

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

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An Analysis of the Legal Liability of Physicians in Medical Malpractice Cases

In certain circumstances, specific harms may arise when a medical intervention is not performed in accordance with the requirements of medical science. In such cases, the physician who performed the intervention, as well as the administration, may be held liable. However, not every complication arising after a medical intervention—namely, adverse outcomes that occur despite the intervention having been carried out with due care and in compliance with established rules—should be regarded as medical malpractice. [\(Page 2\)](#)

The Binding Nature of Constitutional Court Violation Decisions and Their Implementation by Civil Courts

Individual application is set out under the third paragraph of Article 148 of the Constitution, and everyone may apply to the Constitutional Court on the grounds that any of their fundamental rights and freedoms guaranteed by the Constitution, and falling within the scope of the European Convention on Human Rights, has been violated by public authorities. The individual application mechanism is a remedy that can be invoked only after ordinary legal remedies have been exhausted. [\(Page 11\)](#)

An Evaluation of the Amendments to the Communiqué Nr. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Board

The primary and most widely recognized function of competition law is to ensure the preservation of effective competition in markets and to prevent concentration transactions from distorting the competitive structure. In this context, subjecting mergers and acquisitions to prior control is regarded as one of the most important instruments of competition law. In Türkiye, this control mechanism is carried out within the framework of Law Nr. 4054 on the Protection of Competition. [\(Page 19\)](#)

Court of Cessation's Practices on Improper Service of Process

Instances of improper service of process, which are frequently encountered in practice, can hinder the orderly progression of proceedings and lead to the loss of legal rights. Conducting service of process in a manner contrary to the form and procedures prescribed by law produces significant legal consequences, such as affecting the validity of the service and, consequently, the commencement of procedural deadlines. In this respect, improper service of process is not merely a procedural defect but also a matter that directly impacts the fairness of the proceedings. [\(Page 7\)](#)

The Evidentiary Value of Whatsapp Messages in Actions arising from Rental Receivables by Type of Action

With the widespread use of digital communication tools in daily life, electronic correspondence has gained increasing importance in the formation and performance of contractual relationships. In this context, it is observed that, in rental relationships, parties agree on numerous matters through digital communications rather than formal written contracts. Among these practices, the most common is correspondence conducted via WhatsApp. [\(Page 15\)](#)

General Assembly of Civil Chambers Precedent Dated 09 April 2025: Full Contractual Fees for Lawyers Prevented from Filing Additional Claims

A contract signed between a lawyer and a client also constitutes a contract of mandate. However, unlike a general contract of mandate, under the Legal Practitioners Act, "fee" is an essential element of the contract. Through this agreement, the lawyer undertakes to provide legal assistance, while the client undertakes to pay a fee in return for the legal services rendered. Determining the fee in the contract is not mandatory; it may be agreed upon either before or after the performance of the work. [\(Page 21\)](#)

Recent News

Court of Cessation's Latest Ruling: How Will the Preemption Law Amendment Apply in Pending Cases? [\(Page 14\)](#)

New Era for Electric Vehicle Charging Services: Regulation Amended! [\(Page 23\)](#)

Constitutional Court Issues Key Ruling on Limited Liability Companies! [\(Page 23\)](#)

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AN ANALYSIS OF THE LEGAL LIABILITY OF PHYSICIANS IN MEDICAL MALPRACTICE CASES



In certain circumstances, specific harms may arise when a medical intervention is not performed in accordance with the requirements of medical science. In such cases, the physician who performed the intervention, as well as the administration, may be held liable. However, not every complication arising after a medical intervention—namely, adverse outcomes that occur despite the intervention having been carried out with due care and in compliance with established rules—should be regarded as medical malpractice. Malpractice – i.e. medical negligence – is assessed on the basis of various criteria in determining the harm arising from a medical error.

This article examines the lawfulness of medical interventions, the distinction between malpractice and complications, the liability of physicians and the administration following malpractice, the liability of physicians working in the public and private sectors, and the circumstances under which physicians are subject to investigation authorization.

1. Lawfulness of Medical Intervention

Although there are numerous criteria for a medical intervention to be considered lawful, this article will examine the four principal conditions for its lawfulness. Accordingly, a medical intervention must remain within the objective and subjective limits, rules, and standards of contemporary medical science. The physician's intervention must pursue a therapeutic purpose. The medical intervention must be carried out by individuals duly

authorized to practice the medical profession. Finally, the patient must have given consent to the medical intervention.

The Court of Cassation has also adopted this view under one of its decisions, stating: "If medical science permits the intervention performed by the physician, then the physician is deemed to have engaged in an activity authorized by the medical profession, and therefore, the act cannot be considered unlawful on the grounds of the exercise of a right." However, the Court of Cassation has also observed that, with increasing emphasis on the consent of the injured party, legal doctrine has gradually shifted toward a consent-based theory¹.

The primary basis of this view lies in the "freedom of science and arts", as set out under the Constitution (Art. 27). Although the source of this right is also found under the applicable health regulations, it is most explicitly set out under Article 13/1 of the Medical Deontology Regulation. According to this provision, "a physician or dentist establishes a diagnosis and administers the necessary treatment in accordance with the requirements of medical science. The fact that such activities do not necessarily result in a cure does not give rise to deontological liability." Furthermore, custom and usage are also regarded as sources of the right to perform medical intervention³. [1]

The conditions, scope, and details required for the lawfulness of medical interventions are specified under the Patient Rights Regulation. Accordingly;

g) (Supplemented: OJ-8/5/2014-28994) Medical intervention: A physical and mental procedure carried out by individuals authorized to practice the medical profession, within the limits of medical science, in accordance with professional obligations and standards, for the purpose of protecting health and diagnosing and treating diseases,

ğ) (Supplemented: OJ-8/5/2014-28994) Informed consent: The provision of necessary information to the individual by the healthcare professional who will perform any planned medical intervention prior to its execution,

h) (Supplemented: OJ-8/5/2014-28994) Consent: The individual's voluntary and informed acceptance of a medical intervention." [2]

The purpose of any medical intervention must be to protect health, and to diagnose and treat diseases. Such intervention must be carried out solely by individuals authorized to practice the medical profession. The most important and final requirement is the patient's consent to the proposed medical intervention. If the patient does not provide consent, the intervention cannot be considered lawful, even if it is deemed necessary for the patient's health.

"In my view, what renders medical interventions lawful is the fulfillment of all the conditions outlined at the beginning of this study. Accordingly, the intervention must be performed by a physician, there must be a valid medical indication and informed consent, and the physician must carry out the intervention in accordance with the requirements of medical science, exercising due care and diligence. In fact, the requirement of medical indication constitutes a constitutional condition (see Art. 17/2). Both the requirement that the intervention be performed by a physician (Art. 1-4 of the Law on the Practice of Medicine and Medical Sciences) and the requirement of consent (Art. 70 of the Law on the Practice of Medicine and Medical Sciences; Art. 6 of the Law on the Removal, Storage, and Transplantation of Organs and Tissues; Art. 4 of the Population Planning Law; additionally, the Art. 5 of the Convention on Biomedicine; Art. 5, 25 of the Patient Rights Regulation) are legal conditions.

Consequently, with respect to these three requirements, the “execution of a statutory provision” is effectively fulfilled.”

The patient’s consent alone does not render a medical intervention lawful. For consent to be valid, the patient must be adequately informed about the nature of the intervention, its risks, potential complications, alternative treatment options, and the consequences of not undergoing the intervention. The scope and effect of the consent are determined by the extent of the information provided during the disclosure process.

2. Distinction Between Malpractice and Complications

Not every harm or adverse outcome arising after a medical intervention should be regarded as malpractice. Even when all necessary care and diligence are exercised, and the intervention meets the conditions of lawfulness, unforeseen or, if foreseen, undesired results may still occur. In such cases, the normal risks recognized by medical science manifest as complications.

“... In the case reviewed on appeal, the reports obtained within the file and the expert reports, including those from the Council of Forensic Medicine, indicated that the intramuscular Dicloron injection administered to the plaintiff due to leg pain was medically indicated, and when the clinical and laboratory data were evaluated together, the nerve damage observed after the intramuscular injection was consistent with injection neuropathy, and it is medically recognized that, in such injection procedures, the tissue distribution of the injected drugs can, albeit rarely, cause nerve damage, and this risk may materialize even when the injection is performed correctly according to technique, and it is thus classified as a complication that can occur despite all due care and diligence, and therefore, assuming the court accepts that the injection was administered to the correct site, the injection neuropathy developed in the individual constitutes a complication rather than malpractice, and when all findings are evaluated as a whole, no medical error was attributed to the physician supervising the treatment or to the healthcare personnel who administered the injection, and, based on the documents under the file, no apparent fault was found on the part of the administration providing services through healthcare staff, and although an informed consent form was not

present under the file, according to Article 70 of the Law on the Practice of Medicine and Medical Sciences and the Circular, Nr. 2019/11 and dated 10.06.2019, of the Directorate General of Health Services of the Ministry of Health, verbal information is considered necessary and sufficient for injection procedures, as they do not constitute major surgical operations, and accordingly, it was stated that when the patient’s current treatment, prescribed by the attending physician, is administered by authorized healthcare professionals after reviewing the patient’s prescription, obtaining written consent is not mandatory.

Furthermore, for compensation of material and moral damages, fault, harm, and causation must coexist. Since the condition observed in the plaintiff was classified as a complication, it is evident that no fault existed. Consequently, the plaintiff’s counsel’s appeal was rejected, and the decision, found to be in accordance with procedural and substantive law, was upheld ...” [3]

As evidenced by the aforementioned Court of Cassation decision, if a medical intervention is carried out lawfully and all duties of care and diligence are fulfilled, any resulting harm cannot be classified as malpractice. Such occurrences are defined as complications.

Even when all obligations of care are observed during a medical intervention, unforeseen or, if foreseen, unavoidable and undesired outcomes may still arise, and these are to be regarded as complications. The Council of State has categorized medical intervention fault under three main headings: fault arising from the procedure itself, organizational or coordination deficiencies, and fault in informing the patient, and thus in obtaining explicit consent. Under the decision of the Council of State cited below, the concepts of complication and malpractice are also clarified.

“Erroneous Medical Practice (Malpractice):

Article 13 of the Turkish Medical Association’s Rules of Medical Ethics defines medical error. Any physician intervention that lacks the due care required according to the standards and experience of medical science, and therefore appears inappropriate for the situation, is understood as a practice error (malpractice). In other words, failure to follow standard proce-

dures, lack of knowledge and skill, or the application of inappropriate treatment during the diagnosis and treatment of a patient may be defined as a medical error. In this context, the liability arising from an erroneous medical practice constitutes ‘fault-based general liability.

In terms of the physician’s legal liability, the standard of care is measured against that of an experienced specialist physician. Objectively, the physician must be capable of foreseeing potential harm to the patient’s health based on the normal course of events, and subjectively, according to their personal experience, skills, individual professional knowledge, and the quality and level of their education. At this point, the duty of care comes to the fore.

The breach of a physician’s duty of care is concentrated in three areas: first, in the treatment of the patient, including diagnosis, determination of medical indication, selection and application of medical measures, and post-treatment or post-surgical care; second, in informing the patient and taking the medical history; and third, in clinical organization, including the qualification of personnel, maintaining an adequate number of staff, and cooperation among physicians (consultations).

Fault in these three areas can be respectively classified as procedural error (error in treatment), fault in patient information, and organizational fault. Collectively, these three types of fault are referred to as “Medical Practice Error” (Malpractice). At this point, the concept of medical standards should be clarified.

The term ‘medical standards’ refers to the generally recognized and accepted professional rules within medical science. Violations of medical standards can occur in various ways, including diagnosis, treatment (such as lack of indication or selection of an inappropriate treatment method), and post-intervention care management.

Complication: A complication is an unforeseen or, if foreseen, unavoidable and undesired outcome during a medical intervention; however, it must not result from a lack of knowledge or skill. According to this definition, a physician who acts within the medically accepted normal risks and deviations, exercising the necessary care and diligence, is not legally liable for such undesired outcomes.

A medical intervention is considered lawful if the patient is informed of the undesired outcomes (complications) that may occur during or after the procedure without any fault, and consents to the intervention. If the harmful outcome to the patient is unforeseeable and unavoidable, or even if it could have been foreseen but cannot be prevented—provided that the patient has been adequately informed, consent has been obtained, and no fault occurred during the procedure—this outcome should be regarded as a complication. At this point, it is essential that there be no deviation from medical standards and that the rules of professional experience are observed. Furthermore, the diagnosis and treatment applied during the post-complication process must also comply with medical standards. In this context, the management of the post-complication process is important for determining the presence or absence of service-related fault.” [4]

4. Liability of Physicians Working in the Public and Private Sectors

In cases where a medical intervention is alleged to have been performed erroneously, i.e., in claims of malpractice, specific procedures exist for establishing the liability of physicians working in public healthcare institutions as well as those in private healthcare facilities or practicing independently.

a. Liability of physicians working in public healthcare institutions

The activities performed by physicians working in public healthcare institutions fall within the scope of administrative functions. When public services are delivered by the administration, the administration may be held liable for various harms caused by the personnel performing these services. Healthcare services provided by physicians in public institutions are included among these. Accordingly, the administration is liable for damages resulting from the actions of physicians working in public institutions. This liability arises from Article 125 of the Constitution.

“Article 125 – Recourse to judicial review shall be available against all actions and acts of administration.”

In the event of a malpractice claim against a physician working in a public institution, provided that the claim does not rely on a personal fault unrelated to the physician’s

duties, the action arises from conduct performed during and in connection with official duties, constituting service-related fault. In such cases, the defendant in the lawsuit will be the administrative institution to which the physician is affiliated. This type of dispute can be resolved in the administrative courts.

“... Moreover, if a public official’s conduct within or related to their duties constitutes a criminal act, involves gross negligence while performing the service, or intentionally harms someone due to hostility, political animosity, or other malicious intent, this situation should also be considered a service-related fault arising from the administration’s failure to fulfill its supervision and proper staffing obligations. Consequently, any legal action in such cases must be directed against the administrative institution ...

Accordingly, since the claim does not rely on a personal fault of the defendant outside the scope of their duties, the act occurred during and in connection with the official duties, and constitutes service-related fault, the proper defendant in the present case is not the public official but the administrative institution. Therefore, the lawsuit should be filed against the administration, and the legal action must be directed at the administrative body...” [5]

b. Liability of physicians in private healthcare institutions or independent practice

In the case of physicians working in private healthcare institutions or practicing independently, the relationship between the doctor and the patient is often contractual in nature. Accordingly, the physician’s liability is generally governed by the Turkish Code of Obligations. The defendant in such cases may be the physician or

the healthcare institution where they work. Disputes of this nature are resolved in the judicial courts.

The Decision, bearing the Basis number 2009/15373, the Decision number 2010/5157 and dated 15.4.2010, of the 13th Civil Chamber of the Court of Cassation reads as follows:

“In private hospitals defined under the Private Hospitals Law, the patient enters into a contractual relationship with the hospital operator, and therefore the physician’s contractual liability does not arise.

The physician works under the hospital operator; accordingly, the liability rests with the hospital operator. In interpreting the hospital-patient service agreement, the provisions of the agency contract are applied by analogy. Under the hospital admission agreement, the hospital operator fulfills all healthcare services through the staff employed by them. All services are performed by the hospital operator, and since there is no contractual relationship between the patient and the physician, the liability rests with the hospital operator.” [6]

The Decision, bearing the Basis number 2008/969 and the Decision number 2008/6813 and dated 14.11.2008, of the 15th Civil Chamber of the Court of Cassation reads as follows:

“The relationship between the plaintiffs and the defendant physician constitutes a work contract, as set out under Articles 355 and et seq. of the Turkish Code of Obligations. Any dispute between the parties must be resolved according to the provisions governing work contracts. The plaintiffs assume the role of the principal, while the defendant physician acts as the contractor. The defendant physician undertook to perform nasal and chest surgeries for K1 and a nasal surgery for K2. All of these surgeries are for aesthetic purposes.

The defendant physician’s obligations are set out under Articles 356 and et seq. of the Turkish Code of Obligations. The primary obligation of the defendant is to perform the aesthetic surgeries in accordance with the plaintiffs’ requests. If performing the surgeries exactly as requested by the plaintiffs is not possible, the defendant physician has a prior duty to inform and warn the plaintiffs. In this case, the defendant has failed to provide evidence that such a warning was given.



It is concluded that the defendant physician did not fully fulfill their obligations, as evidenced by Plaintiff K1 undergoing a repeat aesthetic surgery of the same nature at X1 Hospital, and, regarding Plaintiff K2, by the report dated 27.11.2006 issued by the 3rd Expertise Committee of the Forensic Medicine Institute. The existence of professional fault on the part of the defendant physician must be recognized. In this case, it is necessary to hold the defendant liable pursuant to Article 96 of the Turkish Code of Obligations.” [7]

5. Physicians' Requirement for Investigation Authorization

For healthcare professionals who are public officials, complaints and reports cannot trigger a direct investigation. Following the amendment published in the Official Journal on May 27, 2022, the provisions of Law Nr. 4483 on the Trial of Civil Servants and Other Public Officials, dated December 2, 1999, shall apply to investigations concerning medical procedures and practices, including examination, diagnosis, and treatment, carried out by physicians, dentists, and other healthcare professionals working in public or private healthcare institutions and foundation universities within the scope of their professional duties.

Law on the Amendment of the Turkish Penal Code and Certain Other Laws:

“SUPPLEMENTAL ARTICLE 18- Except for those subject to the investigation procedures, set forth under Article 53 of the Higher Education Law, the provisions of Law Nr. 4483 on the Trial of Civil Servants and Other Public Officials, dated December 2, 1999, shall apply to investigations concerning medical procedures and practices, including examination, diagnosis, and treatment, carried out by physicians, dentists, and other healthcare professionals working in public or private healthcare institutions and foundation universities within the scope of their professional duties.

Authorization for investigation is granted by the Professional Liability Board established within the Ministry of Health. For physicians, dentists, and other healthcare professionals working in private healthcare institutions and foundation universities, the Professional Liability Board may also assign the directors or deputies of provincial health directorates to conduct a preliminary investigation. The time periods specified in Article 7 of

Law No. 4483 regarding the granting of investigation authorization are applied twice. Decisions of the Professional Liability Board may be appealed to the Regional Administrative Court of Ankara.”

In order to initiate an investigation, authorization must be obtained from the administrative authority. In compensation lawsuits, a case can be filed directly. Offenses by physicians that are unrelated to their official duties are not subject to this procedure.

A request for a preliminary investigation must be submitted to the Professional Liability Board. The authority empowered to grant investigation authorization is the Professional Liability Board itself. The Board may conduct the preliminary investigation personally or through authorized personnel (inspectors, officials of the provincial health directorates, etc.). Based on the outcome of the preliminary investigation, the Board issues a reasoned decision on whether to grant or deny authorization for a full investigation. This decision may be appealed to the Regional Administrative Court of Ankara in ten days.

Without investigation authorization, a criminal investigation cannot be initiated against physicians who are legally subject to such authorization.

6. Negligence, Causal Link, and Burden of Proof

For liability arising from medical malpractice; fault, damage, and causal link must coexist in accordance with the general principles of tort law. In malpractice cases, the most critical element is often the establishment of causal link, as it must be demonstrated that the harm suffered by the patient directly resulted from the physician's negligent act.

Accordingly, the following elements must be considered together:

- The physician's conduct in violation of medical standards (negligence)
- The harm suffered by the patient
- The appropriate causal link between the harm and the physician's act

As recognized in the practice of the Court of Cassation, the decisive factor in distinguishing between a complication and malpractice is whether the harm arose

from an unavoidable risk or as a result of a breach of the duty of care. While the burden of proof generally lies with the plaintiff, expert reports play a decisive role in such disputes, particularly given their technical and specialized nature.

Furthermore, in cases of breach of the duty to inform, established case law provides that the burden of proof shifts, requiring the physician to demonstrate that the patient was adequately informed.

7. Assessment in Terms of Statute of Limitations

The statute of limitations for lawsuits based on medical malpractice varies depending on the legal nature of the dispute and the judicial branch in which the case is filed.

a. Statute of Limitations in Lawsuits Filed under Private Law

In lawsuits filed against private healthcare institutions or independently practicing physicians, the provisions of the Turkish Code of Obligations apply, depending on the legal nature of the relationship between the parties.

In cases where the relationship between the physician and the patient is classified as a mandate contract or, in certain circumstances, as a contract for work, the statute of limitations is generally applied as:

- **10 years (TCO Art. 146).**

However, in cases where the medical intervention constitutes a tort, the statute of limitations is applied as follows:

- *2 years as of the date the damage and the perpetrator are discovered*

- *In any case, 10 years as of the date the act occurred (TCO Art. 72).*

Therefore, in a given case, correctly determining whether the relationship between the parties is contractual or constitutes a tort is crucial for establishing the applicable statute of limitations.



b. Statute of Limitations in Lawsuits Filed Against Public Healthcare Institutions

Lawsuits arising from medical interventions performed in public hospitals are heard in the administrative courts, as they are based on the administrative liability of the institution.

Accordingly, , pursuant to Article 13 of the Code of Administrative Procedure Nr. 2577: an application must be submitted to the administration

- in 1 year as of the date the damage is discovered
- in any case, in 5 years as of the date of the act.

Following the rejection or implicit rejection of the application submitted to the administration, a full remedy lawsuit may be filed in the administrative courts within the prescribed period for initiating legal action.

c. The Importance of Statute of Limitations in Practice

In malpractice cases, the statute of limitations can lead to the dismissal of a lawsuit without examining its merits, and it is a procedural objection frequently encountered in practice.

In particular, the following are crucial for determining the commencement of the statute of limitations:

- Establishing the date on which the damage was discovered
- Distinguishing between a complication and malpractice
- Determining when the medical process was completed.

Therefore, in each individual case, the statute of limitations must be carefully assessed, and the litigation strategy should be planned accordingly.

CONCLUSION

The lawfulness of a medical intervention depends on it being performed by an authorized practitioner, compliance with medical standards, the existence of a proper indication, and obtaining the patient's informed consent. When these conditions are met, any adverse outcomes are generally considered complica-

tions, and the physician cannot be held liable. Conversely, if medical standards are violated, the required duty of care and diligence is breached, and a causal link is established between this breach and the resulting harm, malpractice occurs, giving rise to the physician's legal liability.

The competent authority and the applicable judicial procedure vary depending on whether the physician works in a public or private healthcare institution. Moreover, legislative amendment introduced in 2022 linking criminal investigations of healthcare professionals to a prior authorization system has established a significant protective mechanism in practice. Accordingly, the assessment of malpractice cases should consider not only the existence of harm but also its nature, compliance with medical standards, and the causal link together.

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References:

1. Hakeri, Tıp Ceza Hukuku (*Medical Criminal Law*), p. 31
2. Patient Rights Regulations (Date of the Official Journal: 01.08.1998 Issue: 23420)
3. Decision, bearing the Basis number 2025/3862, the Decision number 2025/4767 and dated 13.10.2025, of the 3rd Civil Chamber of the Court of Cessation
4. Decision, bearing the Basis number 2015/6119 and the Decision number 2015/5733, of the Fifteenth Chamber of the Council of State of the Republic of Türkiye
5. Decision, bearing the Basis number 2014/77, the Decision number 2015/1712 and dated 19.6.2015, of the General Assembly of Civil Chambers of the Court of Cessation
6. Decision, bearing the Basis number 2009/15373, the Decision number 2010/5157 and dated 15.4.2010, of the 13th Civil Chamber of the Court of Cessation
7. Decision, bearing the Basis number 2008/969, the Decision number 2008/6813 and dated 14.11.2008, of the 15th Civil Chamber of the Court of Cessation

THE COMPETENT AUTHORITY AND THE APPLICABLE JUDICIAL PROCEDURE VARY DEPENDING ON WHETHER THE PHYSICIAN WORKS IN A PUBLIC OR PRIVATE HEALTHCARE INSTITUTION.

COURT OF CESSATION'S PRACTICES ON IMPROPER SERVICE OF PROCESS

INTRODUCTION

In legal proceedings, proper service of process to the parties constitutes one of the fundamental elements of the right to a fair trial. In this context, service of process ensures that judicial acts are communicated to the parties and is considered one of the most important instruments of procedural law. Indeed, conducting service of process in accordance with procedural rules is essential for enabling the parties to effectively exercise their right to defense.

However, instances of improper service of process, which are frequently encountered in practice, can hinder the orderly progression of proceedings and lead to the loss of legal rights. Conducting service of process in a manner contrary to the form and procedures prescribed by law produces significant legal consequences, such as affecting the validity of the service and, consequently, the commencement of procedural deadlines. In this respect, improper service of process is not merely a procedural defect but also a matter that directly impacts the fairness of the proceedings.

This study will examine the legal nature and consequences of the concept of improper service of process in light of the Court of Cessation's decisions.

IMPROPER SERVICE OF PROCESS AND COURT OF CESSATION'S RELATED DECISIONS

The addressees and the manner of service are stipulated under the Notification Law. Under normal circumstances, service of process is made to the principal addressee; however, in cases where the addressee cannot be reached, Articles 13, 14, 16, 17, and 18 specify to whom the service may be made.

Article 20 of the Notification Law sets out that *"If the persons specified in Articles 13, 14, 16, 17, and 18 indicate that the person to be served has temporarily gone elsewhere, the circumstance and the full name of the declarant shall be recorded in the service minutes and signed by the declarant, and the notification officer shall deliver the service documents to these persons. These persons are obliged to*



accept the service documents. If the person who indicates that the addressee has temporarily gone elsewhere refuses to sign, the officer effecting the service shall note and sign this statement. In this case, and in the event of refusal to accept the service documents, the service shall be carried out in accordance with Article 21." Service of process that is not conducted in accordance with these prescribed procedures is considered improper service of process.

Improper service of process is set out under Article 21 of the Notification Law.

If neither the addressee nor any of the persons eligible to receive the service in the addressee's absence is present at the indicated address, or if they refuse to accept the documents, the notification officer shall deliver the service documents against a signature to the local headman (muhtar) or a member of the local council of elders, or to law enforcement officers.

In addition, a notice containing the recipient's address shall be affixed to the door of the building at the indicated address. In case of absence, the notification officer shall, to the extent possible, inform a nearby neighbor, and if available, the building manager or doorman.

The date on which the notice is affixed to the door shall be considered the date of service. As per this article;

1. The notification served to the addressee's last known address cannot be deliv-

ered because the addressee, or persons authorized to accept service on their behalf, are not present at the address, or refuse to accept service.

2. The notification has been delivered, against signature, to the local headman, a member of the local council of elders, or a law enforcement officer.

3. All of the foregoing circumstances (including the reason for non-delivery at the address, the capacity and name of the person notified, the authority to whom the notification was delivered, and the identity of the person informed) must be clearly stated both on the document containing the notification and on the notice affixed to the door.

4. One of the nearest neighbors, or, if available, the building manager or doorman, must be informed to notify the addressee of the notification.

5. The notice must be affixed to the addressee's door.

If any of these requirements is not duly fulfilled, the service shall be deemed improper pursuant to Article 21/1 of the Notification Law.

It is of particular importance that the serving officer is obliged to ascertain why the addressee is not present at the address, and whether such absence is temporary. Notifications effected without due consideration of these factors shall be deemed improper.

Related decisions are as follows:

Under the decision, bearing the Basis number 2022/13402 and the Decision number 2023/5752, of the 12th Civil Chamber of the Court of Cessation, which reads as follows:

“The Regional Court of Appeal’s decision holding that the service was improper has been upheld, on the grounds that, pursuant to Article 35 of the Regulation on Notifications, no inquiry was made—by asking the persons listed in Article 30 of the same Regulation—into whether the addressee had left the address temporarily or permanently, the reason for the addressee’s absence, or whether the addressee would return to the notification address after the hours of delivery; that the signature of the neighbor who was allegedly informed was not obtained; and that, if such signature was refused, this fact was neither recorded nor duly documented. Accordingly, the service was not effected in compliance with Articles 21/1 and 23/7 of the Notification Law and Articles 30 and 35 of the Regulation on Notifications, and was therefore improper.”

Similarly, under its decision, bearing the Basis number 2022/10122 and the Decision number 2023/2877 concerning the third item mentioned above, the 12th Civil Chamber of the Court of Cassation upheld the Regional Court of Appeal’s ruling, which reads as follows:

“Since the name of the neighbor who was informed was not recorded on the notification report, the notifications issued to the debtors were improper for not being effected in accordance with Article 21 of the Notification Law and Article 30 of the Regulation; accordingly, the decision under review was found to be in compliance with procedure and law, and the defendant’s appeal was dismissed on the merits pursuant to Article 353/1-b-1 of the Code of Civil Procedure.”

Moreover, Article 35 of the Notification Law also specifies the procedure to be followed in case of a change of address, and the article reads as follows: *“A person who has been served, or whose address has been served, in accordance with the procedures prescribed by law is obliged, upon changing their address, to immediately notify the competent judicial authority that effected the service of the new address. In such case, all subsequent notifications shall be made to the new address.”*

This provision is also highly significant in the context of improper service. In this regard;

The decision, bearing the Basis number 2023/3554 and the Decision number 2023/4395, of the 12th Civil Chamber of the Court of Cessation reads as follows:

“The creditor argued that the debtor’s MERSIS address had been obtained from the UYAP system, and that after the notification sent to this address was returned, service was effected to the same address in accordance with Article 35 of the Notification Law; that in other cases filed against the debtor, notifications were also served to this address; that the debtor submitted a response within the prescribed period and did not provide any declaration regarding a change of address; that the debtor bears the obligation to keep the MERSIS records up to date; and that the MERSIS address was updated after the date of the complaint. The creditor further argued that the debtor became aware of the initiated debt enforcement proceedings on 20.05.2021 due to the attachment made on the case in which the creditor was involved, and claimed that the notifications were duly served, requesting annulment of the lower court’s decision.

However, it was determined that on the dates of notification, the address registered in the trade registry of the debtor differed from the notification address, and that the notifications served on 15.04.2021 and 20.05.2021 in accordance with Article 35 of the Notification Law were therefore not proper; since the trade registry address is the relevant one, the claim that the MERSIS address should be considered was found not to affect the merits. Accordingly, the creditor’s appeal was dismissed with prejudice.”

In order to better understand improper service of process, it is necessary to examine several decisions of the Court of Cassation on different issues;

The decision, bearing the Basis number 2023/7558 and the Decision number 2023/5536, of the 12th Civil Chamber of the Court of Cessation reads as follows:

“The court found that the notification report did not contain any statement indicating that ... was illiterate, that there was no concrete evidence, document, or witness testimony to the contrary, and that the notification was carried out in

accordance with the proper procedure. Since the complaint of improper service was dismissed, the debtor’s appeal was also dismissed with prejudice on the grounds that, as of the date of notification of the payment order, the debtor’s objection to the debt, interest, and accessories was not filed in due time.”

The Decision, bearing the Basis number 2022/12590 and the Decision number 2023/4264, of the 12th Civil Chamber of the Court of Cessation reads as follows:

“It was determined that the notification was served directly to a permanent employee without first investigating whether the recipient was a person authorized to receive documents on behalf of the company, such as someone next in authority after the company officer or the document manager, and that the service was therefore improper.

The complaint of improper service, submitted within the statutory period as of the date of knowledge indicated as 29.06.2021, was rightly accepted. Accordingly, the decision of the Court of First Instance was found to be in compliance with law and procedure, and the defendant’s appeal was dismissed with prejudice.”

The Decision, bearing the Basis number 2016/9795 and the Decision number 2017/1346, of the 12th Civil Chamber of the Court of Cessation reads as follows:

“It is understood that no annotation was made on the payment order notification document by the authority issuing the notification report, in accordance with Articles 23/1–8 of the Notification Law and Article 16/2 of the Regulation.

The fact that the distributor carried out the service of the payment order on their own initiative pursuant to Article 21/2 of the Notification Law is contrary to the provisions of the aforementioned law and regulation. Therefore, it cannot be said that the said notification was duly effected.”



The Decision, bearing the Basis number 2022/8938 and the Decision number 2023/2189, of the 12th Civil Chamber of the Court of Cessation reads as follows:

“Under Article 21/1 of the Notification Law, the conditions set out in the Regulation regarding the addressee’s whereabouts and whether they will return to the address after delivery hours apply to natural persons; therefore, the court correctly did not consider the notification improper on this ground. However, upon examining the notification document, it was observed that the section explaining the subject of the service contained the phrase “7/7 supporting document”, and did not indicate that the matter served was a payment order.

Although the creditor’s grounds of appeal were unfounded, the court should have accepted the complaint for the reasons explained; proceeding to a conclusion with the written justification was deemed inappropriate. As a result, since the complaint was accepted, the decision of the Court of First Instance was annulled for correction of its reasoning, and the complaint of improper service was upheld.”

The Decision, bearing the Basis number 2023/7143 and the Decision number 2023/7976, of the 12th Civil Chamber of the Court of Cessation reads as follows:

Article 16, entitled “Notification to persons residing in the same household or to servants”, of the Notification Law Nr. 7201 provides that: “If the person to be served is not present at the address, the notification shall be made to a person residing in the same household or to one of their servants.” Similarly, Article 25 of the Regulation on the Implementation of the Notification Law provides: “If the person to be served is not present at the address, the notification shall be made to a person residing in the same household or to one of their servants.”

On the other hand, Article 39 of the Notification Law provides that: “If persons who may lawfully be served under the provisions of this Law are parties to the case as defendants, notifications cannot be served on them on behalf of the addressee.”

In this present case, under Article 16 of the Notification Law, the notification was received on behalf of the debtor by another debtor, K2, who is also a party to the same debt enforcement proceeding. Such service on behalf of the complaining debt-

or is contrary to the prohibition on service to an opposing party under Article 39 of the Notification Law. Therefore, the service of the sale notice is deemed improper.

Accordingly, the Court of First Instance should have upheld the debtor’s complaint and annulled the property auctions; proceeding to render a judgment as written was erroneous.

As can be seen from the aforementioned decisions, improper service of process may occur for multiple reasons, not just a single cause. Therefore, when examining a notification, it is crucial to consider all of these factors in order to determine whether the notification in question constitutes improper service.

Once improper service of process has been thoroughly understood, the following question naturally arises: Is every instance of improper service automatically invalid?

VALIDITY OF IMPROPER SERVICE OF PROCESS

If the addressee becomes aware of the notification, even if it was effected improperly, the service shall be deemed valid. The date on which the addressee declares that they have learned the content of the improperly served notification shall be considered the date of service (Article 32/3 of the Notification Law).

Apart from the addressee’s oral declaration of having received an improperly served notification, it may sometimes be inferred from their conduct and behavior that they have become aware of it. If the addressee takes action regarding the subject of the notification, even without explicitly stating so, they shall be deemed to have learned of the service.

The 12th Civil Chamber of the Court of Cessation ordered under the decision, bearing the Basis number 2019/11629 and the Decision number 2020/3376, as follows:

“In this present case, upon examining the notification report for the payment order served to ... on 20.03.2018, there is no information regarding the identity of the neighbor to whom the notice was left. As such, this notification was not effected in accordance with Article 21/1 of the Notification Law Nr. 7201 and the provisions of the Regulation on Notifications, and is therefore improper. Furthermore, a review of the UYAP inquiry system shows that the debtor’s attorney, Att. ..., submitted a power of attorney to the debt enforcement file on 04.05.2018, paid the associated fee on the same date, and the power of attorney was approved by the debt enforcement office on 07.05.2018. As of that date onward, the debtor’s attorney gained access to all documents available in the UYAP system, and the objection was filed after the statutory 7-day objection period, namely on 11.06.2018.



Accordingly, the Regional Court of Appeal should have determined the date of notification as 07.05.2018, the date on which the power of attorney submitted by the debtor's attorney was approved, and should have decided on the objection filed on 11.06.2018 regarding the impropriety of the service of the payment order. Rendering judgment as written was therefore erroneous.

CONCLUSION: It is hereby ordered and adjudged unanimously on 01/06/2020 that the creditor's appeal be upheld, and that for the reasons stated above, the decision of the Regional Court of Appeal be REVERSED pursuant to Article 371 of the Code of Civil Procedure Nr. 6100, as applied by reference to Article 364/2 of the Debt Enforcement and Bankruptcy Law Nr. 5311, and that the advance court fee be refunded upon request, and in accordance with Article 373/2 of the Code of Civil Procedure, the file be remitted to the 6th Civil Chamber of the Regional Court of Appeal of" [1]

As can be seen from the decision, even if the service of process is improper, the debtor's attorney is deemed to have learned of the notification once a power of attorney has been submitted to the file. The date on which the power of attorney is approved is considered the date of knowledge.

CONCLUSION

Improper service of process is not merely a formal defect; it is a significant procedural issue that directly affects the parties' right to be heard and undermines the integrity of the proceedings. If a notification is not effected in accordance with the formal requirements prescribed by law, it is generally considered improper, directly impacting the course of the proceedings and causing substantial potential losses of rights.

An examination of the Court of Cassation's decisions shows that improper service most often arises from issues such as to whom the notification was addressed, the preparation of the notice, informing the neighbor, deficiencies in the notification report, and the failure to investigate the reason for the addressee's absence. This clearly demonstrates the necessity of meticulously observing the formal requirements of the service of process.

On the other hand, even in the presence of improper service, the statutory periods begin to run once the addressee becomes

aware of the content of the notification. This point should not be overlooked, particularly in debt enforcement proceedings, as it may lead to potential loss of rights.

Within this context, practitioners must evaluate notification procedures with regard to both their formal and substantive elements. In cases of alleged improper service, it is of great importance to determine and prove the date on which the addressee became aware of the notification, and to calculate the relevant deadlines accurately based on that date.

In conclusion, service of process is of critical importance with respect to the right to be informed, which constitutes a fundamental element of the right to be heard.

The ability of a person to understand a dispute in a legal proceeding, to raise objections, and to present their case depends on being properly informed in accordance with procedural rules.

Therefore, a notification that does not comply with the prescribed procedures may constitute a violation of the right to be heard. Accordingly, it is crucial for all parties involved in a legal proceeding to be fully aware of the requirements for proper service and to ensure that all actions are conducted in compliance with them.

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References:

1. Decisions, bearing the Basis number 2022/13402 and the Decision number 2023/5752, and the Basis number 2022/10122 and the Decision number 2023/2877, and the Basis number 2023/3554 and the Decision number 2023/4395, and the Basis number 2023/7558 and the Decision number 2023/5536, and the Basis number 2022/12590 and the Decision number 2023/4264, and the Basis number 2016/9795 and the Decision number 2017/1346, and the Basis number 2022/8938 and the Decision number 2023/2189, and the Basis number 2023/7143 and the Decision number 2023/7976, and the Basis number 2019/11629 and the Decision number 2020/3376, of the 12th Civil Chamber of the Court of Cessation

IN CASES OF ALLEGED IMPROPER SERVICE, IT IS OF GREAT IMPORTANCE TO DETERMINE AND PROVE THE DATE ON WHICH THE ADDRESSEE BECAME AWARE OF THE NOTIFICATION, AND TO CALCULATE THE RELEVANT DEADLINES ACCURATELY BASED ON THAT DATE.

THE BINDING NATURE OF CONSTITUTIONAL COURT VIOLATION DECISIONS AND THEIR IMPLEMENTATION BY CIVIL COURTS



1. Introduction

The individual application mechanism is one of the most effective constitutional safeguards for the protection of fundamental rights and freedoms. The purpose of an individual application to the Constitutional Court is to protect the fundamental rights of individuals whose rights and freedoms, as defined under the Constitution and the European Convention on Human Rights (ECHR), have been violated by public authorities, and to ensure the prevention of similar violations.

Indeed, the individual application to the Constitutional Court has been incorporated into our legal system with the aim of remedying violations of rights committed by public authorities and ensuring the effective protection of constitutional rights. The functionality of this mechanism largely depends on the full and proper implementation of violation decisions by administrative authorities and civil courts. Accordingly, the binding nature of violation decisions rendered by the Constitutional Court emerges as a fundamental element for the effectiveness of the individual application system.

Pursuant to Article 153 of the Constitution, although it is expressly stipulated that the decisions of the Constitutional Court are binding on the legislative, executive, and judicial organs as well as administrative authorities, it is observed in practice that judicial bodies experience hesitation in implementing violation decisions rendered as a result of individual applications and, in some cases, fail to comply with them. This situation not only leads to the ineffectiveness of the individual application mechanism but also un-

dermines the principles of legal certainty and foreseeability, which are among the fundamental elements of the rule of law.

Particularly at the stage of implementing violation decisions that require a retrial, there are instances in which courts interpret the scope of the Constitutional Court's decisions narrowly, refrain from producing the consequences necessitated by the determination of a violation, or make assessments that amount to resistance to their previous judgments. This situation also gives rise to significant debates in terms of the hierarchy of norms, the relationship between judicial bodies, and the binding nature of Constitutional Court decisions.

This study will examine the legal binding nature of violation decisions rendered by the Constitutional Court, with particular emphasis on civil courts; it will address the problem of non-implementation of such decisions in practice and assess the consequences of this issue in terms of the rule of law, the protection of fundamental rights, and the integrity of the judicial system.

2. The Mechanism of Individual Application to the Constitutional Court

The right to individual application to the Constitutional Court was recognized as a constitutional right by the referendum held on September 12, 2010. With the introduction of the individual application mechanism, constitutional review has been available, as of September 23, 2012, against violations of rights caused by persons and institutions exercising public authority.

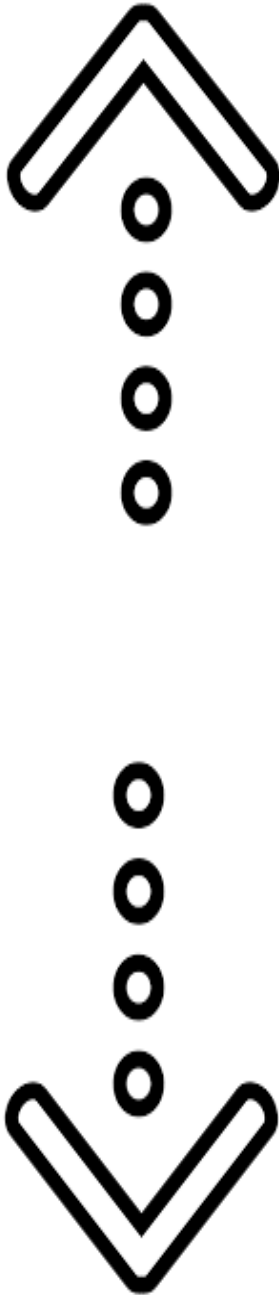
Individual application is set out under the third paragraph of Article 148 of the Constitution, and everyone may apply to the Constitutional Court on the grounds that any of their fundamental rights and freedoms guaranteed by the Constitution, and falling within the scope of the European Convention on Human Rights, has been violated by public authorities. The individual application mechanism is a remedy that can be invoked only after ordinary legal remedies have been exhausted. Therefore, all administrative and judicial remedies provided by law for the act, action, or omission alleged to have caused the violation must be exhausted

before submitting an individual application. (Law Nr. 6216, Art. 45/2).

If the Constitutional Court does not find any violation of rights, it shall issue a decision stating that no violation has occurred. The decision rendered upon an individual application is also notified to the parties and to the Ministry of Justice (Law Nr. 6216, Art. 50). The Constitutional Court's decision that no violation has occurred is final, and there is no legal remedy available against it. [1]

One of the decisions that may be rendered following the substantive examination is a violation decision. In the event of a violation decision, the Court rules on the measures to be taken to remedy the violation and its consequences. However, the Court cannot conduct a review of expediency, nor can it issue decisions of an administrative or executive nature (Law Nr. 6216, Art. 50/1). Following a violation decision, the Constitutional Court may issue three types of rulings: retrial, compensation, and filing a case before general courts.

If the identified violation stems from a court decision, the file is sent to the relevant court for a retrial to remedy the violation and its consequences. In cases where a retrial would not provide a legal benefit, compensation may be awarded in favor of the applicant, or the applicant may be directed to file a case before general courts. The court obliged to conduct the retrial shall, if possible, decide based on the file in a manner that eliminates the violation and its consequences as specified under the Constitutional Court's violation decision. (Law Nr. 6216, Art. 50/2). Article 75 of the Bylaw of the Constitutional Court sets out the pilot decision procedure. Pursuant to this article, the Chambers may apply the pilot decision procedure if they determine that an application arises from a structural problem that also affects other applications, or if they foresee that it may give rise to new applications. Under this procedure, a pilot decision is issued by the relevant Chamber. Applications of a similar nature are resolved by administrative authorities in accordance with the principles set out in the pilot decision; if they are not resolved, the Court collectively examines them and renders a decision.



Within this framework, the Constitutional Court may, depending on the nature of the violation, order a retrial, award compensation in favor of the applicant, or determine other measures necessary to remedy the violation. The effectiveness of individual application decisions, however, depends on the implementation of the remedial measures specified in the violation decision by the relevant judicial authorities.

3. The Binding Nature of Constitutional Court Decisions in Individual Applications and the Referral of the File to the Relevant Court for Retrial

Pursuant to the final paragraph of Article 138 of the Constitution, entitled “Independence of the courts”, the legislative and executive organs and the administration are obliged to comply with court decisions, and these organs and the administration may not, under any circumstances, alter court decisions. [2] Likewise, the final paragraph of Article 153 of the Constitution provides that the decisions of the Constitutional Court are binding on “the legislative, executive, and judicial organs, administrative authorities, as well as natural and legal persons”.

Since the decisions of the Constitutional Court are final, the court to which the decision is referred for retrial is bound by that decision. The court obliged to conduct the retrial shall, if possible, decide based on the file in a manner that remedies the violation and its consequences as specified in the Constitutional Court’s violation decision. (Law Nr. 6216, Art. 50/2)

It should not be assumed that the retrial conducted by the relevant court, aimed at remedying the violation and its consequences specified in the Constitutional Court’s decision, is detached from or independent of the original trial. The retrial is linked to the initial proceedings and is built upon the original case, essentially constituting a continuation of that case. Therefore, the findings of the initial trial are generally preserved, and the retrial conducted by the court will focus on addressing the reasons identified as violations. [3]

The court to which the file is sent for retrial is bound by the Constitutional Court’s decision and may not issue a decision resisting it. Otherwise, the court could potentially assess the Constitutional Court’s decision and, if it believes the supervisory authority has been exceeded,

render a contrary decision. In fact, this view could also be justified by reference to the independence of judges. However, even if there are issues other than the violation of rights, the court must issue a decision that remedies the rights violation in accordance with its own assessment. It is obliged to render a new decision to eliminate the identified violation. Otherwise, it remains possible to apply again to the Constitutional Court against the new decision. [4]

Accordingly, it is a constitutional obligation for the court tasked with conducting a retrial to render a decision that remedies the violation identified by the Constitutional Court. The effectiveness of the individual application mechanism depends not only on the finding of a violation but also on addressing the consequences of that violation. Failure to implement the Constitutional Court’s violation decision, or conducting a merely formal retrial, undermines the purpose of the individual application mechanism and renders constitutional safeguards ineffective. Therefore, the court obliged to conduct the retrial must issue a decision that eliminates the violation and its consequences in accordance with the principles and reasoning set forth in the Constitutional Court’s decision.

However, in practice, it is observed that courts obliged to conduct retrials sometimes interpret the scope of the Constitutional Court’s decision narrowly, refrain from making assessments sufficient to remedy the consequences of the violation, or issue decisions that effectively resist the ruling by merely repeating their previous judgments. This situation weakens the principle of binding effect established in Article 153 of the Constitution in practice, reduces the effectiveness of the individual application mechanism, and negatively impacts the rule of law and legal certainty. Therefore, the issue of the implementation of Constitutional Court violation decisions by civil courts emerges as an important matter that requires separate examination in terms of the functioning of the individual application system.

4. Implementation of Constitutional Court Violation Decisions by Civil Courts

The effectiveness of the individual application mechanism depends on the full and proper implementation of the violation decisions rendered by the Constitutional Court by the relevant judicial authorities.

However, in practice, it is observed that civil courts, in particular, adopt different approaches regarding the enforcement of these violation decisions. These differences sometimes manifest as a narrow interpretation of the scope of the violation decision, and at other times as treating the retrial process merely as a formal procedure.

Firstly, it is observed that civil courts, when interpreting a violation decision, often focus only on the narrow point where the violation was identified and refrain from making a comprehensive assessment that would remedy the consequences of the violation.

However, the Constitutional Court's violation decisions are not limited to the mere finding of a violation; they also require that the consequences of the violation be remedied. Therefore, in the retrial process, the court must conduct a new assessment aimed at eliminating the source of the violation, rather than merely repeating its previous judgment.

Another issue is that the retrial mechanism is sometimes confused by certain courts with the ordinary procedure of reopening a case. However, a retrial ordered as a result of an individual application differs from the classical institution of reopening a trial under our procedural law.

The retrial conducted pursuant to a Constitutional Court violation decision is carried out directly to remedy the violation, without the need for new evidence or a new legal situation. Nevertheless, it is observed that some courts impose additional conditions for retrial or act in a way that avoids altering their previous judgment.

Another situation observed in practice is that courts, when implementing a violation decision, limit themselves to issuing a merely formal ruling. In this context, it is stated that a retrial has been conducted, yet the provisions are essentially a repetition of the previous judgment without any change to the substance of the violation. Such decisions undermine the effect of the binding decisions of the Constitutional Court and produce outcomes contrary to the purpose of the individual application mechanism.

Ultimately, the non-implementation of violation decisions rendered by the Constitutional Court is legally impermissible.

As stipulated under Article 153 of the Constitution and Article 66 of Law Nr. 6216, Court decisions are final. Court decisions are binding on the State's legislative, executive, and judicial organs, administrative authorities, as well as natural and legal persons. Therefore, if the decisions concerning individual applications are final and binding on judicial bodies, no decision resisting them may be issued.

These practices weaken the principle of binding effect established in Article 153 of the Constitution and negatively impact legal certainty, which is one of the fundamental elements of the rule of law.

Moreover, they prolong the process of remedying the rights violations for individuals who apply through the individual application mechanism and reduce the effectiveness of the Constitutional Court's supervisory function.

In conclusion, the failure to implement the Constitutional Court's violation decisions not only renders the individual application mechanism ineffective but also produces significant constitutional consequences in terms of the rule of law, the protection of fundamental rights, the right to a fair trial, the supremacy of law, the hierarchy of norms, and the principle of separation of powers. Therefore, the full and proper implementation of Constitutional Court decisions by all judicial authorities is imperative for the preservation of the constitutional order.

5. Conclusion

The individual application mechanism constitutes an important safeguard in our legal system for the protection of constitutional rights and freedoms.

However, the effectiveness of this mechanism depends on the full and proper implementation of the violation decisions rendered by the Constitutional Court by the relevant judicial authorities.

Pursuant to Article 153 of the Constitution and the provisions of Law Nr. 6216, it is clear that Constitutional Court decisions are binding on the legislative, executive, and judicial organs, and their non-implementation is legally impermissible.

Nevertheless, in practice, it is observed that, particularly in the retrial process, civil courts often interpret the scope of violation decisions narrowly, limit themselves to merely formal retrials, or effec-

tively repeat their previous judgments. This situation produces outcomes contrary to the purpose of the individual application mechanism and undermines the effectiveness of constitutional safeguards.

The failure to properly implement the Constitutional Court's violation decisions gives rise to significant concerns in terms of the rule of law, legal certainty, the hierarchy of norms, and the protection of fundamental rights.

Indeed, although a violation has been identified, its non-remedying undermines the effectiveness of the individual application mechanism as a means of legal recourse and erodes confidence in the judicial system.

Therefore, it is imperative that courts tasked with conducting retrials issue decisions that take into account the violation findings and reasoning set forth in the Constitutional Court's decisions and ensure the remedy of the violation and its consequences.

To ensure the effectiveness of the individual application mechanism, trial courts must develop practices that respect the binding nature of Constitutional Court decisions and are consistent with constitutional interpretation.

This approach will contribute to the protection of fundamental rights and freedoms while also ensuring a healthy and effective relationship between constitutional adjudication and courts of first instance.

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References:

1. Hakan Pekcanitez, "Bireysel Başvuru Sonunda Verilen Kararların Medenî Yargıya Etkisi (*The Impact of Decisions Rendered Following Individual Applications on Civil Judiciary*)", *Anayasa Yargısı*, p.35, *Anayasa Mahkemesi Yayınları*, Ankara 2019, p.77-78.
2. Bülent Tanör and Necmi Yüzbaşıoğlu, *1982 Anayasasına Göre Türk Anayasa Hukuku (Turkish Constitutional Law According to the 1982 Constitution)* (19th Ed., Beta 2019) 584.
3. Hakan Pekcanitez, *ibid.*, p. 82.
4. Hakan Pekcanitez, *ibid.*, p.85.

COURT OF CESSATION'S LATEST RULING: HOW WILL THE PREEMPTION LAW AMENDMENT APPLY IN PENDING CASES?

Amended Law

As part of the 11th Judicial Package published in the Official Journal on 25.12.2025, amendments were made to Articles 733 and 734 of the Turkish Civil Code (TCC), introducing new provisions regarding the exercise of the statutory preemption right.

The amendment to Article 734/2 of the TCC stipulates that the value of the share subject to the preemption right will be determined by the judge based on its market value, and imposes an obligation on the right holder to deposit the amount in order to accrue interest. Following the amendment, Article 734/2 of the TCC is as follows:

"The market value of the share subject to the lawsuit shall be determined by the judge without any delay. The holder of the preemption right is obliged to deposit the determined market value along with the title deed registration fees owed by the buyer, in cash, at the place specified by the judge within the pre-determined fixed period. If this obligation is not fulfilled within the given period, the registration of the share in favor of the preemption right holder cannot be ordered. The deposited amount shall be paid to the entitled person, together with accrued interest, once the ruling becomes final."

Moreover, it has been stipulated that the amendment to Article 734/2 of the TCC will also apply to cases filed before the amendment date of 25.12.2025.

Court of Cessation's Latest Ruling

Under its decision, dated 17.02.2026 and bearing the Basis number 2025/2557 and the Decision number 2026/870, the 7th Civil Chamber of the Court of Cessation has developed case law regarding the temporal application of the law amendment. The relevant part of the decision is as follows:

"Considering the legal regulations and principles explained above, since there is not any provision in the second paragraph of Article 734 of the TCC, as amended by Law Nr. 7571, it will be consistent with the purpose of the law and the general principles of law that, in determining the market value of the share subject to the preemption right, the filing date of the case be taken into account for cases filed after the amendment's entry into force, and the date of entry into force itself be applied for pending cases filed before that date. Any contrary application would produce unfair results that disrupt the balance of rights between the parties and contradict the primary purpose of the preemption right."

Accordingly;

- Under any cases filed after 25.12.2025, the preemption price will be determined based on the "value on the date of filing" as assessed by the court.

- Under any cases filed before 25.12.2025, which are still pending, the preemption price will be determined based on the "value as of 25.12.2025."

Within the framework of the case law it has developed, the 7th Civil Chamber of the Court of Cessation ruled as follows in this present case:

"In the appeal case filed before the amendment, it was concluded that, in accordance with the amendment, the obligation of the preemption right holder, the plaintiff, regarding the payment consists of the market value of the share subject to the preemption right as of the date the amendment entered into force, along with the title deed registration fees payable by the buyer as stated under the official deed. Therefore, the market value of the share subject to the preemption right must be determined by collecting the parties' evidence on this matter, through an on-site inspection and an expert committee appropriate to the nature of the property, as of 25.12.2025. If the preemption price determined in this manner exceeds the amount previously deposited and accrued with interest, the total previously deposited and accrued amount must be offset against the new preemption price, and the remaining balance must be deposited into the same account to accrue interest. A decision must then be made based on these calculations, necessitating the annulment of the previous ruling."

As a result, with the updated case law developed by the 7th Civil Chamber of the Court of Cessation, a framework has been established for the application of the amendment to Article 734/2 of the TCC in pending cases. In cases filed before the amendment and still pending, reversal decisions are expected to be issued within the same framework.

Source: Decision, dated 17.02.2026 and bearing the Basis number 2025/2557 and the Decision number 2026/870, of the 7th Civil Chamber of the Court of Cessation

THE EVIDENTIARY VALUE OF WHATSAPP MESSAGES IN ACTIONS ARISING FROM RENTAL RECEIVABLES BY TYPE OF ACTION

1. INTRODUCTION

With the widespread use of digital communication tools in daily life, electronic correspondence has gained increasing importance in the formation and performance of contractual relationships. In this context, it is observed that, in rental relationships, parties agree on numerous matters—such as the rental amount, rate of increase, payment date, and conditions for renewal—through digital communications rather than formal written contracts. Among these practices, the most common is correspondence conducted via WhatsApp.

Pursuant to the principle of freedom of contract prevailing in Turkish law, the formation of a contract is not subject to any formal requirement, except for the exceptional cases explicitly stipulated by law. Indeed, no form requirement has been prescribed for lease agreements. Accordingly, for the conclusion, renewal, determination, and adjustment of the rental amount, it is sufficient that the parties' declarations of intent—namely offer and acceptance—are in mutual conformity.

In this context, although an agreement reached by the parties via WhatsApp may give rise to a valid legal relationship, it is not always possible to prove the existence of such a relationship through WhatsApp correspondence. The extent to which such correspondence constitutes evidence in civil proceedings varies depending on the rules of evidence applicable to the proceedings. In disputes concerning rental receivables, the rules of evidence differ particularly between:

- actions for the removal of objection filed before the Civil Courts of Debt Enforcement, and
- actions for the annulment of objection and actions for receivables filed before the general courts.

Accordingly, the evidentiary weight of WhatsApp messages also varies.

In this study, with particular focus on actions arising from rental receivables, the evidentiary value of WhatsApp correspondence will be examined separately



according to the type of action; potential losses of rights arising in practice will be assessed; and the legal remedies available to a party who is compelled to make payment despite not being indebted will be set forth.

2. THE EVIDENTIARY VALUE OF WHATSAPP MESSAGES IN CIVIL PROCEEDINGS IN GENERAL

2.1. WhatsApp messages are considered discretionary evidence under Article 199 of the Code of Civil Procedure.

Under the Code of Civil Procedure Nr. 6100 (CCP), evidence is classified into two categories: conclusive evidence and discretionary evidence. Conclusive evidence comprises four types: acknowledgment (Art. 188), *res judicata* (Arts. 303 and 204/1), deed (Arts. 200 et seq.), and oath (Arts. 225 et seq.).

Discretionary evidence, on the other hand, includes witness testimony (Arts. 240 et seq.), expert reports (Art. 266 et seq.), site inspections, documents other than deeds (Art. 199), and evidence not specifically set out by the law (Art. 192). The defining characteristic of conclusive evidence is that it is binding on the judge, whereas discretionary evidence may be freely evaluated by the judge. [1]

WhatsApp messages, as documents under Article 199, are considered discretionary evidence according to the evidentiary framework of the Code of Civil Procedure.

Art. 199 of CCP: Data such as written or printed texts, promissory notes, drawings, plans, sketches, photographs, films, images or sound recordings, electronic data and similar information carriers that are suitable for proving the facts in dispute are documents according to this Law.

WhatsApp correspondence qualifies as “documents” under the aforementioned provision, as they are data records created electronically and reflect the parties' declarations of intent. However, these documents are not considered deeds, as they do not contain a traditional signature element and have not been created using a secure electronic signature. Accordingly, such correspondence does not constitute conclusive evidence but is instead regarded as discretionary evidence subject to the judge's free evaluation. The evidentiary weight of WhatsApp messages increases when they are not denied by the opposing party or when the existence of the correspondence is officially recorded through electronic verification by a notary.

2.2. WhatsApp messages sent by the opposing party constitute the commencement of evidence under Article 202 of the Code of Civil Procedure.

Pursuant to Article 200 of the Code of Civil Procedure, in cases where the disputed amount exceeds a certain threshold, the rule of proof by deed applies.

In situations where the rule of proof by deed is applicable, it is not sufficient to prove the dispute solely through discretionary evidence such as witness testimony or WhatsApp messages. However, under Article 202 of the Code of Civil Procedure, the existence of a written "commencement of evidence" allows resort to witness testimony and enables the proof of a legal transaction even in the absence of a formal deed.

Art. 202 of CCP: (1) *In cases where proof by deed is mandatory, witness testimony may be allowed if commencement of evidence exists.* (2) *Although the commencement of evidence is not sufficient to fully prove the legal transaction in question, it constitutes a document that indicates the likelihood of the transaction and has been provided or sent by the party against whom the claim is made or their representative.*

As is evident from the wording of the law, documents originating from the party against whom a claim is made are regarded as the commencement of evidence. In this context, WhatsApp messages sent by the opposing party qualify as commencement of evidence.

In its decisions, the Court of Cassation frequently emphasizes that, for WhatsApp messages to qualify as commencement of evidence, there must be no doubt that the relevant message was sent by the opposing party in the case (the party against whom it is used) or through that party's representative:

Decision, bearing the Basis number 2023/287, the Decision number 2023/1549, and dated 23.05.2023, of the 3rd Civil Chamber of the Court of Cassation reads as follows:

"It should be noted that, for the printouts of emails or message texts to be used as commencement of evidence, there must be no doubt that the alleged document was sent by the opposing party or their representative. If the party against whom the evidence is used claims that an electronic document was not sent by them, the court must collect information from the relevant authorities and institutions to determine whether the document was indeed sent from an email address or mobile phone associated with that person's IP number (Pekcanitez, Özokes, Akkan, Korkmaz, Medeni Usul Hukuku (Civil Procedural Law), On İki Levha Yayıncılık: İstanbul, 2017, s. 1850)." [2]

Within this framework, for WhatsApp messages to be recognized as commencement of evidence, there must be no doubt that they were sent by the opposing party. WhatsApp messages that are not denied by the opposing party, or whose existence has been verified by a notary and originate from the party against whom they are used, possess all the characteristics of commencement of evidence. In cases where WhatsApp messages are denied by the opposing party, the court must determine whether the messages were indeed sent by the party against whom they are used.

The primary legal function of the commencement of evidence, as explicitly set out by the legislator, is to allow the proof of relevant facts in disputes concerning legal transactions for which proof by deed is generally mandatory, through witness testimony and other forms of evidence. In cases where WhatsApp messages qualify as commencement of evidence, the parties are able to prove the facts in dispute through witness testimony. Indeed, recent decisions of the Court of Cassation support this approach;

Decision, bearing the Basis number 2025/1472, the Decision number 2025/4776, and dated 13.10.2025, of the 3rd Civil Chamber of the Court of Cassation reads as follows:

"In this context, it should have been assessed whether the WhatsApp messages submitted to the file qualify as commencement of evidence under Articles 199–202 of the Code of Civil Procedure, and, if commencement of evidence is established, whether witness testimony could be taken, with the research conducted and a decision rendered accordingly. However, a decision was issued in writing based on incomplete examination and erroneous evaluation, which was deemed incorrect and required to be reversed." [3]

3. THE EVIDENTIARY VALUE OF WHATSAPP MESSAGES IN ACTIONS FOR THE REMOVAL OF OBJECTIONS

When a receivable arising from a tenancy relationship is subject to debt enforcement proceedings, the debtor's objection to the payment order suspends the debt enforcement proceedings. For the proceedings to continue, the creditor must file an action for the removal of the objection before the Civil Courts of Debt Enforcement or an action for the annulment of the objection before the general

courts. In order to file an action for the removal of an objection before the Civil Courts of Debt Enforcement, the creditor must possess evidence in accordance with Article 68 of the Debt Enforcement and Bankruptcy Law. Pursuant to Articles 68 and 68/A of the said Law, in order for the objection to be removed, the receivable must be based on:

- a document containing an acknowledgment of payables signed by the debtor or certified by a notary,
- documents issued by government agencies or competent authorities, or
- a deed certified by a notary.

If the creditor possesses evidence specified by law, the debtor can only prove the absence of payables by presenting counter-evidence of equivalent strength.

The primary purpose of the removal of objection is to ensure that, when the creditor relies on documents of a specific nature prescribed by law, the debtor's objection is resolved in a shorter period compared to actions heard before the general courts. In this respect, this procedural mechanism serves as a swift and practical solution aimed at protecting the interests of the creditor. Accordingly, a special evidentiary regime applies in actions for the removal of objections.

Accordingly, in proceedings for the definitive removal of an objection, the general provisions of the law of evidence contained in the Code of Civil Procedure Nr. 6100 do not apply directly; instead, proof is required only through the documents specifically provided under the law. Within this framework, it is not possible to rely on commencement of evidence in actions for the removal of objections. This is because;

The commencement of evidence constitutes a special form of evidence subject to the judge's discretion, which serves as an exception to the requirement of proof by deed in cases where such proof is mandatory. What distinguishes it from other discretionary evidence is its ability to circumvent the obligation of proof by deed for the relevant facts. Article 202 of the Code of Civil Procedure Nr. 6100 sets out the elements of commencement of evidence as follows: the existence of a document (material element), the origin of the document from the party against whom it is to be used (source element), and the indication of the relevant legal transaction (probative element).

Nevertheless, in order for commencement of evidence to be recognized, the requirement of proof by deed must first exist with respect to the relevant fact. [4]

In proceedings for the definitive removal of an objection, the legislator, aiming to ensure the rapid resolution of the debtor's objection, has deviated from the general provisions of the law of evidence and has recognized only the documents specifically enumerated in the law as admissible evidence. Therefore, although some of these documents may possess the characteristics of deeds, it cannot be said that there is a technical requirement for proof by deed in this type of proceeding. The absence of a deed requirement means that the necessary precondition for the existence of commencement of evidence is not met. Accordingly, it is not possible to rely on commencement of evidence in proceedings for the definitive removal of an objection. [4]

Consequently, when disputes arising from rental receivables are brought before the court in an action for the removal of an objection, neither the creditor nor the debtor can substantiate their claim through WhatsApp messages. Due to the special evidentiary regime applicable to actions for the removal of objections, it is also not possible to use WhatsApp messages as commencement of evidence.

4. THE EVIDENTIARY VALUE OF WHATSAPP MESSAGES IN ACTIONS FOR THE ANNULMENT OF OBJECTIONS AND RECEIVABLES

An action for the annulment of an objection (Article 67 of the Debt Enforcement and Bankruptcy Law) is a type of action for performance filed by the creditor in general courts to continue debt enforcement proceedings that have been suspended due to the debtor's objection to debt enforcement proceedings without judgment. In this context, unlike actions for the removal of an objection, actions for the annulment of an objection are not subject to a limited or formal evidentiary regime. Actions for the annulment of objections, as well as actions for receivables filed directly, are actions for performance heard before general competent courts, in which disputes concerning substantive law are examined on the merits. The rules of evidence applicable in these cases are governed by the provisions of the Code of Civil Procedure Nr. 6100. Accordingly, unlike in civil courts of debt enforcement, evidence is freely assessed

in general courts, and the parties may rely on any legally admissible evidence to substantiate their claims and defenses. Accordingly, in actions for the annulment of objections and in actions for receivables, WhatsApp correspondence serves a probative function, as it qualifies as a document and constitutes discretionary evidence under Article 199 of the Code of Civil Procedure. In these cases, the judge is not bound solely by formal documents but evaluates all evidence together with the aim of ascertaining the material facts.

In actions for the annulment of objections and actions for receivables arising from a tenancy relationship, where the annual rent amount triggers the rule of proof by deed, the parties cannot substantiate their claims solely through discretionary evidence such as witness testimony or WhatsApp messages. However, since WhatsApp messages originating from the opposing party may be recognized as commencement of evidence under Article 202 of the Code of Civil Procedure, the parties are permitted to rely on discretionary evidence in the proceedings. However, in practice, while WhatsApp messages are commonly recognized as commencement of evidence in actions for commercial receivables, there are instances in tenancy disputes where WhatsApp messages are not accepted as such.

This practice is inconsistent with the evidentiary framework of the Code of Civil Procedure, as the law does not distinguish the source of the legal relationship in relation to commencement of evidence. Accordingly, provided that the WhatsApp messages are sent by the opposing party, they should be accepted as evidence in all civil proceedings. In the case law of the Court of Cassation, it is frequently observed that WhatsApp messages and other digital communications of a similar nature are recognized as evidence in actions for the annulment of objections and actions for receivables:

Decision, bearing the Basis number 2016/28755 and the Decision number 2019/5086, of the 13th Civil Chamber of the Court of Cassation reads as follows:

"Article 199 of the Code of Civil Procedure Nr. 6100 sets out the concept of document as follows: "Data such as written or printed texts, promissory notes, drawings, plans, sketches, photographs, films, images or sound recordings, electronic data and similar information carriers that are

suitable for proving the facts in dispute are documents according to this Law". In this case, the correspondence relied upon as evidence by the plaintiff, which is not denied by the defendant, must be recognized as a document within the meaning of Article 199 of the Code of Civil Procedure Nr. 6100. Accordingly, although the plaintiff claims to have lent TRY 54,000.00, since the defendant does not acknowledge the amount of payables, the submitted messages should also be considered as evidence. An examination and investigation should be conducted in accordance with the principles and rules outlined above to determine the actual amount of the payables and render a decision accordingly. Issuing a judgment based on incomplete examination, as done in the written decision, is procedurally and legally erroneous and necessitates reversal." [5]

Decision, bearing the Basis number 2016/28932 and the Decision number 2019/7493, of the 13th Civil Chamber of the Court of Cassation reads as follows:

"The plaintiff relied on the messages as evidence, indicating that such messages existed. It appears that the court did not consider the messages, reasoning that the message screenshots submitted by the plaintiff's attorney could not be treated as written evidence in the presence of an official deed, and instead examined and concluded the case based on the other evidence in the file. (...) Since the plaintiff also relied on messages sent by the defendant as evidence, an examination and investigation should have been conducted in accordance with the principles and rules outlined above, and a decision rendered based on the findings. However, issuing a judgment based on incomplete examination, as was done in the written decision, is procedurally and legally incorrect and necessitates reversal." [6]

Decision, bearing the Basis number 2017/1014 and the Decision number 2020/4488, of the 13th Civil Chamber of the Court of Cassation reads as follows:

"Article 199 of the Code of Civil Procedure sets out as follows: "Data such as written or printed texts, promissory notes, drawings, plans, sketches, photographs, films, images or sound recordings, electronic data and similar information carriers that are suitable for proving the facts in dispute are documents according to this Law".

Under this regulation, email correspondence is also recognized as a document. Accordingly, the court should have evaluated the email exchanges along with the payments made by the plaintiff to determine whether the plaintiff is indeed a debtor. However, issuing a written decision dismissing the case based on incomplete examination is procedurally and legally incorrect and constitutes grounds for reversal.” [7]

In conclusion, in actions for the annulment of objections and actions for receivables arising from a tenancy relationship, it is possible to rely on WhatsApp messages as evidence due to the evidentiary regime established under the Code of Civil Procedure. Moreover, in cases where the rule of proof by deed applies, the parties may substantiate their claims through witness testimony and other evidence based on WhatsApp messages, provided there is no doubt that the messages were sent by the opposing party.

5. LEGAL REMEDIES AVAILABLE TO A PARTY FORCED TO PAY DESPITE NOT BEING LIABLE, IN THE EVENT WHATSAPP MESSAGES ARE NOT ADMITTED AS EVIDENCE

5.1. Assessment with Respect to Actions for the Removal of Objections

The judgment rendered in an action for the removal of an objection does not constitute a *res judicata* in terms of substantive law. Accordingly, the debtor always has the opportunity to prove non-liability before the general courts. In this context, a person under the threat of debt enforcement proceedings may file a negative declaratory action before the general courts to establish that they are not liable.

As a result of an action for the removal of an objection, if debt enforcement proceedings continue and a person makes a payment despite not being liable, it is possible to recover the amount paid. If the payment was made under a debt enforcement proceeding, the person who paid without being liable may file a restitution action (Article 72 of the Debt Enforcement and Bankruptcy Law) before the general courts. The restitution action aims to recover money paid under the threat of debt enforcement proceedings and must be filed within one year as of the date of payment. In the context of rental receivables, this remedy is also available if a payment was made as a

result of an unjust debt enforcement proceeding.

5.2. Assessment with Respect to Actions Heard Before General Courts

Actions for the annulment of objections and receivables are heard before general courts, and the decisions of these courts become final either upon exhaustion of the regional and general appeal remedies or if such remedies are not pursued. The finality of a court decision results in the definitive resolution of the dispute. In such a case, a person who is forced to make a payment despite not being liable can only resort to extraordinary legal remedies. Although WhatsApp messages may qualify as commencement of evidence under Article 202 of the Code of Civil Procedure, the court’s failure to take this into account and the prevention of resorting to witness testimony based on such commencement of evidence constitutes a violation of the person’s right to be heard under the right to a fair trial. For this reason, a person whose right to be heard has been violated and who is compelled to pay an amount they do not owe may, after exhausting ordinary legal remedies, file an individual application to the Constitutional Court.

6. CONCLUSION

The evidentiary value of WhatsApp correspondence in disputes arising from rental receivables varies depending on the procedural framework applicable to the litigation. In actions for the removal of objections, the limited evidentiary regime under Article 68 of the Debt Enforcement and Bankruptcy Law prevents WhatsApp messages from being used as evidence. By contrast, in actions for the annulment of objections and receivables, the general evidentiary regime under the Code of Civil Procedure applies, allowing WhatsApp messages to function both as discretionary evidence and as commencement of evidence.

However, in practice, particularly in rental disputes, there is often hesitation in recognizing WhatsApp messages as commencement of evidence, and a narrower approach is applied compared to commercial disputes. Yet, the evidentiary framework of the Code of Civil Procedure does not differentiate between types of legal relationships in terms of accepting commencement of evidence. Accordingly, WhatsApp messages that are indisputably sent by the opposing party should also be

recognized as commencement of evidence in disputes arising from tenancy relationships.

In an action for the removal of an objection heard before Civil Courts of Debt Enforcement, if WhatsApp messages are not recognized as evidence, a party who is forced to pay an amount despite not being liable may file an action before the general courts to prove non-liability and recover the amount paid. In actions heard by general courts, the failure to recognize WhatsApp messages as commencement of evidence under Article 202 of the Code of Civil Procedure would constitute a violation of the person’s right to be heard, making it possible to file an individual application before the Constitutional Court.

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References:

1. Kuru, Baki, *Medeni Usul Hukuku (Civil Procedural Law)*, İstanbul, 2015, p. 241 et seq.
2. Decision, bearing the Basis number 2023/287, the Decision number 2023/1549 and dated 23.05.2023, of the 3rd Civil Chamber of the Court of Cessation
3. Decision, bearing the Basis number 2025/1472, the Decision number 2025/4776 and dated 13.10.2025, of the 3rd Civil Chamber of the Court of Cessation
4. Yıldırım/Tok, *İtirazın Kaldırılması Yararlanmasında Delil Başlangıcının Delil Değeri (Evidentiary Value of Commencement of Evidence in Actions for the Removal of Objections)*, Faculty of Law of Marmara University, *Journal of Legal Studies*, Vol.22, p.1
5. Decision, bearing the Basis number 2016/28755 and the Decision number 2019/5086, of the 13th Civil Chamber of the Court of Cessation
6. Decision, bearing the Basis number 2016/28932 and the Decision number 2019/7493, of the 13th Civil Chamber of the Court of Cessation
7. Decision, bearing the Basis number 2017/1014 and the Decision number 2020/4488, of the 13th Civil Chamber of the Court of Cessation

AN EVALUATION OF THE AMENDMENTS TO THE COMMUNIQUÉ NR. 2010/4 ON MERGERS AND ACQUISITIONS REQUIRING THE APPROVAL OF THE COMPETITION BOARD



1. Introduction

The primary and most widely recognized function of competition law is to ensure the preservation of effective competition in markets and to prevent concentration transactions from distorting the competitive structure. In this context, subjecting mergers and acquisitions to prior control is regarded as one of the most important instruments of competition law. In Türkiye, this control mechanism is carried out within the framework of Law Nr. 4054 on the Protection of Competition, while the principal secondary regulation guiding its implementation is the Communiqué Nr. 2010/4 on Mergers and Acquisitions Requiring the Approval of the Competition Authority.

As is the case with many existing regulations, changes in economic conditions, the growth in transaction volumes, and particularly the rapid transformation in the technology sector have made it necessary to update the Communiqué on Mergers and Acquisitions. Accordingly, the Competition Authority has introduced a number of amendments to the Communiqué. These amendments are not limited to mere technical updates; rather, they are of a nature that will directly affect the scope, methodology, and intensity of merger and acquisition control.

2. A Comparative Analysis of the New and Former Communiqués

One of the first notable aspects of the New Communiqué is the clarification of the concept of “transaction party” within

the scope of merger and acquisition control. This is because the notion of a “transaction party” plays a critical role in determining whether a merger or acquisition is subject to notification requirements. Under the previous regulation, the fact that this concept was defined in a general and limited manner led to uncertainties in practice, particularly with regard to which undertakings would be considered as parties in acquisition transactions.

Particularly in complex group structures involving a change of control, the determination of the undertakings to be taken as a basis for notification has been open to differing interpretations. Under the new regulation, however, the concept of “transaction party” has been addressed in greater detail with respect to the undertaking concerned by the transaction. In this context, it has been clearly established that not only the direct parties, but also economic units within the same control relationship, must be taken into account in the assessment.

This amendment has the potential to reduce uncertainties in practice. Indeed, the clarification of the scope of the notification requirement both enhances legal predictability for undertakings and helps prevent unnecessary disputes before the Competition Authority.

As a reflection of changing economic conditions, adjustments have been made to the turnover thresholds, which constitute one of the most important criteria for determining mergers and acquisitions subject to the notification requirement.

Under the previous regulation, the thresholds had not been updated for a long period, which, particularly in an environment of high inflation and economic growth, resulted in an increasing number of transactions falling within the scope of notification.

Under the new regulation, the turnover thresholds have been significantly increased. The individual turnover threshold has been raised from 250 million TRY to 1 billion TRY, the total turnover in Türkiye threshold from 750 million TRY to 3

billion TRY, and the worldwide turnover threshold from 3 billion TRY to 9 billion TRY. The primary purpose of this increase is to enable the Competition Authority to use its control resources more efficiently and to ensure that only transactions likely to have a significant impact on competition are subjected to review.

Indeed, subjecting low-volume transactions to the notification requirement imposes unnecessary costs on undertakings and increases the workload of the Authority.

However, it can also be argued that raising the thresholds entails certain risks. In particular, mergers among undertakings operating in local markets with relatively low turnovers, although falling below the thresholds, may still have significant effects on competition.

In recent years, one of the most debated issues in competition law has been the inclusion of transactions involving the acquisition of technology undertakings within the scope of control.

In particular, the acquisition of startups with relatively low turnovers but high innovation potential is considered among the transactions referred to as “killer acquisitions”, which may weaken competition in the long term.

The previous regulation, the exemption concerning technology undertakings could be applied more broadly, whereas the new regulation limits this exemption to undertakings “based in Türkiye”. It is also explicitly stipulated that certain turnover thresholds will continue to apply to such transactions.

This approach aims, on the one hand, to protect domestic technology startups, while on the other hand, it may have a narrowing effect on the scope of control. In particular, the possibility that technology acquisitions carried out by foreign investors may, in certain cases, fall outside the review process is a development that warrants careful monitoring from a competition law perspective.

Joint ventures are considered hybrid structures in competition law, encompassing both elements of concentration and cooperation.

Therefore, it is important to assess not only their effects on market structure but also whether they give rise to anti-competitive coordination between the parties. Under the previous regulation, this issue was not explicitly addressed in the text of the Communiqué, and evaluations were largely based on practice and guidelines.

With the new regulation, a general framework for assessing the coordination risk between the parent undertakings in joint ventures has been incorporated into the text of the Communiqué. This amendment is significant in terms of aligning Turkish competition law more closely with European Union practice, as the coordination effects of joint ventures have long been treated as a separate assessment in EU competition law.

The new regulation paves the way for the Competition Authority to conduct a more systematic analysis of such transactions.

The notification process for mergers and acquisitions constitutes a significant administrative burden for undertakings. The previous Notification Form included extensive requests for information and documents, requiring a substantial preparation process even for transactions with low market shares.

Upon the new regulation, the Notification Form has been significantly simplified. Some information requests have been completely removed, and in particular, the information required to be submitted for transactions with low market shares in the affected markets has been reduced. In addition, the regulation introduces measures to facilitate the notification process for venture capital investment funds and similar investors.

This change can be regarded as a positive development in terms of reducing transaction costs and improving the investment environment. A lighter bureaucratic burden provides a significant advantage, especially in investment transactions that require swift action.

Another significant innovation introduced by the new regulation concerns transactions that are already under review. Accordingly, it is explicitly stipulated that ongoing review processes may be termi-

nated by a Board decision if it is determined that the transactions do not meet the new turnover thresholds or other notification requirements.

This provision serves an important function in terms of procedural efficiency. Preventing unnecessary reviews enables the Authority to use its resources more efficiently and reduces the period of uncertainty for undertakings.

3. Conclusion

The amendments to Communiqué Nr. 2010/4 aim to render merger and acquisition control in Türkiye more selective, flexible, and aligned with economic realities. In particular, the increase in turnover thresholds and the simplification of the notification process provide significant conveniences for both undertakings and the Competition Authority.

At the same time, it is likely that the regulations will give rise to new debates in certain areas. In conclusion, while the general orientation of the amendments is aimed at enhancing the effectiveness of competition law and making the control mechanism more rational, the extent to which these objectives will be achieved will need to be assessed in light of developments in practice.

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UPON THE NEW REGULATION, THE NOTIFICATION FORM HAS BEEN SIGNIFICANTLY SIMPLIFIED. SOME INFORMATION REQUESTS HAVE BEEN COMPLETELY REMOVED, AND IN PARTICULAR, THE INFORMATION REQUIRED TO BE SUBMITTED FOR TRANSACTIONS WITH LOW MARKET SHARES IN THE AFFECTED MARKETS HAS BEEN REDUCED.

GENERAL ASSEMBLY OF CIVIL CHAMBERS PRECEDENT DATED 09 APRIL 2025: FULL CONTRACTUAL FEES FOR LAWYERS PREVENTED FROM FILING ADDITIONAL CLAIMS



Introduction

The contract of mandate is set out under the Turkish Code of Obligations. Article 386 of the Code of Obligations outlines the general scope of the contract of mandate.

It defines it as follows: “A contract of mandate is a contract whereby the mandatary undertakes to perform a task or legal transaction on behalf of the mandator.”

As can be understood from this definition, it is a contract in which the mandatary undertakes to perform a task. In a mandate concerning legal acts, the mandatary is obliged to carry out legal transactions for the benefit of the principal, particularly to acquire, exercise, and transfer subjective rights. [1].

A contract signed between a lawyer and a client also constitutes a contract of mandate. However, unlike a general contract of mandate, under the Legal Practitioners Act, “fee” is an essential element of the contract.

Through this agreement, the lawyer undertakes to provide legal assistance, while the client undertakes to pay a fee in return for the legal services rendered.

Determining the fee in the contract is not mandatory; it may be agreed upon either before or after the performance of the

work. If no written or oral agreement on the fee is made between the parties, the fee is determined in accordance with the Legal Practitioners Act and the Minimum Attorneyship Fee Tariff. [2]

The attorney fee agreement is regulated under Article 163 and other provisions of the Legal Practitioners Act.

According to Article 163 of the Act, the agreement has three essential elements: specific legal assistance, fee, and the mutual consent of the parties. Specific legal assistance constitutes the mandatory element of an attorney fee agreement.

A contract that does not pertain to specific legal assistance cannot be considered an attorney fee agreement.

Another element, the fee, is the payment made by the client in return for the lawyer’s performance of the work.

Finally, the lawyer and the client must reach an agreement regarding the fee and the provision of specific legal assistance by the lawyer. While the lawyer’s obligation consists of providing specific legal assistance, the client’s primary obligation is the payment of the fee.

Discharge of Attorney

Article 174 of the Legal Practitioners Act contains specific provisions regarding the payment of fees in the event of the termi-

nation of the attorney fee agreement due to either discharge or resignation.

First, it is necessary to explain the meaning of discharge and resignation of the attorney.

The discharge of the attorney refers to the client terminating the attorney fee agreement, either for specific reasons or without any reason.

Such termination may always be carried out unilaterally. No formal requirement is necessary for the termination of the attorney fee agreement, and likewise, no justification is required.

If the attorney fee agreement is terminated by discharge, it must first be determined whether the discharge was based on a justified reason. The attorney’s fee will be determined according to the existence of such justification. Paragraph 2 of Article 174 of the Legal Practitioners Act provides:

“In case of the attorney’s discharge, the full fee shall be paid. However, if the attorney has been discharged due to fault or negligence, no fee shall be payable.”

Therefore, if the attorney is discharged due to fault or negligence, they are not entitled to the fee. If discharged without fault or negligence, the attorney is entitled to the full fee.

An Analysis of the Decision, bearing the Basis number 2024/666 and the Decision number 2025/224 and dated 9.4.2025, of the General Assembly of Civil Chambers of the Court of Cessation

[...] It has been understood that, in light of all these explanations and upon evaluation of the concrete case, the plaintiff attorney, acting as the attorney of the defendant, filed a claim for TRY 30,000.00.- against a third party due to the abuse of mandate, under the file, bearing the Basis number 2010/423, the 2nd Civil Court of First Instance of Karşıyaka on 17.12.2010, and that during the proceedings, an expert report determined that the value of the immovable property at issue in the case was TRY 919,720.00.- following which an attorney fee agreement was executed on 01.03.2012, and that according to Article 3 of the agreement, the attorney fee to be paid for the legal services agreed upon by the parties under the contract was set at TRY 92,000.00.-, and that the claim was not amended, and that the case was dismissed on 04.04.2012, and that the decision was appealed, and at this stage, the plaintiff attorney was discharged on 29.03.2013, and that as a result of the appellate review, the decision was overturned with the reasoning that the claim should have been accepted, and that the case, subsequently pursued by another attorney, resulted in the upholding of the decision in favor of the claim for TRY 30,000.00.-, and that thereafter, a subsequent lawsuit for the annulment of the objection was filed to claim the remaining amount.

[...] Since there is no dispute between the parties regarding the validity of the attorney fee agreement dated 01.03.2012, and the unlawfulness of the plaintiff attorney's discharge, it must be accepted that, pursuant to paragraph 2 of Article 174 of the Legal Practitioners Act, which provides for the full payment of fees in the event of the attorney's discharge, the plaintiff attorney is entitled to the full fee stipulated under the agreement, namely TRY 92,000.00.-.

This is because the contractual relationship between the attorney and the client is established upon the execution of the attorney fee agreement, based on the mutual declarations of intent of the parties regarding this matter. Upon the formation of the agreement, both parties acquire the rights and obligations arising from the contract. One of the fundamental principles recognized in contract law is

that, after the offer and acceptance declarations regarding the formation of the contract are made in mutual agreement—in other words, after the contract is validly concluded—it becomes binding on the parties. According to the principle defined as binding force of the contract, in the absence of any reasons justifying a departure from this principle, it is unacceptable that, despite the existence of a valid attorney fee agreement between the attorney and the client, the contract would be treated as if it had never been concluded due to an unjustified discharge.

[...] During the proceedings of the partial claim filed, the plaintiff attorney's unjust discharge resulted in the deprivation of the opportunity to file the additional claim stipulated under the agreement. Although the right of discharge may always be exercised, whether justified or unjustified, according to the principle of "Principle of honesty" set forth in Article 2 of the Turkish Civil Code Nr. 4721, "Everyone must comply with the rules of honesty when exercising their rights and fulfilling their obligations.

The legal system does not protect the manifest abuse of a right." Although the Specialized Chamber has mentioned the principle that the fee for services not yet claimed, it is clear in this present case that this situation arose from the defendant's unjust discharge. In this circumstance, as the defendant must bear the consequences of their own actions, it must be accepted that the plaintiff attorney, who was unjustly prevented from filing the additional claim, is entitled to receive the full attorney fee stipulated under the agreement."

In this present case, an examination was conducted regarding the attorney fee of the discharged attorney. First, the concepts of mandate fee and attorney fee were explained. It was determined that the attorney's discharge was not based on a justified reason. [3] If the discharge is unjust, the attorney is entitled to full fees even for work that has not been completed as of the date of discharge.

The fact that the attorney could not continue the work due to the discharge, and thus saved effort and labor, does not prevent entitlement to the full fee. Indeed, this principle is set out under paragraph 2 of Article 174 of the Legal Practitioners Act, which provides that "In case

of the attorney's discharge, the full fee shall be paid."

In case of an unjust discharge, it is not necessary to await the conclusion of the case for the attorney to be entitled to the fee. The attorney's right to the fee becomes due and payable upon the unjust discharge, meaning that the attorney may claim the attorney's fee.

The discharged attorney will no longer be able to continue representing the case. In such a situation, the case will be pursued either directly by the client or by another attorney authorized under a new mandate. In both instances, there is no need to wait for the conclusion of the case for the attorney to claim the fee. Whether the case pursued by the client or another attorney results in a favorable or unfavorable outcome is irrelevant, and the attorney may still claim the mandate fee. Even if the case is left unpursued following the unjust discharge, the attorney may claim the fee.

Conclusion

Paragraph 2 of Article 174 of the Legal Practitioners Act provides that, in case of an unjust discharge, the attorney is entitled to the full fee. Under the above-cited decision of the Court of Cessation, it is likewise recognized that the attorney is entitled to the attorney's fee in cases of unjust discharge. As explained above, it is not necessary to wait for the conclusion of the case in order to earn the attorney's fee. In situations of unjust discharge, the attorney's fee becomes due and payable, and the attorney is entitled to receive this fee.

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References:

1. Türker Yalçınduran: Vekâlet Sözleşmesinde Ücret (*Fee under Contract of Mandate*), Ankara 2007, p. 35.
2. Tülin Kurtoğlu: Akdi vekâlet Ücreti ve Avukatın Hukuki Sorumluluğu (*Contractual Attorney's Fee and the Attorney's Legal Liability*), Ankara 2016, p. 24, 25
3. Decision, bearing the Basis number 2024/666 and the Decision Number 2025/224 and dated 9.4.2025, of the General Assembly of the Civil Chambers of the Court of Cessation

NEW ERA FOR ELECTRIC VEHICLE CHARGING SERVICES: REGULATION AMENDED!

The Energy Market Regulatory Authority (EMRA) has amended the Charging Service Regulation. The amendment was published in the Official Journal on March 23, 2026, and entered into effect on the same date. The amendments introduce comprehensive updates regarding the installation and operation of charging units and stations, the operation of mobile charging stations, the establishment of charging networks, the rights and obligations of charging network operators, station operators, and users, as well as the procedures and principles for the establishment and operation of a free access platform. The main changes introduced by the amendment are as follows;

- The pricing principles for charging services have been revised, making it mandatory for fees to be determined solely based on the energy consumed (kWh). Accordingly, the collection of additional charges under names such as connection fees, service initiation fees, or similar is now prohibited.
- Operators are now required to publish their prices, as well as any reservation/occupancy fees, simultaneously at the stations and through digital channels.
- In addition, card or contactless payment options are now required for DC (fast) charging units with a capacity of 50 kWh or higher.
- Charging network operators are now allowed to provide services to each other's customers. It is also mandatory to notify the Authority of any roaming agreements made within 30 days.
- Mobile (portable) charging stations have been explicitly included within the scope of the regulation, introducing notification and compliance obligations for these operations.
- Charging network operators are now required to submit applications electronically to the Authority to add a new station to the network. Additionally, it has been stipulated that the Authority will finalize these applications within 10 business days.
- It has been explicitly stipulated that the provision of charging services does not constitute an electricity supply activity.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/03/20260323-4.htm>

CONSTITUTIONAL COURT ISSUES KEY RULING ON LIMITED LIABILITY COMPANIES!

The Constitutional Court's decision dated 25/12/2025 was published in the Official Journal on March 17, 2026. 1st Commercial Court of First Instance of Bakırköy filed a request for annulment, claiming that the expressions, as set out under the Turkish Commercial Code Nr. 6102 and dated 13.01.2011, reading as

"The following shareholders' general assembly resolutions may be adopted only if at least two-thirds of the represented votes and an absolute majority of the total share capital with voting rights are present together"

under subparagraph (h) of the paragraph (1) of article 616; and also

"Filing a lawsuit to remove a shareholder from the company for just cause..."

under subparagraph (h) of paragraph (1) of article 621

are incompatible with Articles 2, 10, 35, 36, and 74 of the Constitution.

Upon review, considering the conditions stipulated in the regulations, it was determined that in limited liability companies with two equal-share partners, a request by one partner to remove the other for just cause may not be acted upon by the shareholders' general assembly. Furthermore, if one of the partners does not hold an absolute majority of the share capital, it appears that removal of a partner for just cause is also not feasible. For this reason, since these provisions were found to be incompatible with Articles 40 and 48 of the Constitution, they were annulled by a majority vote.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/03/20260317-24.pdf>

PRINCIPLE DECISION ISSUED ON THE SEPARATE PREPARATION OF EXPLICIT CONSENT AND PRIVACY NOTICES!

The presentation of the explicit consent and the privacy notice in an intertwined manner is among the most common complaints and reports submitted to the Personal Data Protection Authority (KVKK). By their nature, the obligations of explicit consent and the information obligation are distinct concepts. The obligation to provide information, as set out under Article 10 of the Personal Data Protection Law Nr. 6698, fundamentally means informing the data subjects whose personal data is being processed. Explicit consent, on the other hand, is one of the legal bases stipulated by the Law for the lawful processing of personal data. Following the new regulation, the explicit consent and the information obligation must be structured as follows:

When the processing of personal data is carried out based on the explicit consent requirement, the information obligation and the explicit consent form must be prepared separately and presented to the data subjects. Even if both texts appear on a single page, the declarations to be provided by the data subjects are of different nature. Therefore, each text must be placed separately—one above the other—and separate declarations must be obtained for each.

Source: <https://www.resmigazete.gov.tr/eskiler/2026/03/20260324-3.pdf>



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