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We are glad to share September issue of our Law Bulletin which includes recent legal developments and news globally and in Turkey.

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Acquisition of Turkish Citizenship Through Marriage

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Goodwill Compensation in Franchise Agreements

The franchise agreement is a sui generis, anonymous, onerous and typical framework agreement that imposes obligations on both parties and gives rise to a continuous debt relationship. The franchise agreement is not regulated under the law and is a type of agreement that was born and developed in practice within the framework of the principle of freedom of contract. Although it contains the characteristics of various contracts, it is a unique type of agreement. *(Page 7)*

Types of Legal Actions That Can Be Filed in Case of Trademark Infringement and Its Consequences

Within the scope of Article 149/1-a of the Industrial Property Law, the action for determination of infringement examines whether an act constitutes infringement of a trademark right, rather than determining the existence or non-existence of a right or legal relationship, as foreseen in the action for determination of infringement under Article 106 of the Code of Civil Procedure. *(Page 10)*

Division of Jurisdiction Between Intellectual and Industrial Property Courts and Commercial Courts of First Instance

As per Article 5 of the Turkish Commercial Code Nr. #6102, all commercial cases and non-contentious judicial proceedings of a commercial nature are handled by the Commercial Courts. As per Article 156 of the Industrial Property Law Nr. #6769, all cases set out under the Industrial Property Law are heard by the Civil Courts for Intellectual and Industrial Property Rights. *(Page 14)*

The Concept of Counseling Measure Under Child Protection Law

The differences in the development and needs of children and the problems experienced in the current situation have led to the necessity of making child-specific regulations. The Turkish Penal Code Nr. #5237 and the Child Protection Law Nr. #5395 define a child as a person who has not attained the age of eighteen, even if s/he becomes an adult at an earlier age, and the scope of the concept of childhood is broadly defined. *(Page 18)*

Acquisition of Turkish Citizenship Through Real Estate Investment (2024)

As per the Article #17 of the Turkish Citizenship Law, a minor who is adopted by a Turkish citizen may acquire Turkish citizenship as of the date of the adoption decision, provided that there is no obstacle in terms of national security and public order. Another possibility is acquisition of Turkish citizenship through marriage. It should be noted that simply marrying a Turkish citizen will not confer citizenship to the person. *(Page 20)*

Recent News

ACQUISITION OF TURKISH CITIZENSHIP THROUGH MARRIAGE

1. Definition of the Concept of Citizenship

When analyzing the citizenship law, it is seen that the concept of citizenship is expressed in different ways; it is used together with the words citizenship, nationality and the concept of dependence. Although many of these concepts are synonymous, dependence and citizenship cover different situations. While citizenship refers to the political and legal bond between a natural person and the state, dependence is the political and legal bond that binds a person (natural or legal person) or thing (aircraft, ships, etc.) to the state. As can be understood from the scope of these concepts, dependence is an expression that also covers citizenship, and since it has a broader meaning, it is not always correct to use it in the same sense as citizenship. [1]

There is no generally accepted and common definition of citizenship in the doctrine. Nomer attributes the reason for this to the fact that a definition of citizenship that is specific in nature and scope and accepted by all people has not yet been reached. [2]

In the most general sense, citizenship refers to the bond between the human element and the state. [3] In other words, citizenship defines a bond between a person and the state, which has legal and political aspects. [4] Under Turkish law, the definition of citizen is set out in subparagraph (d) of the first paragraph of Article 3 of the Turkish Citizenship Law (TCL) as follows: "Turkish citizen refers to a person who is bound to the State of the Republic of Türkiye by the bond of citizenship". [5]

2. Turkish Citizenship Law Nr. #5901

2.1. Preparation and Justifications of the Turkish Citizenship Law Nr. #5901

Law Nr. #403 has undergone amendments since its entry into force, and the justified criticisms brought to the current text of the Law have not gone unanswered. The lawmaker has brought to the agenda to ensure the systemic integrity within the citizenship law itself, as well as to follow the developments in globalization and directive principles in citizenship law and to update the Law Nr. #403 in this direction, which led to initiation of the current Turkish Citizenship Law Nr. #5901. [6]

The draft Turkish Citizenship Law and its justification, as drawn up by the Ministry of Interior, were first submitted to the Turkish Grand National Assembly (TGNA) by and through the Prime Ministry's cover letter dated April 7, 2006 and numbered #1824. At the end of the 22nd Legislative Year, the Draft Law bearing the basis number #1/1192, which was not discussed and became obsolete, was resubmitted to the TGNA in the 23rd Legislative Year by and through the Prime Ministry's letter dated November 8, 2007 and numbered #4226 and was given the basis number #1/458.

The Presidency of the Turkish Grand National Assembly referred the Draft Law to the European Union's Harmonization, Justice and Foreign Affairs Committees, and to the Committee on Interior Affairs. The Committee on Interior Affairs and the European Union's Harmonization Commission submitted their reports on the bill to the Presidency of the Turkish Grand National Assembly in the 22nd Term and the 23rd Term, the Committee on Interior Affairs submitted its report to the Presidency of the Turkish Grand National Assembly on 28.06.2006 with the text of the new bill, with the number #1232 and the number #90. [7]

In the general justification of the Draft Law, first of all, the reason why a new regulation on citizenship law is needed is answered and it is stated that the amendments made as a result of the needs arising within the framework of the conditions of the period disrupted the systematic of Law No. 403. The general justification also emphasizes the amendment to Article #66 of the Constitution and the necessity of harmonization with the provisions of the Civil Code.

In the general justification, the European Convention on Nationality is also referred to and the need to make a regulation in accordance with this Convention is mentioned. In fact, more than one reference to this Convention in the general justification creates the impression that the Law is drawn up on the basis of a Convention to which we are not a party, and there is an opinion in the doctrine that it would be correct to include other sources of international law in the general justification. [8]

2.2 Turkish Citizenship Law Nr. #5901 in General

Turkish Citizenship Law does not prohibit the cases of multiple citizenships. This is because the directive principle of one citizenship for all has lost its effect.

Interpretation of multiple citizenship situations under the European Convention on Nationality is in the direction of solving the problems arising from these situations rather than preventing the possession of multiple citizenships.

It is possible to say that the directive principle that everyone should have only one citizenship is not a goal to be achieved under the Turkish Citizenship Law, considering that acquisition of the citizenship of another state by Turkish citizens of their own will without permission is not sanctioned, as the case under the Law Nr. #403. [9]

The system of acquisition of Turkish citizenship under the Law Nr. #403, which was criticized in the doctrine and in the general justification of the Draft Turkish Citizenship Law , has been amended by the Law Nr. #5901. The system in the Draft Law is a modern approach that has also found its supporters in the doctrine. While the Law Nr. #403 set out acquisition of Turkish citizenship under 3 headings by focusing on the will of the person, as explained above, this system has been changed under the Turkish Citizenship Law. Acquisition of citizenship is set out under two headings under the Turkish Citizenship Law; namely by birth (original) or after birth (acquisition). [10]

While the Law Nr. #403 did not define the concepts in the text of the law, the Turkish Citizenship Law, on the contrary, defines some of the concepts (multiple citizenships, foreigners, etc.) under Article #3. In addition, while the definition of child is not included under the Turkish Citizenship Law, this concept is defined under the Regulation of the Turkish Citizenship Law. In subparagraph (c) of Article 3 of the Regulation of the Turkish Citizenship Law, a child is defined as "a person who has not turned the age of eighteen". In subparagraph (e) of the same article, the concept of adult is defined, stating that this concept corresponds to the concept of adult person according to the Turkish Civil Code.

2.3 Differences in Provisions on Marriage

The systematic gaps in the Law Nr. #403 were considered to be mostly related to other types of acquisition or loss of citizenship in the law, and the problems regarding acquisition of Turkish citizenship through marriage were solved to some extent with the amendment made to the Law Nr. #403 through the Law Nr. #4866, and therefore, acquisition of citizenship through marriage was not amended much.

The most important amendment regarding the said acquisition is that acquisition of Turkish citizenship through marriage is set out among the ways of acquisition of Turkish citizenship with the decision of the competent authority. Thus, the debates arising from the place of acquisition in Law Nr. #403 have come to an end. However, the conditions of being married to a Turkish citizen or having settled in Türkiye with the decision of marriage, which are listed in Article 7 of Law Nr. #403 on exceptional acquisition of citizenship, are not included in the Turkish Citizenship Law. [11]

In the event of the death of the foreign spouse who is a Turkish citizen after the application for acquisition of citizenship, it did not include any regulation regarding living in family unity with respect to the application of the surviving foreign spouse. In the doctrine, the absence of this condition is an innovation introduced by the Turkish Citizenship Law , and it has been criticized that it was not required only for surviving foreign spouses who applied for citizenship under the previous regulation, and it has been argued that foreign spouses who have lived in a three-year marriage union should benefit from this provision even if they do not apply. [12]

2.4. Acquiring Turkish Citizenship through Marriage

Acquisition of citizenship through marriage is set out under Article 16 of the Turkish Citizenship Law. Parallel to the amendment introduced by the Law Nr. #4866, the first paragraph of the article states that Turkish citizenship cannot be acquired directly through marriage. According to this provision, foreigners who have been married to a Turkish citizen for 3 years and who are still married may apply for acquisition of Turkish citizenship through marriage.

Pursuant to the Article, the applicants are required to "live in family unity, not engage in any activity incompatible with the union of marriage, and not have any condition that would constitute an obstacle in terms of national security and public order".

As can be seen, the conditions of being married for at least three years, continuing the marriage and living in family unity, as set out in Article 5 of the Law Nr. #403 as amended by the Law Nr. #4866, have been preserved under the new regulation, and the conditions of "not engaging in an activity incompatible with the union of marriage" and "not having a situation that would constitute an obstacle in terms of national security and public order" have been added to these conditions. [13]

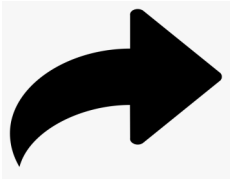
Although the condition of not engaging in an activity that is incompatible with the union of marriage is not included under the Law, subparagraph 2/2-b of the Regulation Nr. #2004/7275 stipulated "not to engage in any activity such as prostitution, mediating or forcing prostitution, trafficking in women".

Not engaging in an activity incompatible with the union of marriage meets this condition. In the doctrine, Tiryakioglu justified use of this term and stated that a condition that starts with prostitution or mediating prostitution would create a prejudice against foreigners. [14]

Likewise, although it is not included under the Law Nr. #403, not having a condition that would constitute an obstacle in terms of national security and public order is included among the conditions sought in Article 2/2-c of the Regulation Nr. #2004/7275. Although the Regulation mentions general morality in addition to national security and public order, this issue is not included in the Turkish Citizenship Law .

The condition of "living in family unity", which is listed as one of the main conditions for acquisition of Turkish citizenship through marriage under the Law, will be objectively evaluated by the citizenship application examination commission established by the Turkish Citizenship Law. The commission will investigate existence of a real marriage and cohabitation between the spouses.

The examination and investigation conducted by the Ministry of Interior through the relevant provincial police directorate and the commission has the characteristics of a security investigation (Articles #28-30 of the Regulation of the Turkish Citizenship Law). The duty of the commission should be to prepare the file within the limits of its authority set out in the Law and Regulation of the Turkish Citizenship Law, to complete the deficiencies in the applications, if any, and to send the file, prepared as such, to the Ministry of Interior. However, the scope of the investigation to be conducted by the provincial police directorates in the Regulation of the Turkish Citizenship Law includes the phrase "behaviors such as engaging in prostitution and mediating in prostitution" and it is not clear what criteria will be used to determine "such behaviors" in the text. [15]



3. Conditions for Acquiring Citizenship through Marriage

Acquisition of Turkish citizenship through marriage is regulated under Article 16 of the Turkish Citizenship Law. Accordingly, persons who meet the conditions set forth in the article may acquire Turkish citizenship through marriage. These conditions will be discussed one by one below.

3.1. A Valid Marriage of at least Three Years

Article 16 of the Turkish Citizenship Law stipulates that in order for a foreigner to acquire citizenship through marriage, s/he must have been married to a Turkish citizen for at least three years and that this marriage must be ongoing at the time of application. Although not mentioned in the article, there is no doubt that this marriage must be a valid marriage under the Turkish law. [16]

The legal validity of the marriage will be determined in accordance with the relevant provisions of the International Private and Civil Procedure Law due to the foreign element. Since the conjugal union is closely related to the personal situation of the parties, it is beneficial that the law applicable to marriage is the law of the state where the parties have intensive and close relations. Since marriage brings about significant changes in the personal status of the parties, it is preferred that the law applicable to the marriage of the parties is the law of the state of which the parties are citizens, or the law of the state where the parties have their domicile or habitual residence.

Accordingly, validity of the marriage will be interpreted in accordance with the provisions of Article 13/1 of the International Private and Civil Procedure Law in terms of the capacity and conditions of marriage, and Article 13/2 of the International Private and Civil Procedure Law in terms of formal validity of the marriage. Taking into account the interests of the parties, Article 13 of the International Private and Civil Procedure Law stipulates that the national law of each party at the time of marriage shall apply to the capacity and conditions of marriage. As for the form of the marriage, the law of the place where the marriage took place will be applicable. Therefore, if one of the parties does not have the capacity to marry according to the national law, if the valid conditions for marriage are not met or if the formal requirements are not complied with, the marriage will be deemed invalid. [17]

If the spouses marry in Turkey, the marriage must have taken place before the competent Turkish authorities. Under the Turkish law, the marriage authorities are the mayor or the officer to be assigned by the same within the borders of the municipality and the headman in villages. Pursuant to the Marriage Regulation, the Ministry of Interior may authorize provincial civil registration and citizenship offices, provincial and district mufti offices and relevant foreign missions to act as marriage registrars. However, pursuant to the second paragraph of Article 7 of the Marriage Regulation, if one of the spouses is a foreigner, the competent authorities are municipal officials and civil registration offices, and the procedure must be carried out within the borders of the province or district.

Another condition for acquisition of Turkish citizenship through marriage is that the marriage of the foreigner and the Turkish citizen must have lasted for at least three years. The three-year period must expire as of the date of application. In addition, this marriage must continue on the date of the decision to be made by the Ministry of Interior on the application of the foreigner. If the Turkish citizen spouse of the foreigner applying for Turkish citizenship is a person who subsequently acquired Turkish citizenship, the calculation of the three-year period shall be based on the date of acquisition of Turkish citizenship by the person who subsequently acquired Turkish citizenship, in accordance with paragraph 25/3 of the Regulation of the Turkish Citizenship Law.

3.2. Living in Family Unity

One of the conditions for acquiring Turkish citizenship through marriage, as set out under Article 16 of the Turkish Citizenship Law , is living in a family union. The condition requires that the marriage must have lasted for 3 years and that the marriage must have continued within a family unity. [18]

The Turkish Citizenship Law does not include the condition of “actual cohabitation”, which is also included under the Law Nr. #403, and the condition of living in family unity is deemed sufficient. In this context, living in family unity is defined in a meaning that includes actual cohabitation in the usual way, but does not exclude the inability of the spouses to live together in exceptional cases. In the doctrine, Gungor argued that, based on this concept, as long as the feeling of being a family does not disappear, it is possible for the foreign spouse who cannot live together temporarily, regardless of the reason, to meet this condition. [19]

It can be said that the condition of living in family unity is sought as a condition that confirms whether the marriage is not only for the purpose of acquiring citizenship, but whether the marriage is actually entered into with the intention to marry. Whether or not one lives in a family unit is determined through an examination and investigation by the provincial police directorate and the citizenship application examination commission.

There are two exceptions to living in family unity, one arising from the law and the other from case law. The first exception is stated in the second paragraph of Article 16 of the Turkish Citizenship Law. However, this condition will not be fulfilled if the marriage is terminated due to reasons such as death or divorce before the application for citizenship. [20]

The second exception is disruption of the family unity due to force majeure. In the doctrine, it is argued that it would be fair to accept that, in addition to force majeure, an unexpected event or a situation that is impossible for the person to avoid (cas fortuit) also constitutes an exception to the requirement of family unity.

3.3. Foreign Spouse Not Engaging in an Activity Incompatible with the Conjugal Union

The person who will acquire Turkish citizenship through marriage must not engage in an activity incompatible with the conjugal union. Under Article 28/1-b of the Regulation of the Turkish Citizenship Law, “behaviors such as engaging in prostitution or mediating in prostitution” are listed as examples of what this means.

As can be seen, this requirement meets the requirements of the Regulation Nr. #2004/7275. Considering the historical process of acquiring citizenship through marriage in our law, it is seen that the purpose of the lawmaker in introducing this condition is to prevent the service of this unity such as marriage, which is considered sacred by the Turkish nation, for immoral purposes.

Whether there is any "engaging" or not will be determined by an investigation to be conducted by the provincial police directorate. The activities that are incompatible with the conjugal union are exemplified under the Regulation of the Turkish Citizenship Law, and what "such behaviors" are and whether they are incompatible with the conjugal union are evaluated by the competent authorities according to the characteristics of the case. According to Nomer, these activities are the acts and behaviors that would cause the foreigner to divorce.

Gungor argues that in order not to acquire Turkish citizenship due to incompatibility of the activity with the conjugal union, the said activity must be an activity that started after the union of marriage was established, continued or repeated within the conjugal union. [21]

3.4. The Foreign Spouse Does Not Have Any Obstacle in terms of National Security and Public Order

In the ways of acquiring citizenship by the decision of the competent authority (except for reacquisition of Turkish citizenship) under the Turkish Citizenship Law, in addition to the conditions specific to each institution, the condition of "not being an obstacle in terms of national security and public order" is sought. Under the Law Nr. #403, although this condition was not included in the text of the law, it is seen in court decisions that there was a secret directive regarding this condition.

Article 16 of the Turkish Citizenship Law does not contain an explanatory provision on what should be understood by the condition that would constitute an obstacle in terms of national security and public order. With the condition added to acquisition of Turkish citizenship through marriage, both the criticism of legality brought during the applicability term of the Law Nr. #403 has been taken into consideration and the administration has been given a very wide discretionary power with an uncertain content in interpretation of the said condition. [22]

As mentioned above, the same condition is also included in subparagraph (g) of Article 11 of the Turkish Citizenship Law, which sets out the conditions for acquiring Turkish citizenship by the decision of the competent authority. Under justification of the said paragraph, it is stated that "it is aimed to prevent acquisition of Turkish citizenship by those who pose a danger to national security and who engage in activities against national interests and the integrity of the country, those who support such activities or those who are in relations with such persons or organizations, and those who engage in activities that disrupt public order such as riots, sabotage, espionage, arms and drug trafficking, forgery of documents".

The concept of national security is defined in Article 2/1-d of the Presidential Decree on Organization and Duties of the Secretariat General of the National Security Council as "protection and safeguarding of the constitutional order of the State, its national existence, its integrity, all its interests in the international arena, including political, social, cultural and economic, and its treaty law against all kinds of external and internal threats".

The definition first explains the values that need to be protected and then emphasizes that these values must be protected against internal and external threats. Regarding public order, the Constitutional Court stated in one of its decisions that it is difficult to define the concept of public order precisely, and then stated that public order is an all-encompassing concept that aims to ensure peace and tranquility in society and to protect the state and state organizations.

National security and public order may limit fundamental rights and freedoms as they are directly related to continuity of the state. This situation can be found in many articles of the Constitution.

Considering that even fundamental rights and freedoms are restricted by citing the concepts of national security and public order, it should be accepted as a matter of course that persons who have an obstacle in terms of national security and public order should not be naturalized in the citizenship law in which the state exercises its sovereign authority.

Persons who threaten national security cannot acquire Turkish citizenship through marriage. Examples of such persons are spies/agents, members of intelligence organizations or persons associated with any terrorist organization. There is no doubt that the State of the Republic of Türkiye may reject the requests of these persons to acquire Turkish citizenship through marriage in accordance with its sovereignty.

ANOTHER CONDITION FOR ACQUISITION OF TURKISH CITIZENSHIP THROUGH MARRIAGE IS THAT THE MARRIAGE OF THE FOREIGNER AND THE TURKISH CITIZEN MUST HAVE LASTED FOR AT LEAST THREE YEARS. THE THREE-YEAR PERIOD MUST EXPIRE AS OF THE DATE OF APPLICATION.

However, since this condition is sought for the foreign spouse, it is not important that the Turkish citizen married to the foreign spouse has an obstacle in terms of national security and public order.

The fifth paragraph of Article 72 of the Regulation of the Turkish Citizenship Law entitled "Research, investigation and validity period" is related to the condition although it does not include the terms national security and public order.

According to the provision of the paragraph, "As a result of the research carried out by the relevant institutions, if it has been found that s/he has been engaged in activities aimed at overthrowing the state order established by the Constitution, has cooperated with or materially supported those engaged in these activities, has been engaged in activities related to crimes against the indivisible integrity of the Republic of Turkey with its country and nation, at home or abroad, within the scope of the Anti-Terrorism Law Nr. #3713, Those who are found to have participated in the crimes of espionage and treason, arms and narcotics smuggling, human trafficking or to have been in contact with them, and those who are sentenced to imprisonment for more than six months, even if it has been postponed, expired, the announcement of the verdict has been postponed, withheld, converted into money or pardoned, except for negligent crimes, s/he cannot acquire Turkish citizenship."

According to Erten, although the distinction between national security and public order is not clear in the paragraph, the first part of the provision, which lists the acts, is related to national security, while the second part, which takes into account the court decision and the duration of the prison sentence, is related to public order.

The Regulation of the Turkish Citizenship Law sets out certain provisions for determination of whether a person is an obstacle in terms of national security and public order.

However, while Article 25/2-c of the Regulation of the Turkish Citizenship Law stipulates that the application of persons who are found to be "on trial for any offense or convicted or detained" will not be accepted, Article 26/1-e of the same Regulation states that the documents required for the application for acquisition of Turkish citizenship through marriage include "a certified copy of a court decision finalized for any offense", which contradicts each other.

Pursuant to the second paragraph of Article 35 of the Regulation of the Turkish Citizenship Law, an archive search will be requested from the Undersecretariat of the National Intelligence Organization and the Directorate General of Security "in order to determine whether there are any circumstances that would constitute an obstacle in terms of national security and public order" for the applicant to acquire Turkish citizenship through marriage. The conditions determined in the archive search to be conducted pursuant to the fourth paragraph of the same article must be clearly notified. [23]

Conclusion

Acquisition of Turkish citizenship through marriage pursuant to Article 16 of the Turkish Citizenship Law is set out. There is no direct acquisition of Turkish citizenship through marriage and certain conditions must be met.

In order for a foreigner who is married to a Turkish citizen to acquire Turkish citizenship, s/he must have been married for at least three years, live in a conjugal union, not engage in activities incompatible with the conjugal union and not have any circumstances that would constitute an obstacle in terms of public order and national security.

The presence of these conditions will be examined by the commission specified under the regulation, married persons will be evaluated separately or jointly, and it will be checked whether they fulfill these conditions.

In the event that it is decided that these conditions are met, this information will be sent to the ministry and the decision to acquire citizenship through marriage will be made by the ministry.

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GOODWILL COMPENSATION IN FRANCHISE AGREEMENTS

1. FRANCHISE AGREEMENT, ITS DEFINITION AND LEGAL NATURE

There are several different definitions of a franchising agreement under the related applicable regulations and in practice. Article 3/b of the Block Exemption Communiqué on Franchise Agreements defines a franchise agreement as:

"A franchise agreement whereby the franchisor grants the franchisee the right to use a franchise for the purpose of marketing certain types of goods or services in return for a direct or indirect financial contribution and at least; 1) Use of a common brand or business name and giving a uniform appearance to the facilities and/or means of transportation; 2) Transfer of know-how by the franchisor to the franchisee; 3) An agreement containing obligations for continuous commercial and technical support of the franchisee by the franchisor during the term of the agreement"

The doctrine states:

"The franchisor may grant authorization to the franchisee to use any registered trademark or service mark for a definite or indefinite period of time."

or

"In general, a continuous relationship in which one person (the franchisor) authorizes another person (the franchisee) to carry out production, operation or marketing activities through the use of its own system and involves mutual obligations"

The franchise agreement is a sui generis, anonymous, onerous and typical framework agreement that imposes obligations on both parties and gives rise to a continuous debt relationship. The franchise agreement is not regulated under the law and is a type of agreement that was born and developed in practice within the framework of the principle of freedom of contract. Although it contains the characteristics of various contracts such as sales, rent, service, proxy, agency, license, dealership, it is a unique type of agreement.

The fact that it is a fully bilateral-synallagmatic agreement stems from the fact that the franchisee is basically under the obligation to pay a fee, and the franchisor is under the obligation to use its commercial values, industrial property rights such as trademarks, licenses, patents and designs. This relationship is continuous throughout the term of the agreement and is referred to as an agreement that gives rise to a continuous debt relationship in legal classification.

2. RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER A FRANCHISE AGREEMENT

As we have stated, the franchise agreement is an agreement that imposes obligations on both parties and the parties have rights and obligations arising therefrom. In line with the explanations provided in the doctrine; the franchisor is obligated to provide:

1. Pre-contractual information,
2. Use of the franchise system (commercial values) (trademark, title, know-how),
3. Protection and support for the franchisee.

The franchisee, on the other hand, is obligated to ;
1. Release the goods and/or services personally,
2. Use the franchise system,
3. Follow instructions and deal with inspections,
4. Pay the fees,
5. Show loyalty (non-competition, confidentiality, information, and accountability)

3. TERMINATION OF THE FRANCHISE AGREEMENT

"Termination of the franchise agreement has a number of consequences for the parties. For the franchisee, the obligation not to use and return the intangible goods and the obligation not to compete if a noncompetition agreement has been executed, and for the franchisor, the obligation to take back the goods under the agreement, the obligation to return the entrance fee and the obligation to pay the goodwill compensation if the conditions are met." [2] Upon termination of the agreement, the franchisee must terminate use of all licenses, titles and trademarks of the franchisor by the franchisee. One of the issues that must be ceased upon termination of the agreement is the technical knowledge of the franchisee, known as "know-how". Although the follow-up of the termination is not easy in practice, use of the values that are unique to the franchisor and that cause the franchisee to establish this contractual relationship should be terminated in practice.

"Despite termination of the franchise agreement, the franchisee's continued use of the intangible goods constituting the franchise system leads to civil and criminal liability. If the intellectual and industrial rights that the franchisee continues to use are registered, the provisions of the Code of Industrial Property shall apply, and if not, the provisions of the Turkish Commercial Code regarding unfair competition shall apply. On the other hand, if the franchisee violates this obligation, it is possible to be held liable in accordance with the provisions of the Turkish Code of Obligations." [3]

The franchisor, on the other hand, has an obligation to assist in liquidation of the business by taking back the goods in the hands of the franchisee within the framework of the post-contractual good faith when the agreement is terminated, and to claim for goodwill compensation if certain conditions are met.

4. FRANCHISEE'S GOODWILL COMPENSATION AND CONDITIONS

Goodwill compensation is also referred to as portfolio compensation and customer portfolio compensation in practice and is referred to as "goodwill compensation" under our Law as per the Article 122 of the Turkish Commercial Code. Goodwill compensation has been introduced to our law within the scope of the steps of harmonization with the Acquis Communautaire in the process of candidacy to the European Union.

In order for the Franchisee to claim for goodwill compensation, the following conditions must be met:

1. The agreement is terminated in such a way that a goodwill compensation may be claimed,
2. The franchisor continues to benefit from the acquired customers,
3. Loss of income to the franchisee,
4. The payment of goodwill compensation is equitable,
5. The claim must be filed within one year of the termination of the franchise agreement,
6. Monopoly rights have been granted to the franchisee.

Paragraph 1 of the Article 122 of the Turkish Commercial Code setting out the goodwill compensation stipulates the conditions of the claim as follows :

"(1) After termination of the contractual relationship, the agent may claim for an appropriate compensation from the principal on the following conditions;

a) If, thanks to the new customers found by the agent, the client keeps receiving significant benefits even after termination of the contractual relationship,

b) If, as a result of termination of the contractual relationship, the agent loses the right to demand the remuneration that he would have obtained if the contractual relationship had continued for the works performed or to be performed within a short period of time with the customers brought into the business by the same,

c) If it is equitable to do so, when the facts and circumstances of the case are evaluated."

It is not possible to claim for goodwill compensation in any type of termination of the agreement, and in accordance with the article #122/3 of the Turkish Commercial Code, if the termination was not made by the franchisee for just cause or if the franchisor terminated the agreement due to the franchisee's fault, then it is not possible to claim for goodwill compensation in accordance with the rule of equity and honesty:

"(3) If the agent has terminated the agreement without any act of the principal justifying the termination, or if the agreement has been terminated by the principal for just cause due to the fault of the agent, the agent may not claim for goodwill compensation."

Another condition, as stipulated under the Article #122 f. 1 of the Turkish Commercial Code for the franchisee to claim compensation is that the franchisor derives significant benefits from the new customers found by the franchisee even after termination of the contractual relationship.

Accordingly, in order for the franchisee to claim for goodwill compensation, the franchisee must bring new customers to the franchisor and the franchisor must derive significant benefits from these new customers after termination of the contractual relationship.

The concept of new customers is naturally continuous, and one-time customers acquired by the franchisee are not sufficient for this compensation to arise.

As a result of the image created, the franchisor must have opened a new commercial door, so to speak, due to this relationship.

Since the legal purpose of the claim lies in the fact that it is not appropriate in terms of equity for the franchisee to be deprived of this gain in return for the material gains obtained by the franchisor and the intention to establish a balance of interests, it is in the spirit of the provision that the franchisee does not benefit in the scenario where the franchisor does not benefit.

The loss of wages of the franchisee due to termination of the franchising agreement, which is another condition of the goodwill compensation, also serves the purpose of protecting this balance of interests.

"Regarding the equitable condition of the goodwill compensation, the amount of goodwill compensation to be paid to the franchisee should not be more than the interest of the franchisor or the loss of wages suffered by the franchisee due to termination of the agreement.

Therefore, the equitable condition should not be evaluated without determining whether the other conditions are met." [4]

As a result, it is seen that in the franchise agreement, the parties mutually carry out commercial activities, subject to come certain rights and obligations, and both parties benefit from this relationship.

In order to protect the balance of interests of the parties in the event of termination of the agreement within the framework of the statutory requirements, the goodwill compensation has been incorporated into our Law in the process of harmonization with the Acquis Communautaire, and it has found an application area in agency and similar agreements.

Since this claim, which is based on good faith to ensure the balance of interests, is subject to some conditions listed under the Law, it is not possible to claim it in every situation and condition.

In this article, the Franchise Agreement is briefly explained, and the conditions required by the Law to claim for goodwill compensation are generally explained.

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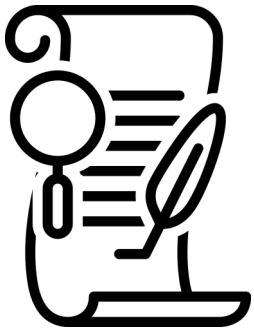

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THE EUROPEAN COURT OF JUSTICE (ECJ) REVERSES THE EUROPEAN COMMISSION'S DECISION TO PROHIBIT THE MERGER, RULING IN FAVOR OF ILLUMINA AND GRAIL

On September 3, 2024, the European Court of Justice (ECJ) ruled that the European Commission (EC) lacked the authority to review Illumina's acquisition of Grail. The legal cases, C-611/22 P (Illumina v. Commission) and C-625/22 P (Grail v. Commission) include the challenges of the European Commission's intervention in Illumina's acquisition of Grail. After earlier rulings by the European Commission to halt this merger, challenges made it to the European Court of Justice (ECJ).

Background:
In September 2020, Illumina, a leader in DNA sequencing technology, acquired Grail, a company specializing in early cancer detection. Illumina confirmed the acquisition in a press release on September 21, 2020. Since Grail had not yet generated revenue in the EU or globally, the transaction did not meet the thresholds set by Article 1 of the EU Merger Regulation (EUMR), meaning it was not required to be notified under EUMR rules. Because of that the acquisition was not reported under EUMR rules. Despite this, the European Commission invoked Article 22 of the EU Merger Regulation, which allows the Commission to review mergers that do not meet the usual notification thresholds if they may affect competition. And according to Article 22 the European Commission block the merger.

European Commission's Role in Mergers and Acquisitions:
The European Commission oversees mergers and acquisitions within the EU to ensure they do not harm competition within the internal market. This involves:

1. Merger Control and Assessment: The Commission reviews mergers involving companies with significant operations in the EU to ensure they do not create or strengthen a dominant market position. The primary legal framework for this is the EU Merger Regulation (Regulation (EC) No. 139/2004).

2. Pre-Notification: Companies exceeding certain turnover thresholds must notify the Commission of planned mergers. This pre-notification allows for a determination of whether further investigation for notified mergers is necessary.

3. Investigative Stages:
3.1. Phase I Investigation: A preliminary assessment is conducted within 25 working days to identify competition concerns. If none are found, the merger is approved.
3.2. Phase II Investigation: If potential issues are identified, a more detailed investigation lasts up to 90 additional working days.

4. Potential Outcomes:
4.1. Approval: If the merger poses no significant competition issues, it is approved.
4.2. Conditional Approval: The merger may be approved with conditions to prevent identified competition concerns.
4.3. Prohibition: If the merger significantly harms competition, the Commission can block the transaction.

5. Post-Merger Monitoring and Enforcement: The Commission also monitors compliance with any conditions imposed on mergers and can take action if companies fail to adhere to these commitments. In cases of non-compliance, the Commission can impose fines or even order the divestment of merged entities. Article 22 Referrals: Under Article 22 of the EU Merger Regulation, member states can refer mergers to the Commission for review, even if they fall below the usual thresholds, if they believe the merger may affect competition. This provision was notably used in the Illumina/Grail case, sparking significant legal debate.

Legal Dispute:
The main legal dispute is whether the European Commission exceeded its jurisdiction by invoking Article 22 to review the Illumina-Grail merger, despite the merger not meeting the usual turnover thresholds.

Court Ruling:
The ECJ ultimately overturned the European Commission's decision to block the merger, ruling in favor of Illumina and Grail. This ruling clarified the limits of the Commission's authority under the EU Merger Regulation.

Sources: ***Cases C-611/22 P (Illumina v. Commission) and C-625/22 P (Grail v. Commission)***

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TYPES OF LEGAL ACTIONS THAT CAN BE FILED IN CASE OF TRADEMARK INFRINGEMENT AND ITS CONSEQUENCES

1- Infringement of Trademark Rights

Under Article 4 of the Industrial Property Law, a trademark is defined as follows: "A trademark may consist of any kind of signs, including words, figures, colors, letters, numbers, sounds and the form of the goods or their packaging, including personal names, provided that they enable the goods or services of an undertaking to be distinguished from the goods or services of other undertakings and can be displayed in the register in such a way that the subject matter of the protection granted to the trademark owner can be clearly and precisely understood." It can be said that the main purpose of the trademark is to create an element of distinctiveness.

Based on Article 4 of the Industrial Property Law, trademark infringement can be characterized as the unauthorized use of the same or indistinguishably similar trademark by third parties.

The cases of trademark infringement are listed under Article 29 of the Industrial Property Law. Although the cases, constituting infringement, are listed follows,

"a) Using the trademark in the ways specified in Article 7 without the consent of the trademark owner. Situations in Article 7

b) Imitation of a trademark by using the trademark or an indistinguishably similar trademark without the consent of the trademark owner.

c) Selling, distributing, otherwise putting into the field of commerce, importing, exporting, holding for commercial purposes or making a proposal to make a contract for this product, even though s/he knows or should know that the trademark is imitated by using the trademark or its indistinguishably similar trademark.

ç) Expanding the rights granted by the trademark owner through a license without consent or transferring these rights to third parties"

these cases are not subject to the principle of limited number. Different situations that are not set out under the Law may also be determined as trademark infringement.

The actions that can be brought in case of trademark infringement are as follows; detection, cessation and prevention of infringement, and in addition to civil liability, criminal liability is also set forth under Article 30 of the Industrial Property Law.

2- Legal Actions that Can Be Filed within the scope of Trademark Infringement

a. Case for Determination of Infringement and its Scope

Within the scope of Article 149/1-a of the Industrial Property Law, the action for determination of infringement examines whether an act constitutes infringement of a trademark right, rather than determining the existence or non-existence of a right or legal relationship, as foreseen in the action for determination of infringement under Article 106 of the Code of Civil Procedure.

However, within the scope of Article 149 of the Industrial Property Law, the trademark right holder may request determination of infringement separately or together with other claims (such as prohibition, compensation, etc.) depending on its legal interest.

For determination of infringement, it is not necessary that the perpetrator of the act is at fault and that a damage has occurred as a result of the act. A legal action may be filed against the defendant for determination of infringement of the trademark right without prior notice or warning. In the event that the action has been terminated, the trademark right holder may also file a legal action for determination of infringement since the legal interest of the trademark right holder is present.

In essence, the action for determination of infringement is brought to determine the content of the infringements that the trademark right holder believes to have occurred against her/his trademark and to establish the certainty of the existence of infringement.

After the content of the infringement has been determined, the trademark right holder will be able to file other legal actions, as set forth under the law, to eliminate the infringements and damages related to the trademark right.

b. Legal Action for Prevention of Infringement and its Scope

The owner of the trademark right may request the court to prevent an infringement that is about to occur or is likely to be repeated, pursuant to Article 149/1-b of the Industrial Property Law. In order to file a legal action for prevention of infringement, there must be a danger of infringement. The danger of infringement is the existence of strong indications that the act of infringement will be repeated or committed. Therefore, since the element of danger is sufficient for filing of an action for prevention of infringement, the elements of fault and damage are not sought.

c. Legal Action for Cease of Infringement and its Scope

The owner of the trademark right may request cessation of an infringement, which has begun and continues, in accordance with Article 149/1-c of the Industrial Property Law.

The legal action for cessation of infringement can be filed as long as the infringement continues, and the statute of limitations does not run during this period. If the infringement has ceased, the cessation of infringement cannot be requested. After that, only prevention of possible repetition and elimination of the material consequences can be requested.

d. Legal Action for Removal of Infringement and its Scope (Elimination/ Revocation of Infringement)

The person whose trademark right has been infringed may request the court to restore the previous situation and to eliminate the material consequences of the infringement within the framework of Article 149/1-ç of the Industrial Property Law. In order to file a legal action under this article, it is not necessary that the infringement is ongoing, but the infringement must have started and be continuing. The request for elimination of infringement may be made as long as the infringement or the consequences of the infringement continue. After the infringement has ceased and the consequences of the infringement have disappeared, a claim for removal of the infringement cannot be made.

The intended result of this legal action is elimination of the consequences of the infringement and restoration of the previous state, and the results that may be requested to be removed will vary depending on each concrete case. The fault of the infringer is not required for this action. The requests that can be put forward with this type of legal action lay lead to such consequences: confiscation of the goods, the production or use of which requires punishment, and the means of producing these goods, granting the right of ownership on the confiscated product, taking other necessary measures, deregistration of trademarks, disposal of products and vehicles, etc..

e. Legal Action for Damage Compensation and its Scope

Pursuant to Article 150/1 of the Industrial Property Law, persons who commit acts deemed as infringement of the trademark right are obliged to compensate the right holder for the damages. The liability for compensation, as set out under Articles 150 and 151 of the Industrial Property Law, is essentially tort liability in the sense of the law of obligations. Since trademark infringement is also a tort, it can be proved by all kinds of evidence.

The person whose trademark right has been infringed may claim the “damage caused” according to Article 151 of the Industrial Property Law. The concept of damage caused includes both the actual damage incurred and the profit deprived by the trademark right holder due to this action.

f. Other Claims in Case of Trademark Infringement

In addition to the above-mentioned legal actions, the trademark right owner who is subject to trademark infringement may also request disposal of the imitated trademark products subject to infringement, detection of evidence, and publication of the finalized court decision on daily newspapers, etc., if the relevant infringement is determined and finalized.

Pursuant to Article 159 of the Industrial Property Law, persons who have filed or will file a legal action for trademark infringement may request an interim injunction to ensure the effectiveness of the legal action, provided that they prove that the trademark subject to the legal action is being used in Türkiye in a way that constitutes infringement of their trademark rights or that serious and effective efforts are being made to use it.

As per Article 149/1 (d) of the Industrial Property Law, the trademark owner may request seizure of goods, the production or use of which requires a penalty due to infringement of the trademark right, and the means such as tools, devices, and machinery used to produce these goods, in a manner to prevent production of the infringing products.

According to Article 149/1 (e) of the Industrial Property Law, the trademark owner may request a decision to recognize the ownership of the confiscated goods according to subparagraph (d) of this provision. In the event that the trademark owner is granted the right of ownership, the value of the goods in question will be deducted from the compensation amount.

Article 149/1 (f) of the Industrial Property Law sets out the trademark owner's request for disposal. According to this provision, the trademark owner may request that measures be taken to prevent continuation of the infringement of the trademark right and that the trademarks on the products and means seized pursuant to subparagraph (d) of the Article be erased or disposed of if it is inevitable to prevent infringement of the trademark right. If it is easy to remove the imitated trademark from the goods, the disposal of the goods cannot be requested.

According to Article 149/1 (g) of the Industrial Property Law, the trademark owner whose trademark right has been infringed may request the court to notify and publish the decision to the relevant persons. As stated under the wording of the article, “In the event that there is a justifiable reason or interest, the final judgment may be published in full or in summary form on a daily newspaper or by similar means, or notified to the relevant persons, at the expense of the other party”.

One of the most important measures that can be taken to prevent continuation of trademark infringement and to eliminate its consequences is cancellation of the internet domain name. In case of trademark infringement through internet domain name, trademark right infringement is also in question, and internet domain name registrations made outside the trademark owner may face the sanction of abandonment. In domain name abandonment requests, courts generally decide on the abandonment of domain names with .com.tr extension. The abandonment of domain name cancellation or abandonment decisions of Turkish courts abroad is a matter of enforcement.

The statutory claims that may be filed in case of trademark infringement may be asserted alone or it is possible to file more than one claim under the same legal action.

The decision, bearing the Basis number #2021/3692 and the Decision number #2022/7831, of the 11th Civil Chamber of the Court of Cassation reads as follows:

"On the grounds that it is necessary to re-establish a new judgment on the issues of trial expenses, attorney fees and charges by the regional court of appeals, the appeal request of the defendant's attorney was rejected on the merits, the appeal application of the plaintiff's attorney by way of participation was partially accepted, the decision of the first instance court was abolished, a new judgment was established, considering the defendant's commercial presentation, the defendant's

infringement and unfair competition of the plaintiff's registered trademark right belonging to the plaintiff was determined, stopped, prevented, the request for moral damages was partially accepted and moral damages of TRY 10.000.- to be collected from the defendant along with the legal interest to be accrued thereon as of the date of the legal action, rejection of the request for more, when the decision becomes final, the cost of the judgment paragraph is taken from the defendant and announced once on one of the three newspapers with high circulation throughout Türkiye, the injunction decision dated 17/04/2015 issued by the court to continue until the decision is finalized, when the decision becomes final, if there is still a product subject to the defendant's product subject to the trial that constitutes a violation in the market, it is decided to dispose of it by collecting it from where it is located within the scope of Article 56/4 of the Turkish Commercial Code.

…

With rejection of the appeal request of the defendant's attorney, the decision rendered by the Regional Court of Appeals is APPROVED in accordance with Article 370/1 of the Code of Civil Procedure…"

3- Criminal Liability in Case of Trademark Infringement

As a result of detection of trademark infringement, it may be requested to punish the infringing party in accordance with the penal provisions set, as set out under Article 30 of the Industrial Property Law.

The offenses under this article are set out to protect the rights of the trademark right holder and to ensure functioning of the trademark system.

Article 30 of the Industrial Property Law lists the acts that constitute infringement of the rights provided by the trademark to prevent infringement by others of the trademark owner's exclusive right to use the trademark.

However, the acts related to infringement of the trademark right are not limited, and acts other than the relevant article may also fall under the scope of trademark infringement.

Article 30 of the Industrial Property Law reads as follows: "(1) Any person who produces goods or provides services, offers for sale or sells, imports or exports,

purchases, possesses, transports or stores for commercial purposes, produces goods or provides services, offers for sale or sells, imports or exports, purchases for commercial purposes, possesses, transports or stores goods by infringing the trademark right of another person through adaptation or confusion shall be sentenced to imprisonment from one year to three years and a judicial fine up to twenty thousand days.

(2) A person who removes the sign indicating trademark protection from the goods or packaging without authorization shall be sentenced to imprisonment from one year to three years and a judicial fine up to five thousand days.

(3) A person who disposes of another person's trademark right by transferring, licensing or pledging it without authorization shall be sentenced to imprisonment from two years to four years and a judicial fine up to five thousand days.

(4) If the offenses under this Article are committed within the scope of the activities of a legal entity, security measures specific to such offenses shall also be imposed.

(5) In order to be sentenced for the offenses under this Article, the trademark must be registered in Türkiye.

(6) Investigation and prosecution of the offenses under this Article are subject to complaint.

(7) No penalty shall be imposed on the person who offers for sale or sells the goods produced by imitating the trademark to which another person has the right, in case the person who offers for sale or sells the goods informs where s/he obtained these goods and thus ensures that the producers are revealed and the goods produced are confiscated."

The trademark right holder will file a criminal complaint as the person who claims that her/his rights have been infringed. However, it is important to consider who has the right to file a complaint and what powers are granted to the attorney by the persons who will file a criminal complaint through their attorneys.

Otherwise, the case will have to be dismissed procedurally.

The decision, bearing the Basis number #2021/22209 and the Decision number #2021/12970, of the 7th Criminal Chamber of the Court of Cassation reads as follows:

"Although the public case was filed against the defendant for the crime of trademark infringement upon the complaint of the attorneys of the participating companies namely ... Electronics Co Ltd., Apple Inc. and ..., based on the allegation that imitated products with trademarks registered in the name of the participating companies were seized for sale during the search of the defendant's workplace, the right to complain in trademark infringement crimes belongs exclusively to the trademark owner, and the real or legal person who owns the registered trademark and whose rights arising from trademark protection are infringed.

In other words, the trademark owner who will exercise the right to complain is the natural or legal person on whose behalf the trademark is registered in the trademark registry kept before the Turkish Patent and Trademark Office. Since the right to file a complaint is a strictly personal right, it is possible to exercise this right by others."

4- Statute of Limitations in Trademark Infringement Cases

Article 157 of the Industrial Property Law reads as follows: "The provisions of the Turkish Code of Obligations dated 11/1/2011 and numbered #6098 regarding the statute of limitations shall apply to claims arising from industrial property rights or traditional product names."

Therefore, the statute of limitations, as set out under the Code of Obligations, will be applicable for trademark infringement claims. The periods to be applied here is the statute of limitations for torts since trademark infringement is characterized as a tort in nature. In other words, the statute of limitations of 2 and 10 years will apply here.

This period may even be longer in cases where the act also requires a penalty and the statute of limitations of penalty nature is longer.

5- Competent and Authorized Court in Trademark Infringement Cases

The court in charge of civil actions regarding infringement of trademark rights is the Civil Court of Intellectual and Industrial Rights.

Where these courts are not available, the Civil Courts of First Instance are authorized. The competent court for civil actions to be filed by the trademark owner against third parties is the court of the plaintiff's domicile or the place where the unlawful act occurred or where the effects of this act are seen.

The competent court for criminal cases that may be filed due to infringement of the trademark right is the Criminal Court of Intellectual and Industrial Rights.

If there is no Criminal Court of Intellectual and Industrial Rights across the respective jurisdiction, the Criminal Courts of First Instance will be in charge.

As for jurisdiction, since there is no special provision under the Industrial Property Law, the general and special jurisdiction rules in the Code of Criminal Procedure will be taken into consideration.

The above-mentioned issues cover the rights of the registered trademark owner, and if the trademark is not registered, the trademark owner may file a legal action based on the unfair competition provisions under the Turkish Commercial Code regarding infringements.

6- Conclusion

The most important function of a trademark, as defined under Article 4 of the Industrial Property Law, is to distinguish the goods or services of one undertaking from the goods or services of other undertakings.

Although the registration system is valid as a rule in terms of trademark protection, unregistered trademarks can also be protected as there is no obligation to register the trademark.

However, trademark owners who register their trademarks obtain a broader and stronger protection under the Industrial Property Law Nr. #6769.

Accordingly, legal uncertainty in terms of protection in the field of trademark law has been eliminated and trademark protection has been harmonized with international conventions by and through the Industrial Property Law Nr. #6769.

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4. The decision, bearing the Basis number #2021/22209 and the Decision number #2021/12970, of the 7th Criminal Chamber of the Court of Cessation

IT IS IMPORTANT TO CONSIDER WHO HAS THE RIGHT TO FILE A COMPLAINT AND WHAT POWERS ARE GRANTED TO THE ATTORNEY BY THE PERSONS WHO WILL FILE A CRIMINAL COMPLAINT THROUGH THEIR ATTORNEYS. OTHERWISE, THE CASE WILL HAVE TO BE DISMISSED PROCEDURALLY.

DIVISION OF JURISDICTION BETWEEN INTELLECTUAL AND INDUSTRIAL PROPERTY COURTS AND COMMERCIAL COURTS OF FIRST INSTANCE

As per Article 5 of the Turkish Commercial Code Nr. #6102 and dated 13.01.2011, all commercial cases and non-contentious judicial proceedings of a commercial nature are handled by the Commercial Courts. As per Article 156 of the Industrial Property Law Nr. #6769 and dated 22.12.2016, all cases set out under the Industrial Property Law are heard by the Civil Courts for Intellectual and Industrial Property Rights. Pursuant to Article 76 of the Law Nr. #5846 on Intellectual and Artistic Works dated 05.12.1951, the Civil Courts for Intellectual and Industrial Property Rights are in charge.

Commercial Courts of First Instance and Civil Courts for Intellectual and Industrial Property Rights are special courts and there is a duty relationship between them. Since the rights set out under the Law on Intellectual and Artistic Works and Industry Property Law compete with the rights set out under the Turkish Code of Commerce, there are some problems in practice regarding determination of the competent court. In this study, the jurisdiction of the Commercial Courts of First Instance and the Civil Courts for Intellectual and Industrial Property Rights will be briefly mentioned, and the jurisdiction of the courts will be analyzed through the decisions of the Court of Cassation.

1. Competence of the Commercial Courts of First Instance

Pursuant to Article 5 of the Turkish Commercial, all commercial cases and non-contentious judicial proceedings of a commercial nature fall within the jurisdiction of the Commercial Court of First Instance. Article 4 of the Turkish Commercial Code defines the commercial lawsuits and non-contentious judicial proceedings. All lawsuits and non-contentious judicial proceedings within the scope of Article 4 of the Turkish Commercial Code fall within the jurisdiction of the Commercial Courts of First Instance.

Turkish Commercial Code

ARTICLE 5- (1) Unless otherwise provided, regardless of the value or amount of the thing sued, the commercial court of first instance shall be in charge of all commercial cases and non-contentious judicial affairs of commercial nature.

Regardless of whether the parties are merchants or not, and regardless of whether the transaction or act is related to a commercial enterprise or not, the lawsuits that are deemed commercial by law are considered as absolute commercial lawsuits. The lawsuits set out under the Turkish Commercial Code and the lawsuits that are set out under other laws but are deemed to be commercial lawsuits pursuant to Article 4 of the Turkish Commercial Code are included within this scope.

Civil lawsuits and non-contentious judicial proceedings arising out of matters related to the commercial enterprise of both parties, regardless of whether the parties are merchants or not, are considered commercial lawsuits and non-contentious judicial proceedings of a commercial nature. The cases within this scope are characterized as relative commercial cases [1].

Disputes arising from commercial transactions, disputes arising from corporate law, competition law, bankruptcy and arrangement of bankruptcy cases, disputes arising from maritime trade law fall within the jurisdiction of the Commercial Court of First Instance. Among the commercial cases listed under Article 4 of the Turkish Commercial Code, the cases arising from the issues regulated in the legislation on intellectual property law are commercial cases and fall within the jurisdiction of the Commercial Court of First Instance. Although it will be discussed below, pursuant to the Industrial Property Law, disputes arising from intellectual property law fall within the jurisdiction of the Civil Courts for Intellectual and Industrial Property Rights, which are specialized courts.

2. Jurisdiction of Civil Courts for Intellectual and Industrial Property Rights

The lawsuits, set out under the Law on Intellectual and Artistic Works and the Industrial Property Law, fall within the jurisdiction of the Civil Courts for Intellectual and Industrial Property Rights. Law on Intellectual and Artistic Works sets out the material and moral rights arising from the work. The IPL sets out the rights arising from trademarks, geographical indications, designs, patents, utility models and traditional product names.

Article 156 of the Industrial Property Law

The court in charge of the cases provided for in this Law shall be the civil court for intellectual and industrial property rights and the criminal court for intellectual and industrial property rights.

Article 76 of the Law on Intellectual and Artistic Works

The competent court for the lawsuits and actions arising out of the legal relations, as set out under this Law, and criminal cases, arising out of this Law, shall be the courts specified in the first paragraph of Article 156 of the Industrial Property Law.

It is set out that the disputes regarding the rights regulated by the Law on Intellectual and Artistic Works are within the jurisdiction of the Civil Courts for Intellectual and Industrial Property Rights. However, disputes arising from the Turkish Commercial Code and the applicable Intellectual Property Regulations remain within the scope of absolute commercial litigation. Pursuant to the Law on Intellectual and Artistic Works, the right holder may request refusal of infringement, prevention of infringement, material and moral damages and transfer of the profits obtained.

Pursuant to the IPL, it is possible to file a lawsuit for annulment of the decision of the Commission for Review and Reevaluation, cancellation of registration, invalidation, determination of whether the act is infringement, prevention of possible infringement, cessation of infringing acts, removal of infringement and compensation for material and moral damages.

3. Related Judicial Decisions

Acts constituting infringement may also constitute unfair competition in lawsuits for determination, cessation and compensation of infringement of rights within the scope of the IPL and Law on Intellectual and Artistic Works.

In the event that a lawsuit is filed for determination of infringement, cessation of infringement and compensation in relation to the rights within the scope of the IP Law and the Law on Intellectual and Artistic Works, the Civil Courts for Intellectual and Industrial Property are the competent court in terms of the unfair competition claim.

THE DECISION, BEARING THE BASIS NUMBER #2017/458, AND THE DECISION NUMBER #2017/5478 AND DATED 15.6.2017, OF THE 20TH CIVIL CHAMBER OF THE COURT OF CESSATION reads as follows:

The plaintiff's attorney filed the lawsuit bearing the basis number #2005/164 at and before the Civil Court for Intellectual and Industrial Property Rights, requesting to determine and prohibit the acts and actions of the defendant that constitute unfair competition over the name, title, logo, sign, etc. and the infringement, and to prevent use of telephones. The court decided to retain the request for determination and prohibition of infringement of the trademark and decided that the Commercial Court has no jurisdiction since the other requests fall within the scope of Article 57 of the Turkish Commercial Code and finalized without appeal. The case, decided for lack of jurisdiction, was registered to the Commercial Court of First Instance under the basis number #2007/226.

In case the issue falls outside of the Commercial Court's jurisdiction, it is necessary to issue a decision for lack of jurisdiction against it, and in case the decision is finalized without appeal, the file should be sent to the relevant Chamber of the Court of Cassation to resolve the negative conflict of jurisdiction, but since it is understood that the file has been transferred by issuing a decision for lack of jurisdiction in terms of the main case, there is no trial to be conducted by the court due to the pending files, as well as the evaluations related to the request in this file. Since the judgment of the Civil Court for Intellectual and Industrial Property Rights and the decision has not yet been finalized, there is no trial to be held by the court due to the pending files, as well as the evaluations related to the request in this file were separated from the issues requested in the unfair competition in the original case sent to the commercial court with the lack of jurisdiction, and it was decided to dismiss the lawsuit regarding the requests in the original case on the grounds that only the issues that constitute unfair competition are not within the jurisdiction of the Civil Court for Intellectual and Industrial Property Rights, but within the jurisdiction of the commercial courts, and it became final without appeal.

Article 23/2 of the Code of Civil Procedure Nr. #6100 sets out as follows; "The decisions on jurisdiction and competence, which are finalized as a result of the decisions of the Court of Cassation and the appellate review, bind the court that will hear the case thereafter". In the concrete case, the conflict of jurisdiction between the 3rd Civil Court for Intellectual and Industrial Property Rights and the 13th Commercial Court of First Instance was resolved by determining the Civil Court for Intellectual and Industrial Property Rights as the seat of jurisdiction with the decision, dated 10.11.2014 and bearing the Basis number #2014/8571 and the Decision number #2014/17242, of the 11th Civil Chamber of the Court of Cassation. Pursuant to Article 23/2 of the Code of Civil Procedure Nr. #6100, the decision of the 11th Civil Chamber is binding on the courts.

Therefore, the dispute should be heard and finalized at and before the 3rd Civil Court for Intellectual and Industrial Property Rights. [2]

The IPL provides protection for unregistered trademark and design rights, and cases regarding unregistered trademark or design rights fall within the jurisdiction of the Civil Court for Intellectual and Industrial Property Rights.

The Decision, bearing the Basis number #2018/2218, and the Decision number #2018/1705 and dated 18.7.2018, of the 16th Civil Chamber of the Regional Court of Justice of Istanbul reads as follows:

From the evidence under the file and the expert report, it is understood that the plaintiff's designs are unregistered original designs, and the defendant uses the same design. According to Article 57 of the IPL, if unregistered designs are made available to the public, the right holder is authorized to sue for infringement of the design right.

Pursuant to the aforementioned provision, it is possible to file a lawsuit at and before the Civil Court for Intellectual and Industrial Property Rights for unregistered designs, and after the lawsuit is filed, the assessment of whether the design will benefit from the protection provided for by this law according to Article 69/2 of the same law, and if not, whether unfair competition conditions occur within the scope of Article 55/a-4 of the Turkish Commercial Code is not an assessment regarding the task, but an assessment regarding the solution of the work according to the IPL, and since this should be done by the Civil Courts for Intellectual and Industrial Property Rights, the Civil Court for Intellectual and Industrial Property Rights is authorized to look into the dispute. [3]

Disputes arising out of contracts regarding the rights, as set out under the Law on Intellectual and Artistic Works or IPL, fall within the jurisdiction of the Civil Court for Intellectual and Industrial Property Rights.

The Decision, bearing the Basis number #2016/2514, and the Decision number #2016/4673 and dated 18.4.2016, of the 20th Civil Chamber of the Court of Cassation reads as follows:

The plaintiff's attorney claimed that an agreement was executed by and between the parties to use the TSE trademark, that his client received an annual trademark usage fee from the persons using the document, that a debt enforcement proceeding was initiated against the defendant company due to the defendant company's failure to pay the invoices for the trademark usage fee, and that the debt enforcement proceeding was suspended upon the objection filed by the defendant against the proceeding, and requested and sued for annulment of the objection and the award of denial compensation.

The lawsuit is related to cancellation of the objection against the debt enforcement proceeding initiated for collection of the trademark license fee.

According to the nature of the dispute, pursuant to Article 71 of the Decree Law Nr. #556 on Protection of Trademarks, the competent court to hear the case is 2nd Civil Court for Intellectual and Industrial Property Rights of Ankara, which is a specialized court. [4]

The Decision, bearing the Basis number #2015/13114, and the Decision number #2015/11572 and dated 20.11.2015, of the 20th Civil Chamber of the Court of Cassation reads as follows:

The Civil Court for Intellectual and Industrial Property Rights, on the other hand, ruled that the case is a commercial business, that there is no case arising from a situation such as trademark infringement, unauthorized use of the trademark, exceeding the license within the scope of the Decree Law Nr. #556, and that the plaintiff's request is cancellation of the objection filed due to the objection against the enforcement proceedings regarding non-payment of the invoices issued for the service fee arising from the agreement, and that the Commercial Court of First Instance has the duty to look into the case where there is no dispute due to the trademark".

The lawsuit is related to cancellation of the objection against the enforcement proceeding for collection of the trademark license fee. According to the nature of the dispute, pursuant to Article 71 of the Decree Law Nr. #556 on Protection of Trademarks, the court authorized to hear the case is the Civil Court for Intellectual and Industrial Property Rights, which is a specialized court. [5]

In determining the disputes falling within the jurisdiction of the Civil Court for Intellectual and Industrial Property Rights, it may be necessary to examine the merits of the subject matter of the case.

The Decision, bearing the Basis number #2021/1330, and the Decision number #2022/1432 and dated 16.5.2022, of the 37th Civil Chamber of the Regional Court of Justice of Istanbul reads as follows:

The case is not a dispute arising from intellectual property law in nature, but a recourse case for the claim of compensation from the defendant for the price paid by the plaintiff to an extra-judicial third party. Since the merits of the matter should be resolved according to the general provisions, it should be resolved by the Civil Court of First Instance, which is a general court, not by the specialized court. It is therefore necessary to rule as follows. " … on the grounds of lack of jurisdiction. In the concrete case; after the decision taken by the plaintiff University publication commission to translate and print the foreign work by paying the royalty fee, the royalty fee was paid to the related foreign organization, but the compensation of the institutional damage caused by the defendant's failure to fulfill its responsibility in terms of translation and royalty was requested. Since there is no claim for existence and violation of the rights arising from the Law on Intellectual and Artistic Works numbered #5846 and there is no claim based on the registered design or trademark right, the application of the provisions of the Law on Intellectual and Artistic Works numbered #5846 in the case will not be in question. In this case, the dispute, which is related to its general provisions, should be heard and concluded at and before the Civil Court of First Instance. [6]

There is a close connection between the disputes arising from the applicable regulations on Intellectual and Industrial Property Rights and the Commercial Code. It is possible that the claim may be protected as a trademark under the IPL and as a business name under the Turkish Commercial Code.

It is also possible that the acts constituting infringement of industrial property rights may also be protected under unfair competition pursuant to the Turkish Commercial Code, and it may be possible to assert the claims in question in alternating claims or to assert them together within the scope of related acts.

In the event that the claims asserted pursuant to the Turkish Commercial Code are subject to the lawsuit together with the claims arising from the applicable regulations on Intellectual and Industrial Property Rights, the Civil Court for Intellectual and Industrial Property Rights is authorized for all claims. However, this situation may cause the Civil Court for Intellectual and Industrial Property Rights to hear cases related to rights that are not protected under the applicable IP regulations, but only under the Turkish Commercial Code.

4. Assessment

Lawsuits related to the rights, as set out under the Law on Intellectual and Artistic Works and the Intellectual Property Law, fall within the jurisdiction of the Civil Courts for Intellectual and Industrial Property Rights. However, these disputes also fall within the scope of commercial disputes. Therefore, for disputes that overlap between intellectual property rights and commercial law, there may be uncertainties in determining the competent court. In cases concerning unregistered trademark and design rights, it can only be determined at the end of the trial whether the rights subject to the lawsuit meet the conditions set forth under the IPL. The same applies to the claims asserted under the Law on Intellectual and Artistic Works, but it will only be possible to determine whether the subject matter of the lawsuit qualifies as a work pursuant to the Law on Intellectual and Artistic Works.

Determination of disputes falling within the jurisdiction of the Civil Court for Intellectual and Industrial Property Rights and the Commercial Court of First Instance may lead to conflicts of jurisdiction due to the competition of rights regulated under the aforementioned laws and the fact that it can be determined at the end of the proceedings under which law the claims asserted are protected.

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HUMANA AGREES TO SETTLE THE CASE BY PAYING $90 MILLION TO THE FEDERAL GOVERNMENT IN THE CASE “UNITED STATES EX REL. SCOTT V. HUMANA INC.”

"United States ex rel. Scott v. Humana Inc." is a legal case that involves allegations of fraud against Humana Inc., a health insurance company.

Case Background:

Plaintiff: The case was brought by a whistleblower (also known as a "relator"), named Scott, under the False Claims Act (FCA), which allows private individuals to sue on behalf of the government if they believe a company is defrauding federal programs.

Defendant: Humana Inc., a major health insurance provider.

Allegations:

The whistleblower, Scott, alleged that Humana was involved in fraudulent activities related to its administration of Medicare Advantage programs.

The Medicare Advantage program, through which private insurers like Humana provide Medicare benefits, pays insurers more for patients who are diagnosed with more severe health conditions.

The lawsuit claimed that Humana systematically submitted exaggerated or false diagnosis codes to the Centers for Medicare & Medicaid Services (CMS).

By doing this, Humana allegedly received higher payments than it was entitled to, thereby defrauding the government.

Specifically, the accusations centered around upcoding and misrepresenting patient diagnoses to receive higher payments from Medicare, a federal program that provides health insurance to individuals aged 65 and older.

Upcoding involves submitting claims to Medicare that reflect more severe conditions than the patient has, which leads to higher reimbursement rates.

Scott’s suit was filed in 2016 in the US District Court for the Central District of California under the case number 16-cv-401 and continued until August 2024.

Settlement: Humana agreed to settle the case by paying $90 million to the federal government.

Humana said, "While we are confident in our position and expected to prevail at trial, we have decided to enter into a settlement agreement without admitting any wrongdoing to avoid the uncertainty, distraction, inconvenience, and expense of a lengthy jury trial," in a statement.

Sources: ***Case United States ex rel. Scott v. Humana Inc. (16-cv-401)***

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THE CONCEPT OF COUNSELING MEASURE UNDER CHILD PROTECTION LAW

1. Introduction

Children's rights and freedoms are an integral part of the concept of human rights. The differences in the development and needs of children and the problems experienced in the current situation have led to the necessity of making child-specific regulations. The Turkish Penal Code Nr. #5237 and the Child Protection Law Nr. #5395 define a child as a person who has not attained the age of eighteen, even if s/he becomes an adult at an earlier age, and the scope of the concept of childhood is broadly defined.

In the justice system for children, improvement of the child and continuation of the child's development should be prioritized and the reaction to be shown to children who are dragged into crime should be proportionate to both the conditions in which the child is in and the act of the child.

In this context, the first article of the Child Protection Law in need of protection or dragged into crime states the purpose as setting out the procedures and principles regarding protection of children in need of protection or dragged into crime and securing their rights and well-being. Under the fifth article of the said Law, protective and supportive measures are set out, and protective and supportive measures are defined as measures to be taken in the fields of counseling, education, care, health and shelter to ensure that the child is protected primarily in her/his own family environment.

2. Protective and Supportive Measures

Protective and supportive measures refer to the measures to support the child who is dragged into crime and in need of protection (including victimized children) with her/his family, taking into account the special circumstances and needs of the child, and to take the child into institutional care as a last resort in cases where it is not in the best interest of the child to stay with her/his family.

Measures where the services needed by the child are provided without leaving the family environment are supportive measures and their aim is to improve the child in the environment in which the child lives. These measures include counseling, health and education measures aimed at improving the child's environment.

In cases where it is not in the best interest of the child to stay with the family despite the support services, the measures to be applied are the protective measures. Protective measures refer to the measures related to temporary or permanent placement of the child in a residential institution, foster family or institutional care.

3. Counseling Measure

First, if we talk about the authorities that can issue a cautionary decision; "the authority to determine whether a child is in need of protection and the measure to be applied belongs to the court." (Article 7 of the Child Protection Law; Article 22 of the Law on Social Services and Child Protection Agency).

"The Social Services and Child Protection Agency, the public prosecutor or the child's mother, father, guardian and persons responsible for the care of the child may request the court to determine the child's need for protection and to apply measures, or the court may independently initiate this examination" (Article 7 of the Child Protection Law).

Furthermore, "the expert who is assigned to conduct an examination on the child during the punishment may also request the court to apply a measure on the child, if deemed necessary." (Article 66.3 of the Code of Criminal Procedure). Counseling Measure is one of the types of protective and supportive measures given by the court or judge about the child in need of protection or dragged into crime. It is applied to ensure protection of the child with her/his family or to support the child and those responsible for her/his during implementation of the cautionary decisions made about the child or to inform about the possible measures to be implemented. In some problematic issues, it is applied as a risk-reducing intervention alone, while in others, it is applied before implementation of other measures or together with other measures, to support those measures.

The scope of the Counseling Measure is defined under the Communiqué on Implementation Procedures and Principles of Counseling Measure Decisions, as promulgated on the Official Journal on 25.10.2008, as follows:

"a) It is applied to ensure protection of the child with her/his family or to support the child and those responsible for her/his care during implementation of the cautionary decisions made about the child or to inform them about the possible measures to be implemented.

b) In some problematic issues, it is applied as a risk-reducing intervention alone, while in others, it is applied before implementation of other measures or together with other measures, to support those measures.

c) The scope of counseling measures includes activities aimed at solving educational problems such as school failure, illiteracy, school absenteeism, and increasing school success in order to support the physical, mental, psycho-social, emotional development of children, to strengthen their harmony with school, family and social environment, and to prepare them for life by having a profession suitable for their abilities; psycho-social and educational support services that systematically address the child in need of protection or who has been dragged into crime, the family and the persons responsible for the care and education of the child on issues such as substance abuse, behavioral disorders, sexual abuse, adolescence problems, anger control, social skills problems, family communication problems, family breakdown, lack of sufficient sensitivity in the family about the value of the child, family problems related to migration, evaluating risks and protective measures to prevent recurrence of crime and victimization, and supporting and intervening in normal development.

ç) The content of the needed counseling is specified under the social investigation report. The social investigation report should be prepared in a way to describe the expertise required by the problem or situation that reveals the need for this measure and to explain the recommendations regarding this measure." [1]

4. Implementation of the Counseling Measures

With respect to execution of the decision given by the competent authority mentioned above, the persons, institutions and organizations in charge of implementing the counseling measure are obliged to start immediately from the date of notification or notification of the decision given by the court or judge.

The counseling measure shall be carried out in cooperation with the officials who monitor other cautionary decisions or supervision decisions, in a way to ensure the participation of the family in the decisions.

The consultant in charge of fulfilling the counseling measure decision shall benefit from the social investigation report as a basis for the implementation plan to be prepared by the institutions or organizations in fulfillment of this cautionary decision, provided that the principles of obtaining information, as set out under Article 22 of the Regulation on Procedures and Principles Regarding Implementation of the Child Protection Law, are complied with. Counseling measures should be implemented in weekly or fifteen-day periods depending on the nature of the service, and at least eight sessions should be held. At the end of this period, a decision should be made on continuation of the measure. [2]

While the consultancy service is being fulfilled, information and file information on the child, family, dependent(s) are collected and examined. The child, family, dependent person or persons are met. The counselor informs the child, family and dependents about her/his duties and responsibilities. The boundaries of the problem are determined by meeting with the family, teachers, administrators and others who may be parties to the problem. The child and family are introduced to the court order and obligations, the consequences of non-compliance and discontinuation, and the responsibilities of the family regarding their child. An implementation plan for the counseling service is prepared. In cases where the child lives with her/his family, the child and the family are included in the process together, and the relevant persons are also interviewed. In cases where the child does not live with her/his family and is far away from her/his family, the counseling service is initiated by taking the necessary measures to inform the family about the development of the process and their duties.

Interviews with the child at least once a week and with the family at least once every two weeks are planned and followed up according to this plan. In addition, teachers or other relevant persons are also interviewed, depending on the situation. The monitoring criteria to be used in evaluation of the implementation process of the counseling measure are determined by the counselor who will provide this service and shown in the implementation plan. In line with the implementation plan, a quarterly report including the evaluation of the process and the recommendation for changing the measure, if any, is submitted to the court for review by the court or juvenile judge according to the procedure, as set out under Article 18 of the Regulation.

Conclusion

Child Protection Law Nr. #5395 sets out that protective and supportive measures may be imposed on children in need of protection or dragged into crime. One of the protective and supportive measures is the counseling measure, which is a measure aimed at guiding those responsible for the care of the child in raising children and guiding children in solving problems related to their education and development. The Communiqué on Implementation Procedures and Principles of Counseling Measures was promulgated on the Official Journal on 25.10.2008.

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1. Communiqué on Implementation Procedures and Principles of Counseling Measures was promulgated on the Official Journal on 25.10.2008

2. General Directorate of Special Education and Guidance Services, Handbook on Counseling Measures, p. 12

COUNSELING MEASURES SHOULD BE IMPLEMENTED IN WEEKLY OR FIFTEEN-DAY PERIODS DEPENDING ON THE NATURE OF THE SERVICE, AND AT LEAST EIGHT SESSIONS SHOULD BE HELD. AT THE END OF THIS PERIOD, A DECISION SHOULD BE MADE ON CONTINUATION OF THE MEASURE.

ACQUISITION OF TURKISH CITIZENSHIP THROUGH REAL ESTATE INVESTMENT (2024)

1. Introduction

Turkish citizenship can be acquired in two ways in terms of time. First, Turkish citizenship can be acquired at the moment of birth. Citizenship acquired by descent refers to acquisition of the citizenship of the Turkish citizen mother or father to whom the child is bound by descent at the time of birth. The second possibility is subsequent acquisition of Turkish citizenship. There are multiple ways for this possibility. For example, Turkish citizenship can be acquired in general based on the decision of the competent authority. Another possibility is through adoption.

As per the Article #17 of the Turkish Citizenship Law, a minor who is adopted by a Turkish citizen may acquire Turkish citizenship as of the date of the adoption decision, provided that there is no obstacle in terms of national security and public order. Another possibility is acquisition of Turkish citizenship through marriage.

It should be noted that simply marrying a Turkish citizen will not confer citizenship to the person. Pursuant to the Article #17 of the Turkish Citizenship Law, marriage to a Turkish citizen does not directly confer Turkish citizenship. However; foreigners, who have been married to a Turkish citizen for at least three years and whose marriage continues, may apply for Turkish citizenship. If the application is approved, citizenship is acquired.

In addition to the examples given, some exceptional cases where Turkish citizenship may be acquired are also set out under the law. The regulation on acquisition of Turkish citizenship through investment, which is also the subject of this article, is one of these cases. Article 12 of the Turkish Citizenship Law sets out the exceptional acquisition of Turkish citizenship.

2. Article 12 of the Turkish Citizenship Law (Exceptional Circumstances in Acquiring Turkish Citizenship)

Pursuant to the Article #12 of the Turkish Citizenship Law, the only condition for persons in the aforementioned groups to acquire Turkish citizenship exceptionally is that they “do not have any condition that would constitute an obstacle in terms of national security and public order”. If the persons in the groups, mentioned in the article, do not have such a condition, they can easily acquire Turkish citizenship exceptionally by the Presidential decree [1].

The persons who can acquire Turkish citizenship exceptionally are specified in 4 groups in under the law:

a) Persons who bring industrial facilities to Türkiye or who have rendered or are expected to render extraordinary services in scientific, technological, economic, social, sportive, cultural, artistic fields and for whom a reasoned proposal is made by the relevant ministries.

b) (Supplemented: 28.7.2016-6735/27 Art.) Foreigners who have obtained a residence permit pursuant to the subparagraph (j) of the first paragraph of the Article #31 of the Law on Foreigners and International Protection dated 4.4.2013 and numbered #6458, and foreigners holding Turquoise Cards, and their foreign spouses, their and their spouses' minor or dependent foreign children.

c) Persons deemed necessary to be naturalized.

d) Persons recognized as immigrants.

Acquisition of Turkish citizenship through real estate investment, which is the subject of our article, falls under the scope of the Article #12-1(b). As seen under the relevant provision, reference is made to the Law Nr. #6458 on Foreigners and International Protection.

3. Article #31 of the Law Nr. #6458 on Foreigners and International Protection

What is essentially regulated in the aforementioned provision is the short-term residence permit. However, as we have mentioned, as per Article 12 of the Turkish Citizenship Law, “those who have obtained a residence permit pursuant to the subparagraph (j) of the first paragraph of Article 31 of the Law Nr. #6458 on Foreigners and International Protection” may acquire Turkish citizenship exceptionally, persons who may obtain a residence permit under Article 31 of the Law on Foreigners and International Protection may acquire Turkish citizenship exceptionally.

Paragraph “j” of Article 31 of the Law on Foreigners and International Protection sets out that residence permits may be granted to “those who do not work in Türkiye but who will make investments within a scope and amount to be determined by the President, and their foreign spouses, and their and their spouses' minor or dependent foreign children”.

Therefore, pursuant to this provision, those who will make investments within the scope and amount to be determined by the President and their foreign spouses and their minor or dependent foreign children may obtain a short-term residence permit under Article 31 of the Law on Foreigners and International Protection and then acquire Turkish citizenship exceptionally pursuant to Article 12 of the Turkish Citizenship Law.

It should be noted that fulfillment of the conditions, as set out under Article 31 of the Law on Foreigners and International Protection, will not directly grant a residence permit. Article 31/f.1 of the Law on Foreigners and International Protection explicitly states that "...may be granted", emphasizing the discretionary power of the competent authority to grant the residence permit.

4. The Investment Element

As mentioned above, the first step in acquiring Turkish citizenship through real estate investment, obtaining a residence permit pursuant to Article 31 of the Law on Foreigners and International Protection, is conditional upon making an investment under specified conditions.

Article 31 of the Law on Foreigners and International Protection sets out that "those who will make investments within the scope and amount to be determined by the President, and their foreign spouses, and their and their spouses' minor or dependent foreign children".

The wording of the provision clearly emphasizes that the scope and amount of the investment will be determined by the President. This scope and amount are set out under Article 20 of the Regulation on Implementation of the Turkish Citizenship Law under the heading "Exceptional acquisition of Turkish citizenship, documents required for application and procedures to be followed".

Pursuant to Article 20 of the Regulation, the investment can be realized in multiple ways. The person who fulfills one of the investment conditions, as set out under the said article, will have fulfilled the investment condition to acquire Turkish citizenship exceptionally. Various investment methods are set out under the respective provision. For example:

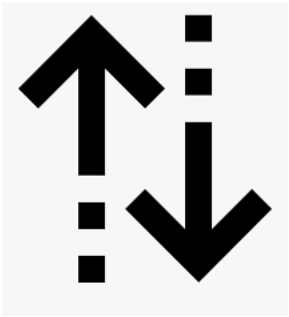
- To make a fixed capital investment of at least USD 500,000 or its foreign currency equivalent,

- Create at least 50 jobs,

- Deposit at least USD 500,000 or its foreign currency equivalent in banks operating in Türkiye, provided that the deposit is held for three years,

- To purchase real estate investment fund participation shares or venture capital investment fund participation shares amounting to at least USD 500,000 or its equivalent in foreign currency, provided that they are held for at least three years.

As can be seen, the investment options set out under the law have different features, and the amounts and conditions may differ depending on which paragraph the investment is to be realized.



5. Real Estate Investment

Realization of one of the investment methods listed above will fulfill the investment condition under Article 31 of the Law on Foreigners and International Protection. The investment methods listed in Article 20 of the Regulation on Implementation of the Turkish Citizenship Law are not limited to those listed above.

The investment method that we encounter in practice and which is the main subject of this article is the real estate investment method, set out under Article 20/2-b of the Regulation on Implementation of the Turkish Citizenship Law.

As per this provision, it is stated that "the person who purchases a landed immovable property with condominium ownership or condominium easement established or on which a building is located, with a landed immovable property of at least 400,000 US Dollars or its equivalent in foreign currency, on the condition that an annotation not to sell it for three years is placed on the title deed records, or a landed immovable property with condominium ownership or condominium easement established, with a landed property of at least 400. 000 USD or its equivalent in foreign currency in advance and promised to sell the immovable with a notarized contract with the condition of annotating the commitment that it will not be transferred and abandoned for three years in the title deed registry" will have fulfilled the investment condition for the exceptional acquisition of Turkish citizenship upon determination of the ministry.

It should be noted that the amounts of the investment methods, as set out under the law, are changed from time to time. Article 20/2-b of the regulation, setting out real estate investment, was revised as USD 400,000 by and through the amendment, promulgated on the Official Journal on January 6, 2022.

As of 19.04.2024, the amount determined as USD 400,000 in the relevant article remains valid. Nevertheless, it should be noted that this amount is subject to change from time to time.

6. Important Considerations for Satisfying the Real Estate Investment Condition

6.1. Nature of Real Estate

As of January 6, 2022, the real estate investment required under this provision is USD 400,000. Therefore, the first condition is that the real estate investment exceeds USD 400,000. This amount can be achieved through purchase of one or more immovable properties. The first condition will be met by purchase of one or more immovable properties above this value. In the same direction, this condition can also be met by acquiring easement rights or condominiums above the specified amount. Therefore, the nature of the real estate to be invested in is important.

In a free market economy, the value of immovable properties cannot be known precisely, and these values may change rapidly. Since the minimum value set by the Law is USD 400,000, investing in real estate with a value below this value will result in failure to meet this condition. Therefore, it is important to objectively determine the value of the immovable property. This will be possible through preparation of an appraisal report.

6.1.1 Appraisal Report (Amendment dated 01.03.2024)

The appraisal report is important in terms of determining the value of the immovable. Under the circular dated 15.02.2019 and numbered 2019/1 published by the Directorate General of Land Registry and Cadastre under the Ministry of Environment and Urbanization, foreign nationals are now obliged to obtain a 'Real Estate Appraisal Report' not only in citizenship applications, but also in all sales transactions in which they are a party as buyers or sellers.

It will be important that the appraisal report is dated no more than three months prior to the application date.

As a result, the value determined in the appraisal report for the real estate to be invested in must be above USD 400,000.

It should be noted that under the circular published very recently, a change has been made regarding the institution to obtain the appraisal report that will be subject to exceptional acquisition of Turkish citizenship, effective as of 04.03.2024.

In other transactions that are not subject to the request for Turkish citizenship and for which an appraisal report is required, the appraisal reports can be issued by any Appraisal Institution licensed by the Capital Markets Board.

Department of Real Estate Appraisal of the Directorate General of Land Registry and Cadastre of the Ministry of Environment, Urbanization and Climate Change issued a circular dated 01.03.2024 titled "Procedures and Principles Regarding the Appraisal Reports to be Used in Real Estate Acquisitions of Foreigners and Certain Transactions".

GEDAŞ Gayrimenkul Değerleme A.Ş., a subsidiary of the Housing Development Administration affiliated to the Ministry, was authorized to issue the appraisal reports required in the sale / sale promise transactions for exceptional acquisition of Turkish Citizenship to ensure standardization in the appraisal reports issued for exceptional acquisition of Turkish citizenship and to prevent differences that may occur in the value of immovables.

After this amendment, report applications in title deed transactions for exceptional acquisition of Turkish Citizenship will be made by selecting GEDAŞ Gayrimenkul Değerleme A.Ş. from the Request Information ==> Purpose of Request ==> Sales Subject to Citizenship application option from the official website address of Web Tapu (https://webtapu.tkgm.gov.tr/).

As clearly stated under the circular, only appraisal reports prepared by GEDAŞ Gayrimenkul Değerleme A.Ş. will be accepted for Turkish citizenship requests to be made after the Sale / Promise of Sale transactions made after the effective date of the circular [2].

The period of use of the appraisal reports to be used in title deed transactions is 3 months. If this period expires, a new appraisal report is requested through the system before the title deed transaction.

6.2. Foreign Currency Purchase Certificate and Receipt

With the update made in the Capital Movements Circular on of the Central Bank of the Republic of Türkiye (the "Circular"), the obligation to exchange foreign currency in real estate sales in which foreign real persons are buyers after January 24, 2022 has been introduced within the scope of Article 13.
Therefore, this provision will be important for real estate investments to be made by foreigners within the meaning of Article 31 of the Law on Foreigners and International Protection as of January 24, 2022. Within the scope of the amendment, non-Turkish citizens will be required to pay for the real estate they will purchase in Türkiye in foreign currency.

Foreign currency purchase certificate is a document showing that the foreign currency has been sold to a bank operating in Türkiye to be sold to the central bank before the purchase is made by the foreign buyer at the land registry office.

The foreign currency subject to the purchase is sold to a bank operating in Türkiye and the bank sells it to the Central Bank of the Republic of Türkiye and the payment is made to the relevant person in Turkish lira.

After this sale to the Central Bank, a foreign currency purchase certificate will be issued by the bank on behalf of the person who sells foreign currency.

The foreign currency must be exchanged before the title deed transactions and the foreign currency purchase certificate must be submitted to the title deed office before the sale.

In citizenship transactions, the Land Registry Office will request the foreign currency purchase certificate and the certified bank receipt showing that the amount of the foreign currency exchange has been sent to the seller's account.

While the foreign currency purchase certificate must be submitted to the Land Registry Office before the sale transaction, it is possible to submit the real estate payment receipt (money transfer from the buyer to the seller) together with the "Foreign Currency Purchase Certificate" before the sale transaction or separately before the commitment transaction and before the issuance of the certificate of suitability at the latest [3].

6.3. Annotation Requirement

An annotation is required to be placed in the land registry regarding the purchased real estate.

The foreigner who wants to acquire citizenship through investment must annotate the land registry for the immovable or immovables exceeding USD 400,000, stating that s/he will not sell the relevant immovable for three years.

Similarly, if an easement right or condominium is transferred, an annotation must be made in the land registry and a commitment not to transfer or abandon the property for three years must be annotated.

6.4. Certificate of Suitability

The Ministry of Environment and Urbanization (Directorate General of Land Registry and Cadastre) is the competent authority to issue the certificate of suitability to determine that the immovable subject to acquisition of citizenship through purchase of immovable property meets the minimum investment requirement.

The certificate of suitability will be requested from the Regional Land Registry Office after the necessary annotation is made in the land registry.

The Regional Land Registry Office will examine the investment and determine whether the transfer meets the conditions. When the certificate of suitability is obtained by the Office, an application for a short-term residence permit will be made to the Directorate General of Migration Management in accordance with the article 31/j of the Law on Foreigners and International Protection with this document and other necessary documents.

After obtaining the short-term residence permit in accordance with the article 31/j of the Law on Foreigners and International Protection, the final stage, which is the application for exceptional acquisition of citizenship, can be realized.

6.5. Application for Turkish Citizenship through Real Estate Investment

Pursuant to Article 31/j of the Law on Foreigners and International Protection, the foreigner who obtains a short-term residence permit shall apply for Turkish citizenship with the necessary documents to the Directorate General of Population and Citizenship Affairs.

7. Conclusion

In conclusion, it is possible to acquire Turkish citizenship by investing in real estate. It is important to carefully consider the conditions and necessary documents at the stages such as realizing this investment, obtaining a short-term residence permit and applying for citizenship.

As of today, a foreigner who purchases real estate worth at least USD 400,000 and puts an annotation on the real estate stating that s/he will not sell it for three years will be able to obtain a short-term residence permit in accordance with article 31/j of the Law on Foreigners and International Protection upon fulfilling the other conditions and stages mentioned above.

The foreigner who obtains a short-term residence permit in this way will then be able to acquire Turkish citizenship by applying for citizenship in accordance with Article 12 of the Turkish Citizenship Law.

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2. Circular dated 01.03.2024 and titled "Procedures and Principles Regarding the Appraisal Reports to be Used in Real Estate Acquisitions of Foreigners and Certain Transactions" published by the Department of Real Estate Appraisal of the Directorate General of Land Registry and Cadastre of the Ministry of Environment, Urbanization and Climate Change

3. Foreign Currency Exchange Obligation for Real Estate Purchases by Foreigners, 2022, Directorate General of Land Registry and Cadastre, of the Ministry of Environment, Urbanization and Climate Change of the Republic of Türkiye

AS OF TODAY, A FOREIGNER WHO PURCHASES REAL ESTATE WORTH AT LEAST USD 400,000 AND PUTS AN ANNOTATION ON THE REAL ESTATE STATING THAT S/HE WILL NOT SELL IT FOR THREE YEARS WILL BE ABLE TO OBTAIN A SHORT-TERM RESIDENCE PERMIT.

ITALY'S SUPREME ADMINISTRATIVE COURT UPHOLDS BAN ON RYANAIR CHARGING EXTRA FOR SEATING NEXT TO CHILDREN UNDER 12 OR DISABLED PASSENGERS

Ryanair has lost its appeal against a ban in Italy on charging travelers to sit next to accompanying children under 12 or people with disabilities. The dispute between the airline and Italian authorities regarding the issue has been ongoing for a few years, with the dismissal now coming from Italy's top administrative court.

Ryanair's implementation was banned by the Italian Civil Aviation Authority. However, Ryanair had filed a lawsuit to annul the regulation on the grounds that it did not charge additional fees and that this ban was an interference with the company's financial freedom.

For passengers who wish to choose where they sit, the carrier charges extra which can be anywhere from €22-30. However, according to the Council of State, "the need for proximity of the seats between minor and accompanying person is clearly connected with the safety obligation." The Council of State states that it is the responsibility of the airline, which cannot charge extra for it.

Eventually, the court upheld the lower court's decision on the grounds that the need for seat proximity between the minor and their companion is clearly connected to the safety requirement.
Source: Court Upholds Ban On Ryanair Charging Extra For Seating Next To Children Or Disabled Travelers (simpleflying.com)

Source: ***https://www.lawgazette.co.uk/news/courts-already-using-automated-decision-making-lord-justice-birss-reveals/5119197.article***

SPOTIFY DODGES HUGE COPYRIGHT INFRINGEMENT LAWSUIT OVER EMINEM SONGS

Eminem's music publisher, Eight Mile Style, has settled a $30 million lawsuit against Spotify, accusing the streaming giant of significant copyright infringement. The lawsuit, which gained attention earlier this year, alleged that Spotify had streamed Eminem's music, including the hit track "Lose Yourself," without obtaining the necessary licenses, resulting in substantial financial damages for the publisher.

The legal action was two-pronged. Firstly, Spotify is accused of deliberately overlooking Eight Mile Style's ownership of Eminem's catalog when determining how to allocate streaming revenue for his music. Eight Mile Style claimed that Spotify failed to properly recognize and respect the publisher's ownership rights, which led to erroneous revenue calculations and an unfair distribution of earnings. The publisher argued that Spotify's negligence in acknowledging its ownership rights resulted in significant financial losses and an inequitable share of streaming revenue.

Secondly, Spotify allegedly breached certain provisions of the Music Modernization Act (MMA), enacted in October 2018. The MMA was designed to simplify the payment process for artists, songwriters, producers, and rights holders from online music streams.

Eight Mile Style contended that Spotify did not meet the MMA's requirements, particularly regarding acquiring mechanical licenses necessary for the lawful distribution of music on streaming platforms. This failure to comply with the MMA contributed to improper compensation and further financial damage.

However, in a twist, Spotify presented a third-party complaint shared by Music Business Worldwide in 2020, asserting that it had been licensed by Kobalt Music Group to use Eminem's greatest hits. According to Spotify's representative, Kobalt had authorized the streaming of tracks such as "The Way I Am," "Lose Yourself," and "Just Lose It." Spotify claimed to have a Mechanical License Agreement with Kobalt, which should protect it from claims by third parties alleging infringement of intellectual property rights.

Judge Aleta Trauger of Tennessee, who presided over the case, ruled that while Spotify's handling of composer copyrights appeared to have been flawed, the right to recover damages belonged to those rights holders who were genuinely harmed. Judge Trauger stated, "While Spotify's handling of composer copyrights appears to have been seriously flawed, any right to recover damages based on those flaws belongs to those innocent rights holders who were genuinely harmed."

The settlement marks a significant development in the ongoing challenges within the music industry related to copyright enforcement and fair compensation. It underscores the need for streaming platforms to manage complex licensing requirements effectively while ensuring transparency and fairness in their practices.

Source: ***https://www.bbc.com/news/articles/cewlqppepjyo***

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