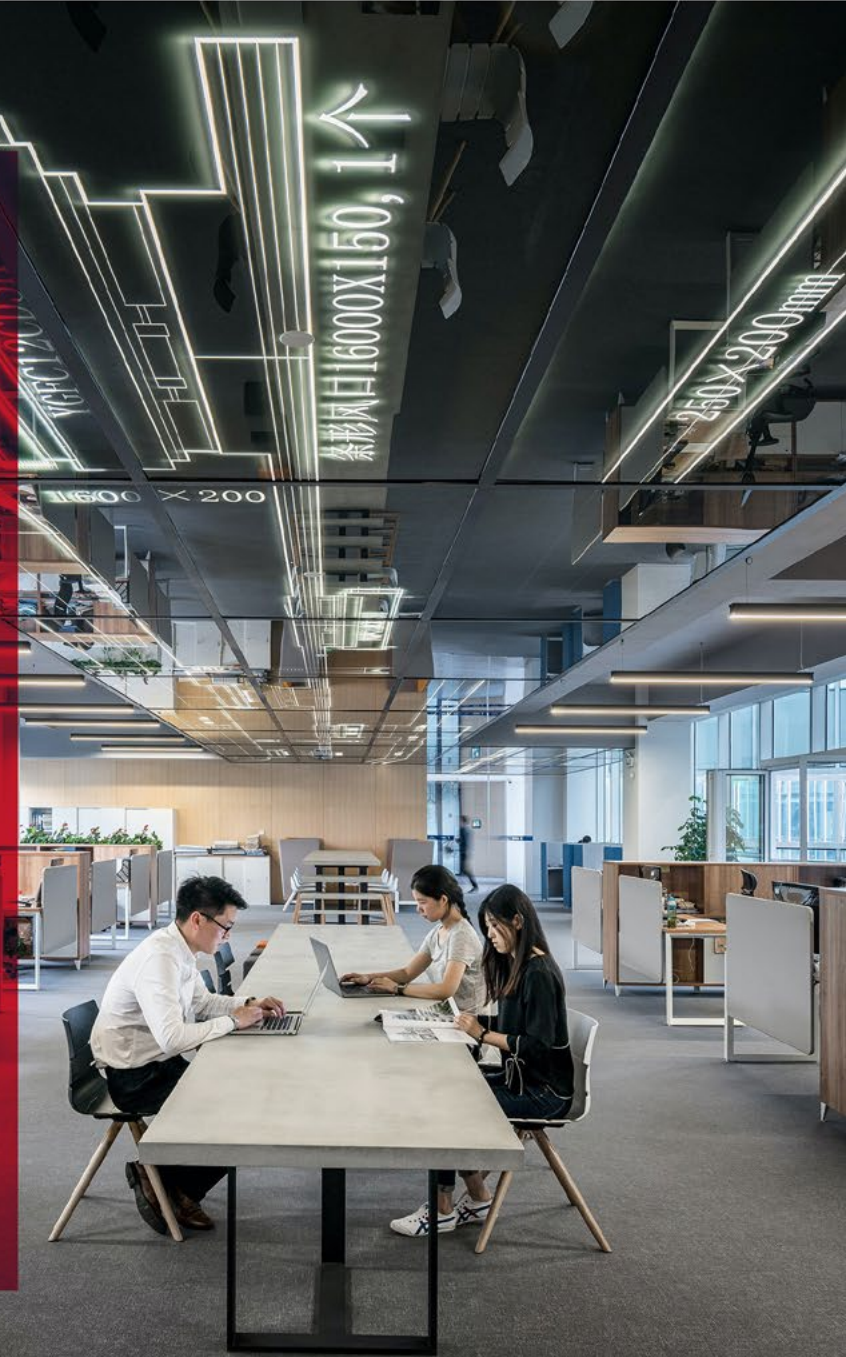
Causes of White-Collar Crimes
and Financial Corruption,
and Possible Solutions

Guest Sector:
Legal Basis of Entrepreneurship:
Is It Allowed? Is It Prohibited?

Special Day:
June 5 World Environment Day
July 10 World Law Day
July 24 Press Day

News to the World
World News

News from Şengün



www.sengungroup.com



ŞENGÜN & PARTNERS
Avukatlık Ortaklığı | Attorney Partnership

www.sengunpartners.com



ŞENGÜN ALSP
Alternatif Hukuk Servis Sağlayıcılığı
Alternative Legal Service Provider

www.sengunalsp.com



JUNE - JULY 2023

LEGALITY INDEX

Editor's Note	04
<hr/>	
Articles	06
<p>The Rights of Consumers Against Contractors - Betül Önal, Associate</p> <p>Causes of White-Collar Crimes and Financial Corruption, and Possible Solutions - Elif Gür, Associate</p>	
<hr/>	
Guest Sector: Entrepreneurship	16
<p>Legal Basis of Entrepreneurship: Is It Allowed? Is It Prohibited? - Gazali Soysal, Managing Senior Associate</p>	
<hr/>	
Special Day	22
<p>June 5 World Environment Day - İpek Kurtoğlu, Legal Intern</p> <p>July 10 World Law Day - Hilal Yayla, Associate</p> <p>July 24 Press Day - Elif Kahya, Legal Intern</p>	
<hr/>	
News to the World	34
<hr/>	
World News	42
<hr/>	
News from Şengün	50
<hr/>	
Sources	56

Legality Editor's Note

Dear Reader,

Şengün Academy is delighted to introduce the June-July 2023 issue of its newsletter, which features the latest national and international news and provides in-depth and clear insights into various industries.

In the accompaniment of articles, we discuss the types of contracts that contractors can offer and the rights of consumers. We also provide details on white-collar crimes and their solutions.

As the guest sector of the month, we consider entrepreneurship and evaluate the legal regulations specific to entrepreneurship.

This issue's special days will be World Environment Day (June 5), World Law Day (July 10), and Press Day (July 24), whose origins will be covered in detail.

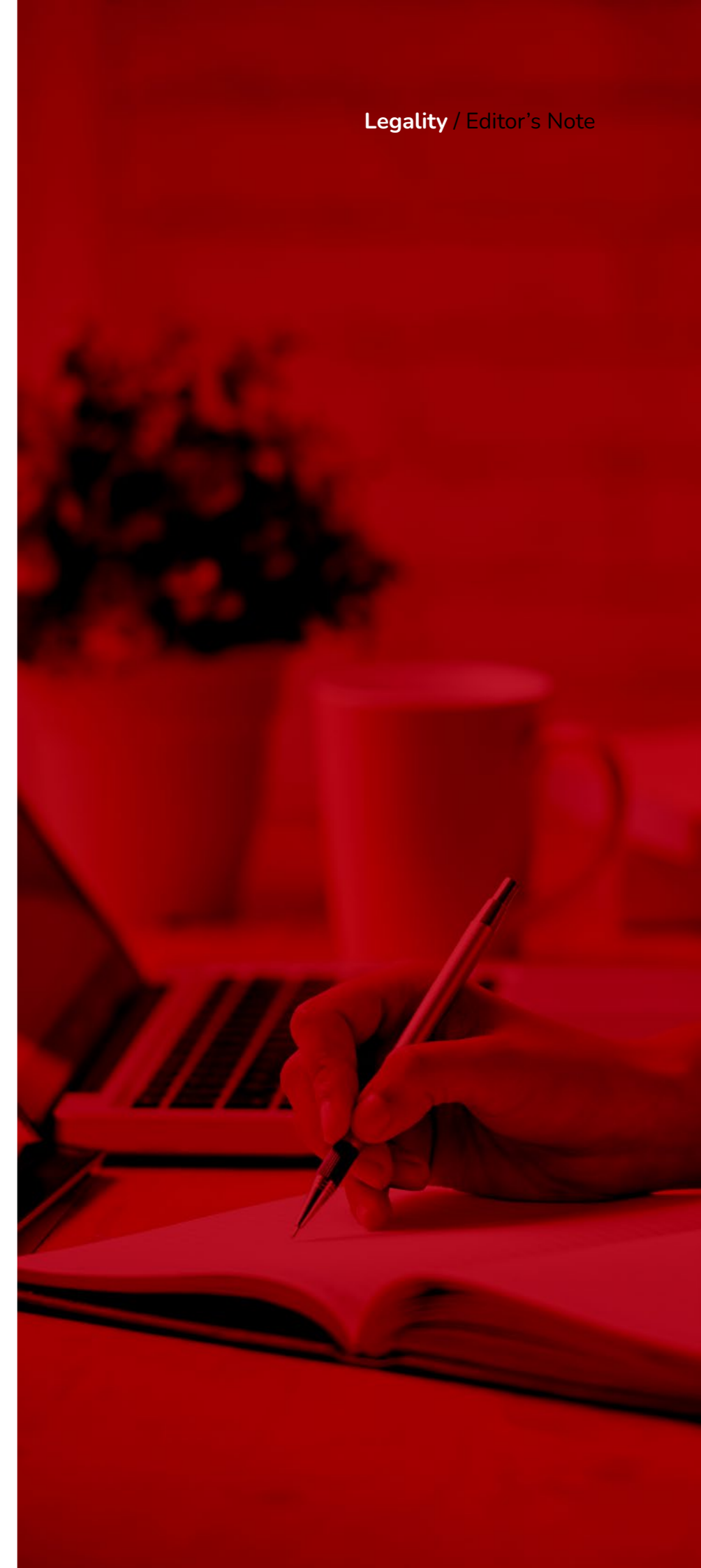
Our "News to the World" section will offer the latest regulations, decisions, communiqués, laws, requirements, and amendments affecting national and international relations.

Our new section, "World News," will keep you transparently updated with the latest international news.

Finally, the "News from Şengün" section will provide the latest news from our team.

Enjoy reading!

**Istanbul, June-July 2023
Şengün Academy**



Articles



Article

The Rights of Consumers Against Contractors

A contractor can be defined as providing the necessary capital and employees for the construction of a construction, obtaining the necessary permits and approvals from the relevant institutions, and organizing this construction from start to finish and delivering it to those concerned with its completion. In this article, the rights of consumers against contractors will be mentioned.

A- What Contracts Can Be Made with the Contractor?

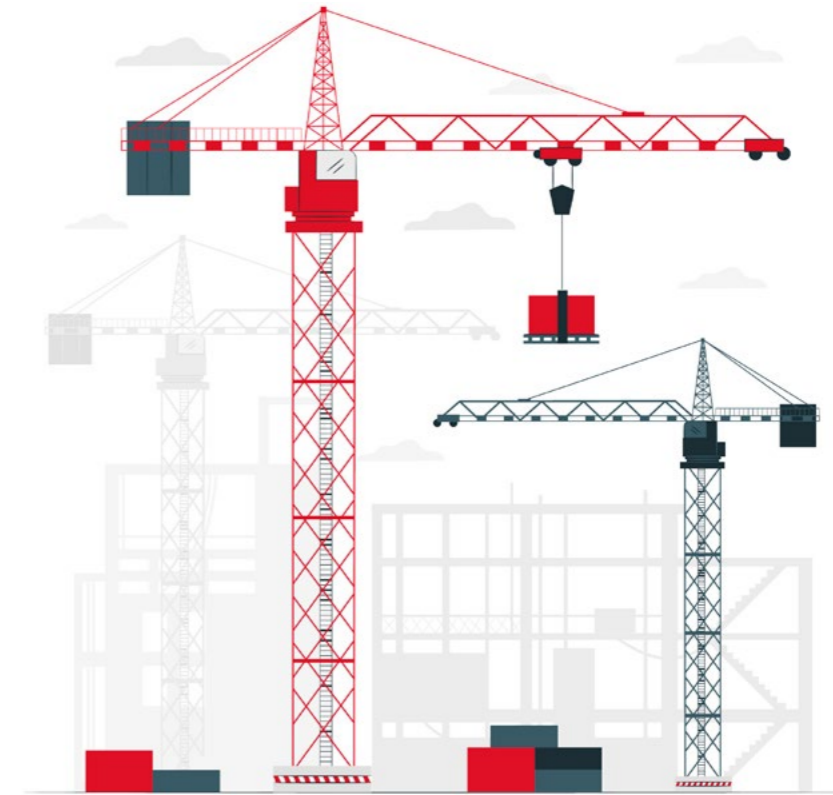
a. Construction Contract For Flat Or Construction Agreement In Return For Land Share:

The contractor undertakes to construct the independent sections on the land and deliver the land parts' specified in the contract to the landowner, and the landowner undertakes to assign the land share of the contractor agreed in contract,

to the contractor or to third parties that was nominated by the contractor. This contract is a mixed contract that imposes obligations on both parties.

b. Preliminary Contract for Sale:

It is a contract between the contractor and the third party. If the conditions in the contract are fulfilled, this contract gives the parties the right to request a contract, regarding the real estate written in the contract. One of the contract's parties undertakes to assign the real estate and the other party undertakes to take over the real estate, and this type of contract is contract of reciprocal promises.



B- The Concept of Defect

A defect can be defined as a violation of the contract due to the fact that the goods do not carry the issues agreed by the parties during delivery to the consumer.

Clear defect, is the defect that is determined by reviewing. If it is a hidden defect, it is a kind of shame that arises later from the delivery or use of goods that cannot be detected by reviewing. In this context, it is necessary to examine the real estate when taking delivery of the real estate made by the contractor. However, if there is a hidden defect, the law has not imposed an obligation to check the work for such sins.

An example of a contractor's defective or incomplete works varies depending on the concrete situation, but the mandatory permits for construction are not obtained

from the relevant institutions, the apartment is delivered late, the product of the promised brand and quality is not used, the promised apartment is not given.

C- Lapse of Time

As stated in Article 478 of the Turkish Code of Obligations, "If the contractor delivers defective work, the litigation to file a case regarding such defect shall be 2 years for the movables and 5 years for the immovables, and if the contractor has gross fault, twenty years regardless of the nature of the defective work." the contractor may be held liable for defects for 5 years, and if there is gross fault, a 20-year statute of limitations is stipulated. In case these periods expire, the right holder will not be able to file a lawsuit against the contractor for the defect.

D- What are the Consumer's Electoral Rights in the Event of a Defective Delivery of Real Estate?

In case of defective delivery of real estate, the consumer's electoral rights, which can be applied to the contractor by law, are regulated in Article 11 of the Consumer Protection Law, and the Contractor is obliged to fulfill this request preferred by the Consumer.

a. Rescission of Agreement:

If the immovable property delivered by the contractor is defective to the extent that the consumer cannot use it or cannot be forced to accept it in equity, or if it is contrary to the provisions of the contract to the same extent, the right to withdraw from the contract is one of the optional rights of the consumer. Under Article 11/5 of the Law on the Protection of Consumers, " In cases where the consumer chooses to exercise the right to rescind the contract or request a discount from the price in proportion to the defect, the complete amount paid or the amount of the discount made from the price shall be refunded to the consumer immediately." All of the price paid by the consumer must be returned to the consumer.

b. Requesting Discount:

Pursuant to Article 11/1-b of the Law on the Protection of Consumers, the Consumer has the right to request a discount from the sale price in proportion to the defect that keeping

the sold good. If this optional right is exercised by the Consumer, the price paid by the Consumer is discounted and returned to them immediately.

c. Requesting a Repair:

In accordance with Article 11/1-c of the Law on Consumer Protection, another optional right of the Consumer is the right to request free repair of the sold good at seller's expense, unless it requires an excessive expense. The important point here is that the repair does not require an excessive expense. If the repair does not meet this condition, the consumer may use one of the other optional rights.

According to Article 11/4 of the Law on the Protection of Consumers, in the event that one of the rights of free repair or replacement of the goods with a defect-free equivalent is chosen, it is obligatory to fulfil this request within sixty working days, for immovable property intended for housing or vacations, from the date of the request.

d. Requesting Replacement with a Defect-Free Equivalent:

In accordance with Article 11/1-d of the Law on the Protection of Consumers, another optional right of the Consumer is "requesting a replacement of the defective good with a defect free one, if possible". Pursuant to this article and the following regulation, this optional right of the consumer should not

cause disproportionate difficulties for the seller who is the contractor. In case of disproportionate difficulties, the Consumer may use other optional rights.

In addition to the above-mentioned optional rights, the Consumer also has the right to request compensation. Article 11/6 of the Law on the Protection of Consumers states that "All expenses arising from the exercise of rights of choice shall be borne by the party realizing the right the consumer chose. The consumer may also demand compensation with one of these rights of choice, in line with the Turkish Code of Obligations numbered 6098 and dated 11.01.2011." In accordance with the aforementioned Law of Obligations Article 112 "If an obligation is not fulfilled at all or as required, the obligor must compensate the creditor for the damage arising therefrom, unless they prove that no fault

can be attributed to them.", the consumer has the right to demand compensation in addition to their optional rights.

E- Conclusion

In case of defective delivery of the immovable property, the consumer's optional rights against the contractor are regulated in Article 11 of the Law on Consumer Protection and the Contractor is obliged to fulfil this request preferred by the Consumer.

These optional rights of the consumer are; returning from the contract, requesting a discount at the rate of defect, requesting repair and requesting replacement with a defect-free equivalent. In addition to these optional rights of the consumer, there is also the right to demand compensation.

Betül Önal, Associate



Article

Causes of White-Collar Crimes and Financial Corruption, and Possible Solutions

In this article, we will delve into the reasons and mechanisms behind the occurrence of white-collar crimes and explore the steps that can be taken to address them.



The emergence of economic relationships and commercial activities in the fast-evolving digital landscape as well as the globalization of the economy have given rise to the necessity for various authorities and nations to impose specific limitations and constraints on associated activities. The increase in regulations has been followed by an increase in violations, resulting in penalties on financial corruption, and misconduct by top-level executives of companies.

We previously defined white-collar crimes in our article titled "White-Collar Crimes".

See: <https://sengunhukukyayinlari.com/beyaz-yaka-suclari/>.

Why Executives and Employees Commit a Crime

Individuals are driven to commit white-collar crimes due to factors such as greed, ambition, and similar motivations. The typical factors that drive an employee within a company to engage in criminal behavior are as follows:

- The existence of viable targets for committing a crime
- Lack of an adequate control mechanism within the company
- The presence of additional factors that incentivize employees to engage in a criminal activity

The first of these factors, the existence of viable targets for committing a crime, is more likely to occur when an employee holds a reputable and impactful position within the company. The second factor, the lack of an adequate control mechanism within the company, may occur for various reasons. The complexity of a company's organization and the absence of a well-defined distribution of work can undermine the effectiveness of the company's control mechanism. Likewise, the lack of internal auditors or security personnel renders the auditing mechanism ineffective, which, in turn, increases the inclination of employees to engage in a criminal activity. Additional factors include various personal circumstances, such as employee discontentment and/or financial indebtedness.





During an internal investigation, it is advisable to prioritize strict confidentiality, take measures to prevent disclosure of employees' statements to other colleagues within the company, and engage an independent audit firm and law firm to oversee the investigation process.

Possible Solutions for Companies

Instances of irregularities within a company that could be categorized as white-collar crimes are usually discovered during audits or through internal reporting mechanisms, and internal investigations are initiated in response to internal reports.

However, the identification and resolution of irregularities concerning white-collar workers within a company can frequently give rise to numerous challenges and uncertainties. When the perpetrators of irregularities at the company are top-level

executives, employees may face obstacles in reporting such irregularities and refrain from providing unrestricted testimony during the internal investigation. Consequently, they might choose to remain silent and protect the wrongdoer, thereby preventing the punishment of those responsible for irregularities. During an internal investigation, it is advisable to prioritize strict confidentiality, take measures to prevent disclosure of employees' statements to other colleagues within the company, and engage an independent audit firm and law firm to oversee the investigation process. Given

that traditional criminal and administrative law establish specific procedural and punitive provisions for these crimes, the evidence gathered during an internal investigation holds significance for subsequent administrative and criminal proceedings.

White-collar crimes that occur even in international companies with stringent compliance policies are frequently seen as a convenient shortcut for employees seeking rapid career advancement. While these employees may reap personal benefits, their actions impose irreparable risks

upon their respective companies. To guard their interests, companies should adopt protective measures against employees who exploit and inflict financial and reputational harm upon the organization, and if they discover misconduct, they should seek professional assistance for conducting internal investigations.

Elif Gür, Associate

Guest Sector



Guest Sector

Legal Basis of Entrepreneurship: ~~Is It Allowed?~~ Is It Prohibited?

It is crucial to stay abreast of each new concept that frequently arises in our everyday and professional lives to make its legal analysis and comprehend its legal basis, as required by the principle of legal certainty. Naturally, people would like to know and understand the opportunities and constraints within their respective fields of business. One of the most important of these constraints is law. Therefore, the legal basis of entrepreneurship and its implications should be analyzed.

These days, we are witnessing a notable surge in the popularity of entrepreneurship due to various factors. The quantity and scale of entrepreneurial activities are on the rise, both within Türkiye and across the world.

The prevalence of entrepreneurship can be attributed to several factors, including increased globalization, generation gaps, different work expectations among generations, the recognition of time as a precious resource, and the drive to embrace time-saving practices.



Right from the inception of an idea, the entrepreneur, being the central figure in entrepreneurship, must abide by the applicable laws. Thus, they can effectively mitigate the risk of encountering substantial damages and wasting time due to potential legal issues or penalties in subsequent stages. For example, they should first assess whether their planned venture complies with the relevant laws, as embarking on a legally prohibited venture would render it futile and unfeasible from the outset.

The establishment of a legal basis for a venture should not hinder business activities. In this century, greater emphasis

should be placed on the supportive and incentivizing aspects of law. Otherwise, law may be perceived as an institution struggling to keep pace with the dynamics of business life, emerging like a “ghost” at times. Therefore, the lawfulness of entrepreneurship should be assessed by posing the right question: The question of “Is it legally prohibited?” should be prioritized over the question of “Is it legally allowed?”, and the process should be carried out from this standpoint. The rationale behind this lies in the fact that our legal system upholds the principle of freedom of will, thus permitting activities other than those explicitly prohibited.



The company's articles of association to be drafted based on the company type should underline the significance of shareholding structure, privileged share system, share groups and the rights to be granted for the operation of the company where the venture takes place.



It is also crucial that a venture is legally protected from the start with appropriate measures. In situations where multiple entrepreneurs are involved, their ideas should be protected even from one another. Adopting this awareness and perspective during the process is one of the key factors contributing to achieving the desired goal in an entrepreneurial journey.

There are also numerous factors that need to be taken into account when deciding on the type of company where a venture will be undertaken, including: capital, shareholding, business structure, incentive opportunities, etc. To determine the right company type, alternatives should be evaluated and analyzed for each of these factors. The company's articles of association to be drafted based on

the company type should underline the significance of shareholding structure, privileged share system, share groups and the rights to be granted for the operation of the company where the venture takes place.

After taking the initial steps for a venture, ensuring confidentiality becomes the utmost priority, particularly during the processes of financing and offering options to personnel.

As such, it is crucial to diligently handle the clauses and penalties of non-disclosure agreements, which are commonly encountered in practice. Failure to do so may result in the venture being unexpectedly undertaken by an investor with funding. Still, it can be discovered

that the personnel who has breached confidentiality lacks the financial means to compensate for the resulting damages, meaning that the signing of a confidentiality agreement has been impractical from the outset. Hence, it is necessary to assess all these potential outcomes and develop a readily implementable roadmap.

Throughout these processes, it may be necessary to sign shareholders' agreements, investment agreements, and preliminary agreements in the form of letters of intent in addition to confidentiality agreements. The successful completion of the process depends on determining if such agreements are binding, assessing the compliance of drag-along and tag-along clauses in agreements with Turkish Law, and seeing

whether there are deterrent consequences in case of contract breach.

All the aforementioned processes entail a form of projection, and a meticulous, thorough, and professional evaluation of each aspect will contribute to achieving the benefit expected to be derived from a venture.

Gazali Soysal, Managing Senior Associate

Special Day



Special Day June 5 World Environment Day

World Environment Day has been celebrated every year on June 5th since the United Nations Environment Conference held in Stockholm, Sweden in 1972 in order to raise awareness and take action worldwide on environmental protection.

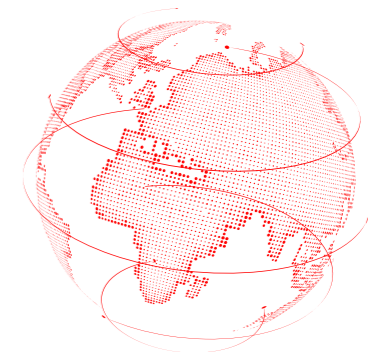
1 million plastic water bottles are purchased every minute in the world and 5 trillion disposable bags are consumed every year. It is called for people to make changes in their daily lives in order to eliminate the negative effects of plastic waste on nature, wildlife and human health. 50% of the plastic products we use are single-use products. The amount of plastic accumulated in the oceans in one year is enough to circle the earth four times, and it lasts for 1,000 years until it is completely dissolved. Plastics also cause direct damage to the human body, and the negative effects can reach people's water and food through microplastics.



The amount of plastic accumulated in the oceans in one year is enough to circle the earth four times, and it lasts for 1,000 years until it is completely dissolved.

With the impact of the climate crisis, the concept of corporate sustainability is now constantly appearing in the business world. This concept constitutes the institutional dimension of the sustainability goal, that is, the goal of achieving a clean future through development without harming the environment.

The concept of corporate sustainability means that its business activities are carried out in a sustainable manner with the focus on growth, efficiency and value creation. Thanks to this concept, which combines an alternative approach that emphasizes environmental and social values with a traditional growth-oriented perspective, economic interests are achieved without harming the environment and by creating value in a social sense. The sustainability approach, which stands out as a management strategy, means that continuity is taken as the basis in all business processes. Developing a future-oriented management approach is very important for companies to maintain their activities in the most effective way. Being more environmentally and socially responsible of companies is a prerequisite for achieving corporate sustainability goals. In this context, it is necessary to develop strategies and planning in many areas such as resource use, emissions, waste management and ethical values while developing products and services.



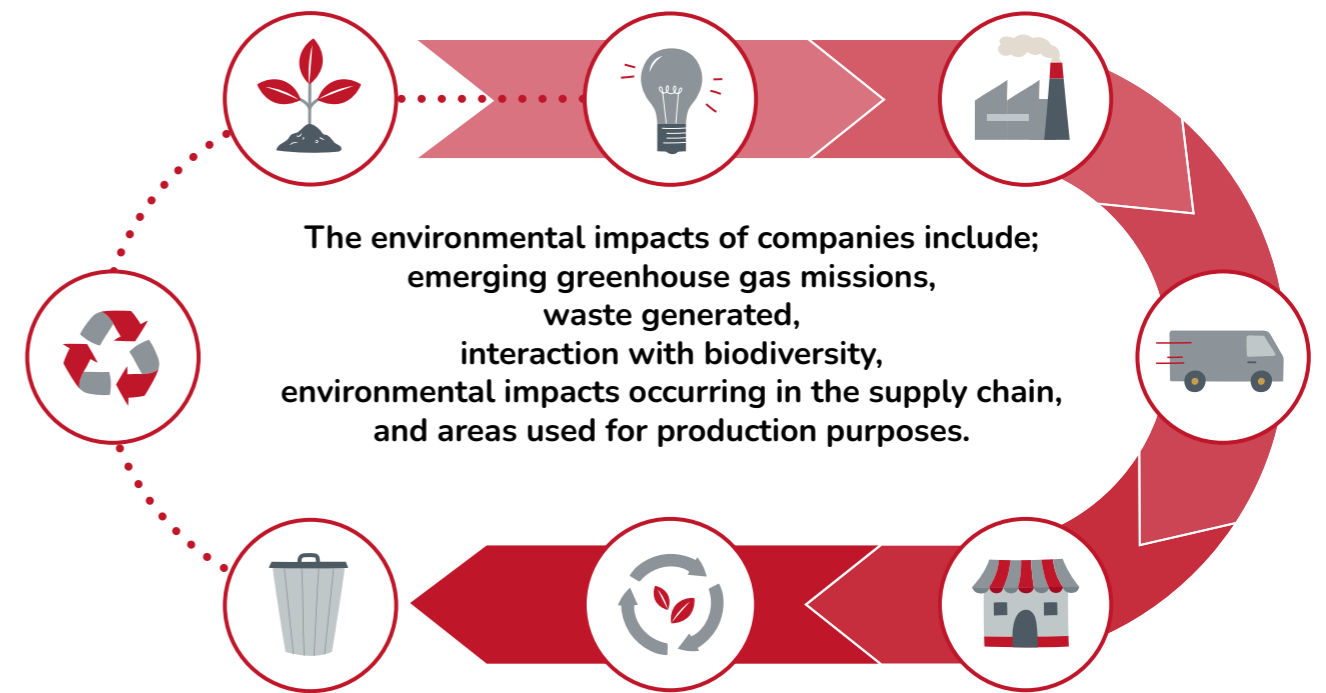
In addition to the impact of companies' products and services throughout their life cycles, it is necessary to take into account the effects that occur throughout the supply chain. Corporate sustainability requires companies to work to achieve their sustainability goals with a holistic approach. The benefits that corporate sustainability provides to enterprises can be listed as increasing productivity, achieving sustainable growth, protecting brand reputation, effective risk management, effective communication with stakeholders. The wide scope of the concept of corporate sustainability is due to the fact that this concept is in a structure that brings together different dimensions. These dimensions appear as environmental, social and economic dimensions.

Corporate sustainability is examined with three dimensions that are intertwined environmentally, socially and economically. This intertwining connected structure shows that the sustainability goals of any dimension are not independent of other dimensions. In other words, in order to be sustainable in an institutional sense, it is necessary to carry out improvement and development studies in all dimensions. The environmental dimension of corporate sustainability refers to the impact on the environment as a result of business activities. The areas used within the scope of corporate and commercial activities are also evaluated within the environmental dimension of sustainability.

Companies leave an environmental impact in many areas from the production to the distribution of the products they develop. The environmental impacts of companies include; emerging greenhouse gas missions, waste generated, interaction

with biodiversity, environmental impacts occurring in the supply chain, and areas used for production purposes. Carbon footprint is the representation of the damage caused to the environment as a result of human activities in terms of carbon dioxide (CO2) equivalent value. It should also not be forgotten that products and services have an impact on the environment throughout their entire life cycle. For this reason, a more environmentally friendly supply chain needs to be created. Companies that want to make a breakthrough in the field of corporate sustainability should also take into account the environmental impacts of all business partners.

İpek Kurtoğlu, Legal Intern



Special Day

July 10 World Law Day

Nowadays, one of the most used is undoubtedly “law”. The civilized people of our age have stuck to the words “right and law” and the principles of the rule of law. Law provides for the compulsory regulation of human rights and fundamental freedoms of economic, social and cultural or personal and political nature that everyone has.

It can be said that the rules governing people’s behavior are related to social life. Even though the law, which took place in the primitive tribes period, has evolved with the formation of modern states and democracy, it has always responded to people’s “protection” instincts and tried to eliminate the conflicts within the society with different systems. Therefore, it is not possible to define the concept of law as an abstract structure that is identified with the will of a legislator.



As definitions of law evaluated from different perspectives;



True law comes out of the mind in accordance with nature. This law is universal, unchangeable and eternal.
(Marcus Tullius Cicero)



Law is the totality of the conditions of social life secured by external coercion by the state power.
(Rudolph von Jhering)



Law according to the general comprehensive freedom law, it is a set of conditions that reconcile the voluntary acts of one person with the voluntary acts of other people.
(Immanuel Kant)



From Hammurabi to modern republics, legislators have always benefited from the law, which is one of the basic elements of society. One of the main features of the law is that the methods are open to change. The legal practices of past societies, the legal rules and institutions they developed have drawn an important road map in terms of the methods used today. For example, the most important distinction made in Roman Law, which forms the basis of modern legal systems, is the distinction between rights in kind and personal rights.

Positive law, which consists of all the legal rules in force in Turkey, can be examined as Private law and Public law. Initially, there was not much distinction made between these two branches of law, but today the differences are decently increasing.



July 10 was declared “World Law Day” with the decision of the Council of Ministers upon the third law-based conference on peace being held in Geneva on July 10, 1967. “World Law Day”, The Day of Law, which was first celebrated in 1967, supports the rule of law, democracy, and the “just-for-society” state understanding.

Justice means treating all people equally. On the other hand, law is also a fundamental value for the rule of law. Nevertheless, it is a common opinion today, especially among decriminalists, that law and justice are two different things and have nothing to do with each other. Therefore, lawyers

have an important role to play in changing this misconception.

As lawyers, we aim to protect the developing legal system without discrimination and thus to resist the unwarranted restriction and violation of rights and to provide judicial services to everyone who needs it, but happy “World Law Day” on behalf of the days when we act freely and diligently in accordance with the accepted standards and moral rules of the profession.

Hilal Yayla, Associate



“World Law Day” supports the rule of law, democracy, and the “just-for-society” state understanding.

Special Day July 24 Press Day

Celebrated annually on July 24th, Press Day is a meaningful day that highlights the freedom of the press and the profession of journalism in Türkiye.



It is considered a celebration that reflects Türkiye's belief in its democratic values and the importance it attributes to freedom of expression. July 24 also represents an important milestone regarding the history of the press in Türkiye. On July 24, 1908, with the declaration of the Second Constitutional Era, a new era also began for the Turkish press with the abolition of censorship and the guarantee of freedom of the press. This historic event has become a symbol of the struggle for press freedom in Türkiye and it is no coincidence that the Press Day coincides with this date.

The press is one of the cornerstones of a democratic society. Journalists, who undertake important tasks such as conveying the facts, presenting news impartially, contributing to public awareness and enlightening the public, are indispensable for the healthy functioning of democracy. By providing access to accurate and objective information, the press raises social awareness, brings public issues to the agenda and enables various segments of society to make their voices heard. However, freedom of the press and journalism have faced many different challenges in Türkiye. Journalists faced censorship, pressure, threats and even violence while reporting news.



Such restrictions restrict the right of journalists to work freely and harm the public's access to accurate information. Press Day draws attention to these challenges and emphasizes the need to protect press freedom and defend the rights of journalists.

This day, especially today, is perhaps more important than ever when there are various problems and censorship against press freedom and journalism. Current problems such as censorship and restrictions on freedom of expression, media monopolization, threats and violence against journalists, source secrecy and internet censorship, and financial difficulties negatively affect press freedom and the profession of journalism, limiting

the impartial transmission of information and the public's right to information. The protection of press freedom and freedom of expression is one of the cornerstones of democratic societies and efforts must be made to combat these problems.

On the occasion of Press Day, we recall the important role of the press and journalists in Türkiye's democratic progress and remind once again, that press freedom must be protected and the rights of journalists must be defended.

Elif Kahya, Legal Intern

News to the World



Legality News to the World



Energy Market Regulatory Authority's Decision on Natural Gas Consumption

The Decision of the Energy Market Regulatory Authority, published in the Official Gazette on 09.06.2023, has amended the procedures and principles regarding the enforcement of the Presidential Decree on system usage fees for natural gas consumption.

Accordingly, natural gas distribution companies will invoice the system usage fees and other amounts equivalent to them, incurred in the previous month(s) due to the former procedures and principles, as well as the summary sheet approved by their officials, to the Ministry of Energy and Natural Resources ("Ministry") within the first 5 business days to request for such fees and amounts to be reimbursed from the Ministry's budget. The Ministry will make the payments for the invoices issued by distribution companies via money transfer to their bank accounts within 10 business days from the date of request.

If the Ministry requests additional information and documentation from a distribution company, the period specified in the relevant paragraph will start from their submission.



If a monthly finalized natural gas consumption amount subject to these procedures and principles, notified to the Ministry by the Petroleum Pipeline Corporation (“BOTAS”) regarding a natural gas distribution company, is lower than the consumption amount reimbursed to the distribution company, the overpayment calculated by multiplying the difference between the consumption amounts by the system usage fees specified in the invoice, together with the late fee to be accrued from the date of payment, will be set off from the distribution company’s next period receivables and deducted from its next period invoice.

If the overpayment specified in the paragraph occurs at the end of the relevant period, it will be collected from the distribution company at once, together with the late fee to be accrued from the payment date.

The Decision has also replaced the phrase “with its legal interest” in the second paragraph of article 10 of the procedures and principles with the phrase “with the late fee to be accrued from the payment date”.



For the full Decision, see:

<https://www.resmigazete.gov.tr/09.06.2023>



Amendment to the Remote Identification Regulation

The Regulation Amending the Regulation on Remote Identification Methods to Be Used by Banks and Establishment of Contractual Relationships in Electronic Environment (“Amendment”) was issued by the Banking Regulation and Supervision Agency (“BRSA”) and published in Official Gazette no. 32201 dated 25.05.2023.

- Accordingly, the remote customer acquisition processes currently used for real persons will also apply to legal entities. Thus, legal entities registered with the trade registry will be able to open a bank account via video calling.

The power of representation of the company’s agent taking action online will be verified with information obtained from the Central Registration System or the Trade Registry Gazette. However, to prevent associated risks, the bank may request from its customer representative to obtain a copy of the signature circular showing that the agent is authorized to represent the legal entity. The sample signature obtained from the signature circular will be compared with the one found on the agent’s identity card and/or MERSIS. The existence of the signature circular may also be confirmed via its date and journal number.

- To facilitate the remote identification of individuals, the bank’s customer representative will employ AI applications during the relevant controls in order to complete the process digitally, without human intervention. The BRSA will be authorized to define the procedures and principles for the actions of the bank officer, which are performed via AI-based methods.

- The Amendment also sets forth that the identities of people with disabilities may be verified with assistance from a third party if needed during a video call.

- Finally, for the remote identification process to be completed at the end of the video call, the person making the call must be informed about the banking services to

be provided, and the real person, the tradesperson or the legal entity must give their verbal consent that they agree to become a bank customer.

Since banks are also subject to the Legislation of the Financial Crimes Investigation Board (“MASAK”), the enforcement of these amendments will not suffice for banks to perform remote identification of legal entities. Therefore, MASAK will need to amend the communiqué serial no. 19 for remote customer acquisition.



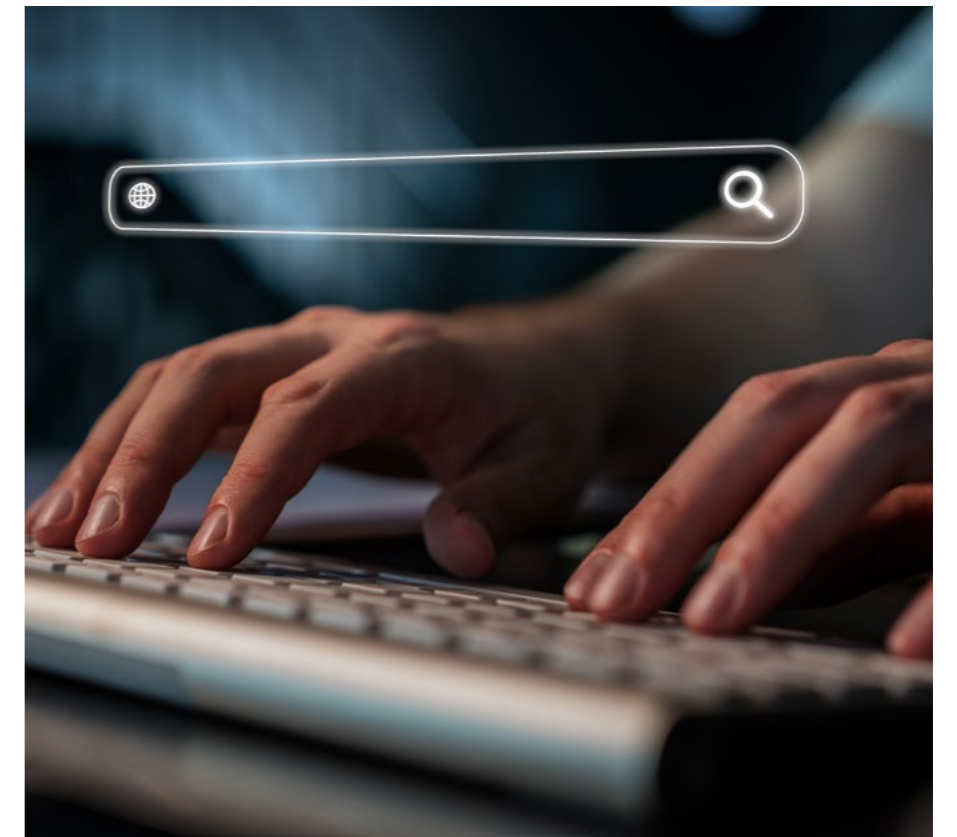
For the full Regulation, see:

<https://www.resmigazete.gov.tr/fihrist?tarih=2023-05-25>



Constitutional Court's Decision on “Learning about a Judgment via UYAP”

The previous decisions of the Constitutional Court were unclear if the rule of “learning about a judgment via the National Judiciary Informatics System (‘UYAP’)” also applied to those represented by a lawyer. The Constitutional Court resolved this uncertainty in its decision dated 08.03.2023, pertaining to Ümran Özkan, which states that the 30-day appeal period begins once the final judgment is available on UYAP. Thus, the appeal period starts when the judgment is discovered, either by the principal or their lawyer. As a result, the beginning of the appeal period will be the day on which the person asserting that their rights have been violated learns of the situation in person or through their lawyer.



For the full Decision, see:

<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/13338>

World News



Legality
World News



Lawyers Sanctioned for Using AI

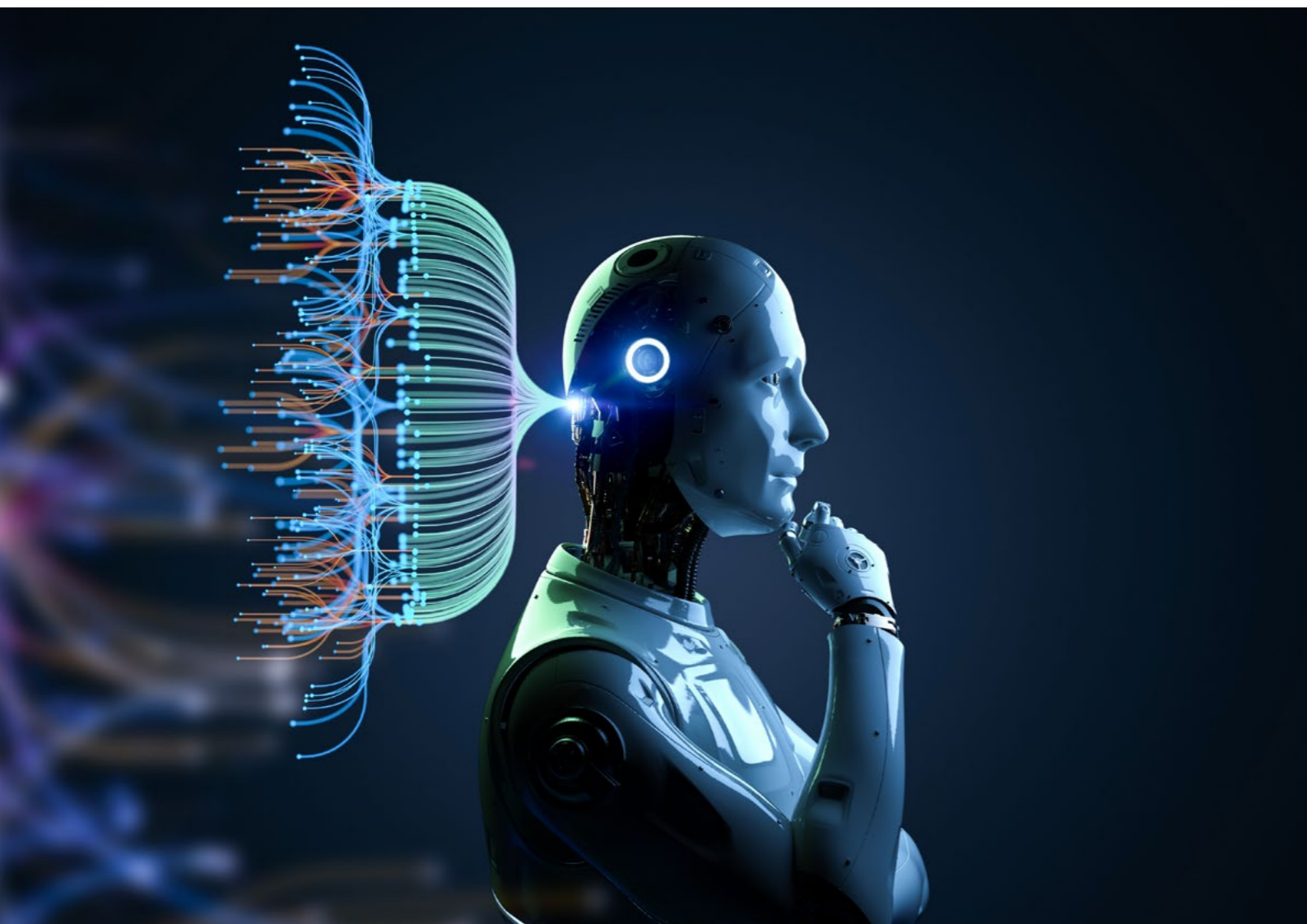
A U.S. judge has imposed sanctions on two New York lawyers for submitting a legal brief containing six fictitious case citations generated by an AI chatbot. The lawyers, Steven Schwartz and Peter LoDuca, along with their law firm Levidow, Levidow & Oberman, were ordered to pay a total fine of \$5,000. The judge found that the lawyers acted in bad faith and made false and misleading statements to the court.

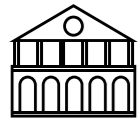
In response to the sanctions, Levidow, Levidow & Oberman expressed their disagreement with the court's assessment, stating that they made an unintentional mistake in trusting the technology to generate accurate citations. Schwartz admitted that he used ChatGPT to assist in researching a personal injury case against Avianca, but was unaware that the AI had included false citations in the brief. The name of LoDuca, who prepared the brief, was the only one listed. Avianca's lawyers initially alerted the court to the missing citations in March, leading to the investigation. Avianca's motion to dismiss the case was granted due to the late filing, and their lawyer stated that the court reached the right conclusion, regardless of the lawyers' use of AI.

The judge emphasized that while it is not inherently improper for lawyers to use AI for assistance, they have an ethical responsibility to ensure the accuracy of their filings. The lawyers were also criticized for standing by the fake opinions even after their authenticity was questioned by the court and the airline. As part of the sanctions, the lawyers are required to notify the real authors of the fake cases, who were identified by the court.

Source:

<https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>





**European Parliament
Adopts AI Law Position**

The European Parliament has taken an important step towards regulating artificial intelligence by voting overwhelmingly to adopt its position on the upcoming Artificial Intelligence Law. The law aims to regulate artificial intelligence according to its potential for harm and follows a risk-based approach by banning applications that pose an unacceptable risk, while introducing strict regulations for high-risk use cases.

The timing of artificial intelligence regulation has been a matter of debate, but Dragos Tudorache, one of the co-rapporteurs of the European Parliament’s Artificial Intelligence Law, stressed that the time is right to regulate artificial intelligence because of its profound impact. The adoption of the Artificial Intelligence Act faced uncertainty as a political agreement collapsed, which led to amendments from various political groups.

One of the main points of contention was the use of Remote Biometric Identification, which liberal and progressive lawmakers want to ban the use of real-time except for legacy investigations into serious crimes. The center-right European People’s Party has tried to introduce exceptions for exceptional circumstances, such as terrorist attacks or missing persons, but its efforts have failed. A layered approach for artificial intelligence models will be introduced by the law, including stricter regulations for basic models and productive artificial intelligence.

Source:
<https://www.artificialintelligence-news.com/2023/06/14/european-parliament-adopts-ai-act-position/>



**20-Year Endorsement
Warrant Banning the
Use of Non-Compete
Agreements**

On June 2, 2023, the Federal Trade Commission (FTC), Anchor Glass Container Corp. announced that it has finalized a consent order with (“Anchor Glass”).

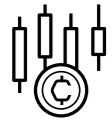
This warrant follows the FTC’s administrative complaint filed in March 2023 against Anchor Glass and the owners who control it (“defendants”). The FTC’s complaint alleges that Anchor has entered into non-compete agreements with more than 300 employees and that these non-compete agreements are unfair and have a “tendency or possible effect to harm competition, consumers and workers.”

The consent order is valid for a period of 20 years and requires defendants to “cease, directly or indirectly, to enter or attempt to enter, pursue or attempt to continue, exercise or attempt to enforce, or threaten to enforce.”

Any non-compete agreement for any of the 139 Anchor employee classifications defined by the FTC. The consent order also requires defendants to provide each employee with an FTC-approved notification letter stating that the employee is not subject to the non-compete clause.

In addition, defendants must serve the order and submit annual compliance reports to officers and directors, as well as employees involved in the hiring process, for a period of 10 years. Defendants also have an affirmative obligation to notify the FTC of any change in the liquidation, acquisition, merger or consolidation of any of the defendants.

Source:
<https://www.natlawreview.com/article/20-year-consent-order-prohibiting-use-non-compete-agreements-antitrust-byte>



UK Introduces 24-Hour “Cooling-Off Period” for Crypto Investments to Protect Consumers

The UK government is introducing new regulations for crypto companies, requiring them to provide a 24-hour “cooling-off period” for customers before completing their transactions. These changes aim to address concerns surrounding the marketing of digital assets. The government estimates that around one in ten UK adults currently owns some form of cryptocurrency. Non-compliance with the regulations could lead to penalties, including imprisonment and fines for company executives.

The rules, effective from October 8th, will cover transferable and fungible crypto assets, including popular digital currencies like Bitcoin. However, non-fungible tokens (NFTs) will not be subject to the new advertising rules, except for a ban on using them as incentives for crypto investments. The Financial Conduct Authority (FCA) is implementing these changes, following legislation that grants it authority over the promotion of digital assets. The rules will apply to all companies marketing crypto in the UK, and the FCA has the power to take strong action against rule violators, including taking their websites offline.

The FCA’s research indicates that many individuals regret making impulsive decisions when it comes to crypto investments. The new rules aim to provide consumers with sufficient time and appropriate risk warnings to make informed choices. However, the FCA emphasizes that crypto investments remain largely unregulated and carry a high risk. Consumers are advised to be prepared to lose all their invested funds. CryptoUK, a trade body representing the industry, supports the concept of a cooling-off period but questions the duration. They seek evidence-based justifications for the proposed timeframe and aim to work with their members to offer recommendations that promote a competitive and safe environment while providing education and information to consumers.

Source:
<https://www.bbc.com/news/technology-65834528>



News from Şengün



Legality News from Şengün



Nedim Korhan Şengün (Şengün & Partners Attorney Partnership's Founding Partner and Attorney) and İclal Aruç Demirtaş (Executive Board Member) attended the Experience Conversations Event organized for Turkish Airlines' Terminal Startup Program, which counts Şengün & Partners Attorney Partnership among its partners.

During the event, the attendees discussed the role of sales and investment in fostering the growth of startups, as well as the expansion of startups into international markets, pivot and exit strategies, and entrepreneurship during challenging periods.



Nedim Korhan Şengün (Şengün & Partners Attorney Partnership's Founding Partner and Attorney) and Gazali Soysal (Managing Senior Associate) from Şengün & Partners Attorney Partnership attended Sales Network's Bosphorus cruise organized for its "Best of Sales Awards", which brought together prominent figures from the business world.

Legality News from Şengün



As part of its collaboration with Turkish Airlines, Şengün ALSP, established under Şengün & Partners Attorney Partnership, delivered a presentation titled “Fundamental Laws for Entrepreneurs” in the event organized for Turkish Airlines’ Terminal Startup Program.

The presentation was led by Nedim Korhan Şengün (Founding Partner and Attorney), İclal Arğuç Demirtaş (Executive Board Member), Gazali Soysal (Managing Senior Associate), and Birgi Kuzumoğlu (Senior Associate).



Şengün & Partners Attorney Partnership has agreed to cooperate with Prof. Dr. Caner Yenidünya, an expert in Criminal Law and Law on Criminal Procedure fields.

Prof. Dr. Caner Yenidünya, a member of the Istanbul Bar Association, has many books and articles in the fields of Criminal Law General Provisions, Special Provisions, Law on Criminal Procedure and Commercial Criminal Law. Also, criminal law legislation and its’ preamble have many reflections of his writings and thoughts on the provisions in force today. He has actively participated in the projects carried out by the United Nations International Organization for Migration, regarding the protection of women victims of human trafficking and sexual violence in our country.

Many offenses and sanctions are occurring in commercial life. Şengün & Partners Attorney Partnership, specialized in white-collar crimes, focuses on certain types of offenses in which criminal procedure is involved in commercial life; such as cyber crimes, fraud, breach of faith, forgery of documents, bribery, embezzlement, unfair competition, capital market and banking crimes. Şengün & Partners Attorney Partnership aims to deepen its studies by means of cooperation with Prof. Dr. Caner Yenidünya, an expert in his field, and to operate to steer the commercial law field.

Legality Sources

- <https://www.resmigazete.gov.tr/09.06.2023>
- <https://www.resmigazete.gov.tr/fihrist?tarih=2023-05-25>
- <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2019/13338>
- <https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>
- <https://www.artificialintelligence-news.com/2023/06/14/european-parliament-adopts-ai-act-position/>
- <https://www.natlawreview.com/article/20-year-consent-order-prohibiting-use-non-compete-agreements-antitrust-byte>
- <https://www.bbc.com/news/technology-65834528>

Legality Locations



ISTANBUL



IZMIR



ANKARA



CAIRO



VIENNA



MILAN



NICE



FRANKFURT



LONDON



DUBAI



LISBON



CHICAGO



www.sengungrup.com



www.sengunpartners.com



www.sengunalsp.com

Legality

“A seminal publication of Şengün Group”

June - July 2023 | E-Bulletin