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Dissolution of Incorporated Companies

An incorporated company, which is a commercial partnership possessing legal personality, acquires its legal existence upon registration with the trade registry and loses such existence upon deregistration. However, the company's reaching this final stage does not constitute a wholly uniform legal process; rather, it is subject to different grounds of dissolution and distinct procedural regimes. Pursuant to the Turkish Commercial Code Nr. 6102 ("TCC"), the dissolution of incorporated companies is addressed under two main categories: general grounds for dissolution and specific grounds for dissolution. The general grounds are set out under Article 529 of the TCC, whereas the specific grounds are separately provided for in Articles 530 and 531 of the TCC. ***(Page 2)***

Procedure in Actions with Alternative Claims

In actions with alternative claims, the claimant generally bases the claims on the same factual grounds or the same legal basis. Even where the claims are founded on different facts or legal grounds, what is essential is the existence of an economic or legal connection between them. In other words, the claims are expected to pursue the same objective. Although the factual circumstances or legal bases underlying the claims may differ, they may still be asserted in the form of alternative claims. What changes, in such cases, is merely the factual matrix and the corresponding legal basis. However, a connection between the claims is indispensable; entirely unrelated claims cannot be brought as alternative claims, otherwise the court would be required to order severance of the claims. ***(Page 7)***

Assessment of Liability in Cases of Defects and Wear & Tear in Leased Property

Damage to or deficiencies in leased real property, whether identified at the time of delivery to the lessee or arising during the tenancy, may give rise to various legal disputes. In practice, some of the most common issues include the failure to take into account defects existing in the property at the time the lease agreement is concluded, the determination of liability for ordinary or extraordinary damage occurring during the lease term, and the allocation of responsibility for damage identified during the vacating and handover process. This article examines the principal obligations of lessors and lessees under the Turkish Code of Obligations and assesses their respective liabilities in the disputes most frequently encountered in practice. ***(Page 9)***

Effect of Reversal of the Underlying Judgment on Annulment of Disposition Actions in Court of Cassation Case Law

In the case law of the Court of Cassation, actions for annulment of disposition are defined as a type of action whereby assets and rights, or the values replacing them, which have been removed from the debtor's estate with the intent to prejudice the creditor, are restored to the debtor's estate through a lawsuit brought by the creditor whose rights have been adversely affected by such disposition, for the purpose of enabling the recovery of the claim. In addition to the general procedural requirements for actions, certain specific conditions must also be satisfied for an action for annulment of disposition to be admissible. One such condition is the existence of a finalized debt enforcement proceeding against the debtor. ***(Page 13)***

Prior Consent in Employment Contracts

Labor law is a special branch of law that takes into account the economic and social imbalance of power between employees and employers and contains mandatory provisions designed to protect employees. Due to this protective structure, freedom of contract between the parties is not absolute. In particular, in matters directly affecting employees' fundamental rights, working conditions, and economic interests, the validity of employees' prior consent is subject to certain limitations. On the other hand, in some cases, employees' prior consent is recognized as legally valid, and the employment relationship is maintained on this basis. ***(Page 17)***

Recent News

DISSOLUTION OF INCORPORATED COMPANIES

1. INTRODUCTION

An incorporated company, which is a commercial partnership possessing legal personality, acquires its legal existence upon registration with the trade registry and loses such existence upon deregistration. However, the company's reaching this final stage does not constitute a wholly uniform legal process; rather, it is subject to different grounds of dissolution and distinct procedural regimes.

Pursuant to the Turkish Commercial Code Nr. 6102 ("TCC"), the dissolution of incorporated companies is addressed under two main categories: general grounds for dissolution and specific grounds for dissolution. The general grounds are set out under Article 529 of the TCC, whereas the specific grounds are separately provided for in Articles 530 and 531 of the TCC.

After a general overview of the dissolution of incorporated companies, the absence of corporate organs under Article 530 of the TCC and dissolution on justifiable grounds under Article 531 of the TCC will be examined in detail in this article.

2. GENERAL GROUNDS FOR DISSOLUTION OF INCORPORATED COMPANIES: AN OVERVIEW OF ARTICLE 529 OF THE TCC

The dissolution of incorporated companies occurs through two main mechanisms: ipso facto dissolution (*infisah*) and dissolution by decision (*fesih*). Ipso facto dissolution refers to the automatic termination of the company upon the occurrence of a ground stipulated by law or provided for in the articles of association, without the need for any resolution or notice.

Dissolution by decision, on the other hand, refers to the dissolution of the company as a result of a decision by a competent corporate body (the general assembly) or by a court; in a sense, it constitutes the reverse of incorporation.

Article 529/1 of the TCC sets out the general grounds for dissolution of incorporated companies in six subparagraphs. These grounds are as follows:

a) Expiration of the term stipulated under the articles of association, provided that the company has not continued its operations in fact after the expiry so as to become a company of indefinite duration;

b) Achievement of the corporate purpose or the impossibility of its achievement;

c) Occurrence of any dissolution event stipulated under the articles of association;

d) Resolution of the general assembly duly adopted in accordance with Article 421(3) and (4) of the TCC;

e) Declaration of bankruptcy;

f) Other cases provided for by law

It should be noted here that it is also possible to include in the articles of association of an incorporated company dissolution and termination grounds that are not expressly provided for in the law or any other related applicable regulations. In such a case, it is accepted that, upon the occurrence of one of the grounds stipulated under the articles of association, the dissolution of the company may be requested from the court. [1]

With regard to dissolution by resolution of the general assembly, Article 421(3)–(4) of the TCC requires the fulfilment of qualified quorums for a resolution on the dissolution of the company to be validly adopted. Accordingly, the affirmative vote of shareholders or their representatives representing at least seventy-five per cent of the company's capital is required. In the absence of such quorum, the general assembly shall not be able to resolve upon the dissolution of the company.

Some of the general grounds for dissolution provided for in Article 529 of the TCC are of the nature of ipso facto dissolution, directly and automatically bringing the legal existence of the company to an end. In contrast, in cases such as the occurrence of a dissolution event stipulated under the articles of association or a resolution of dissolution adopted by the general assembly, an expression of will by the competent corporate body or the court is required.

However, the dissolution of incorporated companies is not limited to the general grounds set out under Article 529 of the TCC.

The legislator has also provided for specific grounds of dissolution in cases where the corporate structure becomes inoperable or the shareholder relationship reaches an intolerable level. In this context, dissolution due to the absence of corporate organs (Article 530 of the TCC) and dissolution on justifiable grounds (Article 531 of the TCC) are of particular significance under the scope of the law of incorporated companies.

3. DISSOLUTION OF INCORPORATED COMPANIES DUE TO THE ABSENCE OF CORPORATE ORGANS UNDER ARTICLE 530 OF THE TCC

Article 530 of the TCC sets out the first of the special grounds for dissolution of incorporated companies.

Pursuant to Article 530/1 of the TCC: *"If one of the company's mandatory corporate organs has been absent for a considerable period of time or the general assembly cannot convene, upon the request of shareholders, company creditors, or the Ministry of Customs and Trade, the commercial court of first instance at the company's registered seat shall, after hearing the board of directors, grant a time period for the company to bring its situation into compliance with the law. If the situation is not remedied within this period, the court shall order the dissolution of the company."*

Article 530 of the TCC provides for a specific ground of dissolution aimed at addressing the legal vacuum arising from the dysfunction of the corporate structure of an incorporated company.

As a consequence of their legal personality, incorporated companies express their will through their corporate organs and carry out management, representation, and decision-making functions via these organs.

Accordingly, the prolonged absence of statutorily required corporate organs, or their inability to perform their duties, endangers the company's ability to continue its operations.

The legislator adopted Article 530 of the TCC to prevent the indefinite continuation of situations that render the company practically inoperative; thereby aiming either to ensure that the company regains a legally compliant organizational structure or, where this is not possible, to have it dissolved.

For Article 530 of the TCC to be applicable, the missing organ must be the one that is mandatorily required by law.

Under the Turkish Commercial Code Nr. 6102, the mandatory corporate organs of an incorporated company are the general assembly and the board of directors.

When referring to the absence of a corporate organ within the meaning of Article 530 of the TCC, the first organ that comes to mind is the board of directors, which is responsible for the management and representation of the company. As also stated under the legislative reasoning of the provision, the absence of a required organ refers to the actual non-existence of that organ.

Accordingly, where the term of office of the board of directors has expired but a new board has not been elected, or where the board has become vacant due to the resignation of its members and there is no possibility of filling the vacancies, the management organ must be deemed to be absent.

It should, however, be noted that the departure of a single board member from office, or the conviction of only one member, does not constitute an absence of a corporate organ within the meaning of Article 530 of the TCC, as such isolated deficiencies do not render the board entirely inoperative. In such cases, the law expects the board to fill the vacancy in accordance with Article 363 of the TCC.

In contrast, the general assembly is not a permanent organ but a decision-making body that convenes at specific intervals; therefore, in its case, it is not a matter of "absence" but rather of "inability to convene."

The inability of the general assembly to convene refers to situations where the bodies authorized to call a meeting fail to do so or do not act accordingly, where the quorum requirements prescribed by law or the articles of association cannot be consistently satisfied, or where, although the general assembly convenes, it is unable to adopt resolutions due to a deadlock in decision-making quorums.

There is, however, doctrinal debate as to whether a situation in which a corporate organ formally exists but fails to function for various reasons should be regarded as an absence of a corporate organ.

In cases where, due to conflicts of interest or disagreements among the members of the corporate organs or shareholders, members vote in different directions or refrain from attending meetings, and as a result the organ becomes unable to adopt any resolutions—or is persistently unable to adopt resolutions on matters of significant importance for the company's operations due to valid quorum requirements—such a situation is referred to in the doctrine as a "deadlock". [2]

A group of scholars in the doctrine who argue that the absence of a corporate organ can only arise where the organ is physically non-existent maintain that "absence" should be understood strictly in its literal sense.

According to this view, reductions in the number of persons constituting the organ, conflicts of interest, the company entering liquidation, or the difficulty and complexity of electing an organ cannot be characterized as an absence of a corporate organ.

By contrast, scholars who adopt a broader interpretation of organ absence approach the issue primarily through Article 530 of the TCC and argue that the expression "absence of the company's mandatory organs" under the provision should be understood to mean both the failure to constitute such organs and their failure to function. [3]

On the other hand, in a single-shareholder incorporated company, resolutions are adopted in accordance with the will of the sole shareholder; therefore, the occurrence of a deadlock situation is, as a rule, not possible.

In addition to all these considerations, for Article 530 of the TCC to be applicable, the absence of a corporate organ or the inability of the general assembly to convene must have persisted for a considerable period of time. The purpose of this requirement is to prevent shareholders, creditors, or the Ministry of Trade from immediately filing a dissolution action.

Neither the wording of the provision nor the legislative reasoning thereof provides any guidance as to what constitutes a "considerable period of time."

In this respect, the legislative reasoning states that *"in order to prevent abuses as to what should be understood by continuity, and to allow flexibility depending on the circumstances of the concrete case, discretion has been left to the judge"*.

It should also be noted that the absence of a corporate organ or the inability of the general assembly to convene must not be temporary but must have a continuous (permanent) character. The existence of a merely temporary situation, or a short-term deficiency, will not satisfy the admissibility requirement for a dissolution action.

Pursuant to Article 530 of the TCC, the right to bring an action is granted to shareholders, company creditors, and the Ministry of Customs and Trade.

Before ordering the dissolution of the company, the court is obliged to hear the board of directors and grant a period of time for the company's situation to be brought into compliance with the law. If the deficiency is remedied within this period, there will be no need for dissolution, and the case will become devoid of essence. If, however, the deficiency is not remedied within the prescribed period, the court shall order the dissolution of the company.

Pursuant to Article 530/II of the TCC, upon the filing of an action, the court may, at the request of one of the parties, take necessary interim measures.

In this context, the appointment of a trustee to the company is particularly envisaged. The trustee temporarily represents the company's capacity to act for the duration of the organ deficiency.

However, it should be noted that, especially in cases where the board of directors is entirely absent, the obligation of the court to hear the board cannot, in practice, be fulfilled; accordingly, it is accepted that this requirement shall not apply in such situations.

Accordingly, Article 530 of the TCC constitutes a protective dissolution mechanism that intervenes in serious and persistent structural defects in the corporate governance of an incorporated company, aiming to prevent the company from becoming entirely inoperative.

On the one hand, the provision allows for the remedying of deficiencies in order to ensure that the company can continue its operations as far as possible; on the other hand, it proceeds from the assumption that, where such deficiencies cannot be remedied, the continuation of the company's legal existence would be detrimental in terms of commercial life, thereby leading to dissolution as a legal consequence.

On the other hand, the specific grounds for the dissolution of incorporated companies are not limited to the absence of corporate organs, but also include the possibility of dissolution based on different circumstances, such as the relationship among shareholders becoming intolerable. In this context, dissolution on justifiable grounds set out under Article 531 of the TCC constitutes another significant ground for dissolution, particularly in cases where the relationship of trust between shareholders has been destroyed and it has become practically impossible for the company to operate in accordance with its purpose.

4. DISSOLUTION OF INCORPORATED COMPANIES ON JUSTIFIABLE GROUNDS UNDER ARTICLE 531 OF THE TCC

Pursuant to Article 531 of the TCC:

"In the presence of justifiable grounds, shareholders representing at least one-tenth of the share capital, and in publicly held companies one-twentieth, may request the commercial court of first instance at the company's registered seat to order the dissolution of the company. Instead of ordering dissolution, the court may decide to expel the claimant shareholders from the company by paying them the real value of their shares as of the date closest to the decision, or may adopt any other appropriate and acceptable solution in light of the circumstances."

Article 531 of the TCC grants shareholders meeting certain thresholds the right to request the court to dissolve the company in the presence of justifiable grounds; however, it neither defines nor exemplifies what constitutes such grounds.

The legislator made this choice deliberately, and the legislative reasoning of the provision explicitly states that determining the content of this concept has been left to judicial decisions and legal doctrine.

According to the generally accepted definition in the doctrine, decisions, transactions, and conduct that continuously, seriously, and materially infringe a shareholder's rights or interests, and that render continued participation in the company intolerable for the shareholder in accordance with the principle of good faith, constitute justifiable grounds. [4]

Within the framework of the case law of the Court of Cassation, the grounds invoked for the justifiable dissolution of an incorporated company may be grouped under several headings:

- Poor management of any incorporated company *(Decisions, dated 06.05.2015, bearing the Basis number 2014/18585 and the Decision number 2015/6457, and dated 12.10.2015, bearing the Basis number 2015/6768 and the Decision number 2015/10302, and dated 03.03.2016, bearing the Basis number 2015/9088 and the Decision number 2016/2352, and dated 30.05.2017, bearing the Basis number 2016/4639 and the Decision number 2017/3180, of the 11th Civil Chamber of the Court of Cassation);*

- Irregularities in general assembly meetings, such as the failure to hold meetings, the suspicious completion of signatures despite the absence of actual attendance, and the failure to convene the general assembly for an extraordinary meeting despite the company being de facto insolvent and over-indebted, with the persistent non-application of the relevant provisions of the law in this regard *(Decisions, dated 16.03.2015, bearing the Basis number 2015/2197, and the Decision number 2015/3596, and dated 11.06.2015, bearing the Basis number 2015/2255 and the Decision number 2015/8166, and dated 23.12.2015, bearing the Basis number 2015/5994 and the Decision number 2015/13820, and dated 03.03.2016, bearing the Basis number 2015/12197 and the Decision number 2016/2357, and dated 11.10.2017, bearing the Basis number 2016/2552 and the Decision number 2017/5272, and dated 22.11.2017, bearing the Basis number 2016/4245 and the Decision number 2017/6420, of the 11th Civil Chamber of the Court of Cassation);*

- The company's deviation from its corporate purpose by being directed towards individual interests, the failure of the members of the board of directors to carry out activities aimed at achieving the company's objectives, and the sale of all facilities and equipment used for the realization of the company's purpose, rendering the achievement of such purpose no longer possible *(Decisions, dated 03.03.2016, bearing the Basis number 2015/9088 and the Decision number 2016/2352, and bearing the Basis number 2016/211 and the Decision number 2016/8872, and dated 11.10.2017, bearing the Basis number 2016/2552 and the Decision number 2017/5272, of the 11th Civil Chamber of the Court of Cassation);*

- The restriction of shareholders' rights to obtain information and conduct examinations, including the failure to provide information regarding the company's financial situation despite requests, the refusal to allow examination of the company's income and expenses, the failure to inform shareholders about the company's management, assets, and profit-loss situation, and the obstruction of shareholders' rights to supervision and access to information *(Decisions, dated 10.02.2014, bearing the Basis number 2013/12495 and the Decision number 2014/2202, and dated 06.05.2015, bearing the Basis number 2014/18585 and the Decision number 2015/6457, and dated 12.10.2015, bearing the Basis number 2015/6768 and the Decision number 2015/10302, and dated 03.12.2015, bearing the Basis number 2015/4504 and the Decision number 2015/12980, and dated 23.12.2015, bearing the Basis number 2015/5994 and the Decision number 2015/13820, and dated 28.01.2016, bearing the Basis number 2015/2939 and the Decision number 2016/937, and dated 03.03.2016, bearing the Basis number 2015/12197 and the Decision number 2016/2357, and dated 21.03.2016, bearing the Basis number 2015/8313 and the Decision number 2016/3066, and bearing the Basis number 2016/211 and the Decision number 2016/8872, and dated 11.10.2017, bearing the Basis number 2016/2552 and the Decision number 2017/5272, of the 11th Civil Chamber of the Court of Cassation);*

- The failure to distribute dividends to shareholders for a prolonged period, the obstruction of shareholders' right to receive dividends, and the non-distribution of profits to shareholders despite the company's high profitability *(Decisions, dated 11.06.2015, bearing the Basis number 2015/2255 and the Decision number 2015/8166, and dated 03.12.2015, bearing the Basis number 2015/4504 and the Decision number 2015/12980, and dated 23.12.2015, bearing the Basis number 2015/5994 and the Decision number 2015/13820, and dated 21.03.2016, bearing the Basis number 2015/8313 and the Decision number 2016/3066, and dated 03.03.2016, bearing the Basis number 2015/12197 and the Decision number 2016/2357, and bearing the Basis number 2016/211 and the Decision number 2016/8872, of the 11th Civil Chamber of the Court of Cassation)*

- The breakdown of the relationship of trust among shareholders, a shareholder's default in paying outstanding capital obligations, serious disputes among shareholders escalating to judicial proceedings, and the complete deterioration of relations between the plaintiff and the other shareholder siblings, which also affects the functioning of the company as a family-owned business, resulting in an irreparable level of mistrust and conflict among shareholders *(Decisions, dated 01.12.2015, bearing the Basis number 2014/18024 and the Decision number 2015/12808, and dated 03.12.2015, bearing the Basis number 2015/4504 and the Decision number 2015/12980, and dated 23.12.2015, bearing the Basis number 2015/5994 and the Decision number 2015/13820, and dated 11.10.2017, bearing the Basis number 2016/2552 and the Decision number 2017/5272, of the 11th Civil Chamber of the Court of Cassation)* [5]

Pursuant to Article 531 of the TCC, shareholders representing at least one-tenth of the share capital, and in publicly held companies one-twentieth, may request the court to order the dissolution of the company.

The prevailing view in the doctrine is that this quorum is mandatory in nature; therefore, it cannot be either reduced or increased by the articles of association.

The fact that the right of action under Article 531 of the TCC is granted exclusively to minority shareholders clearly distinguishes this provision from Article 530 of the TCC; whereas under Article 530, any shareholder, company creditor, and the Ministry of Trade may bring an action without any shareholding threshold requirement.

The most distinctive feature of the provision is that it grants the court broad discretion to adopt alternative solutions appropriate to the circumstances, without being obliged to order dissolution.

Accordingly, even if the court finds the asserted grounds to be justified, it is not required to order the dissolution of the company.

Instead of dissolution, the court may decide to expel the claimant shareholders from the company by paying them the real value of their shares as of the date closest to the decision, or it may adopt any other appropriate and acceptable solution in light of the circumstances.

At this point, the principle of dissolution as a last resort (ultima ratio) plays a decisive role under Article 531 of the TCC.

Accordingly, the mere existence of justifiable grounds does not automatically lead to dissolution; the court must first examine alternative solutions capable of eliminating the justifiable grounds.

Only where such solutions are unavailable or prove ineffective may the court, as a last resort, order the dissolution of the company.

This approach is of significant importance in terms of the principle of corporate continuity and also serves procedural economy.

5. CONCLUSION

The dissolution of incorporated companies constitutes one of the most complex and multi-dimensional issues of Turkish commercial law.

The Turkish Commercial Code Nr. 6102 adopts a systematic distinction between general and specific grounds for dissolution in this area, and further sets out specific grounds for dissolution under two separate institutions: dissolution due to the absence of corporate organs and dissolution on justifiable grounds.

Article 530 of the TCC, concerning the absence of corporate organs, applies in cases where one of the company's statutorily required organs has been absent for a long period or where the general assembly cannot convene.

This provision aims either to ensure the continuity of the company in situations where it is effectively suffering a legal paralysis or to bring this process to an orderly conclusion through liquidation.

The court must first grant the company a period to remedy its situation; only if the deficiency is not remedied within this period may it order dissolution. The fact that the concept of a "long period" is left undefined in the statute allows the judge to assess the circumstances of the concrete case, but in practice it may also give rise to difficulties. For this reason, it is of great importance that courts develop consistent case law by referring to the criteria established in doctrine and judicial decisions.

Article 531 of the TCC, governing dissolution on justifiable grounds, is a distinctive provision introduced into Turkish law by the Turkish Commercial Code Nr. 6102, filling a significant gap that was deeply felt under the former Commercial Code. This provision grants minority shareholders meeting a specified threshold the right to request the court to dissolve the company, while also conferring broad discretion on the court to adopt alternative remedies instead of ordering dissolution.

The fact that the concept of "justifiable grounds" is neither defined nor exemplified in the statute necessitates that its content be concretized through judicial decisions and legal doctrine. An examination of the case law of the Court of Cassation shows that situations such as the abuse of majority power, deviation from the corporate purpose, and the breakdown of the relationship of trust may be recognized as justifiable grounds.

In both mechanisms, the court occupies a central role in the process, and dissolution is in any event adopted as a last resort. This approach reflects a perspective that views the incorporated company not merely as a contractual relationship between shareholders, but as an organizational form that contributes to the broader economic order and whose functionality should be preserved.

However, it should also be noted that, particularly with regard to the concept of justifiable grounds, both case law and doctrine are still in the process of formation. For this reason, it is considered that a broader body of judicial practice under Article 531 of the TCC will continue to shape its application, offering a rich field of study for both practitioners and academics.

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THE PRINCIPLE OF DISSOLUTION AS A LAST RESORT (ULTIMA RATIO) PLAYS A DECISIVE ROLE UNDER ARTICLE 531 OF THE TCC. ACCORDINGLY, THE MERE EXISTENCE OF JUSTIFIABLE GROUNDS DOES NOT AUTOMATICALLY LEAD TO DISSOLUTION; THE COURT MUST FIRST EXAMINE ALTERNATIVE SOLUTIONS CAPABLE OF ELIMINATING THE JUSTIFIABLE GROUNDS.

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3. Keçecioğlu, op. cit., pp. 387–388.

4. Şahin, p. 110.

5. Cengiz Erten, "Anonim Şirketlerde Haklı Sebeplerle Fesih Hakkının Yargıtay İçtihatları Çerçevesinde Değerlendirilmesi" (*An Evaluation of the Right to Dissolution on Justifiable Grounds in Incorporated Companies within the Framework of the Case Law of the Court of Cassation*) pp.195-196.

PROCEDURE IN ACTIONS WITH ALTERNATIVE CLAIMS

1. INTRODUCTION

First, the meaning of the term "*terdit*" (alternative claims) should be examined. The term "*terdit*" is of Arabic origin and refers to the expression of an idea through two alternative possibilities. In civil procedure law, the concept of "*terdit*" likewise denotes the assertion of claims in an alternative order. In order for an action to qualify as one involving alternative claims, there must be more than one claim asserted within the same proceedings. Furthermore, the examination of the subsequent claim must be contingent upon the court's acceptance or rejection of the first (principal) claim.

2. WHAT IS AN ACTION WITH ALTERNATIVE CLAIMS?

Actions with alternative claims are set out under Article 111 of the Code of Civil Procedure. The provision reads as follows:

"(1)The claimant may assert multiple claims against the same defendant in a single statement of claim by establishing a principal–alternative relationship between those claims. To do so, a legal or economic connection must exist between the claims.

(2) The court may not examine or rule on the alternative claim unless it has rendered a decision rejecting the claimant's principal claim on the merits."

According to this provision, in order to bring an action with alternative claims, the claimant must assert more than one claim against the same defendant. However, the facts pleaded in support of the alternative claims must not be mutually contradictory.[1] In addition, a principal–alternative relationship must exist between the claims. Pursuant to this relationship, the principal claim must be asserted first, followed by the alternative claim. Where multiple claims are advanced, it must be determined whether a legal or economic connection exists between them. At least one such connection—either legal or economic—must be present. Once these requirements are satisfied, the claimant may assert multiple claims under a single statement of claim.

In actions with alternative claims, the claimant generally bases the claims on the same factual grounds or the same legal basis. Even where the claims are founded on different facts or legal grounds, what is essential is the existence of an economic or legal connection between them. In other words, the claims are expected to pursue the same objective.

Although the factual circumstances or legal bases underlying the claims may differ, they may still be asserted in the form of alternative claims. What changes, in such cases, is merely the factual matrix and the corresponding legal basis. However, a connection between the claims is indispensable; entirely unrelated claims cannot be brought as alternative claims, otherwise the court would be required to order severance of the claims. [2]

An action with alternative claims should not be regarded as a conditional action. This is because a conditional judgment is not permissible either. Through this procedural mechanism, the claimant arranges the claims in a hierarchical order. The claimant primarily specifies the principal claim.

Unless the principal claim is dismissed with prejudice, the alternative claim is neither examined nor adjudicated. In other words, no judicial assessment is carried out, and no decision is rendered in respect of the alternative claim.

In essence, the alternative claim functions as a subsidiary claim, brought in anticipation of the possible dismissal of the principal claim. Moreover, it is not possible for the court to reverse the order of the principal and alternative claims and rule on the subsidiary claim first. [2]

In its case-law, the Court of Cassation also holds that, in an action with alternative claims, the court is required to render a positive or negative decision in respect of the claimant's principal claim in the first instance. Accordingly, the alternative claims are to be examined only if the principal claim is dismissed. A separate judgment is not rendered for each claim. Instead, the court either rules on the principal claim or, where the principal claim is dismissed, renders a judgment on the alternative claim. Pursuant to the principle of being bound by the claim, the judge may not adjudicate both claims simultaneously or grant relief beyond what has been requested. The judge is limited to assessing either the principal claim or, if it is rejected, the alternative claim, and arriving at a single conclusion. In this respect, there is ultimately a single judgment that depends on either the principal or the alternative claim.

The court first conducts its examination on the basis of the principal claim and, if it dismisses that claim with prejudice, proceeds to examine and adjudicate the alternative claim. However, in an action with alternative claims, if the principal claim is dismissed but the alternative claim is not examined and no positive or negative decision is rendered in respect thereof, a procedural deficiency arises in relation to the alternative claim.

Such a deficiency in the court's decision is characterized as a gap in the judgment. In this case, the alternative claim may be made subject to an application for completion of the judgment.[3] The claimant may seek completion of the judgment on the ground that the ruling in respect of the alternative claim is not sufficiently clear and gives rise to uncertainty in its enforcement.

With respect to litigation costs, if the principal claim is partially or entirely dismissed, the court proceeds to examine the alternative claim. In this context, the Court of Cassation has held that, in an action with alternative claims, there is no partial dismissal in respect of the claim that is ultimately rejected, and therefore no obligation arises to award costs to the opposing party in relation to that claim. [4]

In a staged action, the claims are examined in a predetermined order. Pursuant to Article 111 of the Code of Civil Procedure, if the principal claim is dismissed, the alternative claim is examined. Where the alternative claim is upheld, attorney's fees should not be awarded in favor of the opposing party in respect of the dismissed principal claim.

Under its judgment, dated 06/10/2022 and bearing the Basis number 2021/5570 and the Decision number 2022/4606, the 6th Civil Chamber of the Court of Cassation held that *"[…] the dismissal of one or several of the asserted claims does not require the award of attorney's fees in favor of the opposing party unless all staged claims are dismissed."*

One of the most significant aspects of the actions with alternative claims in the case-law of the Court of Cassation is that the judge may not interfere with the ranking of claims established by the claimant. Indeed, in the jurisprudence of the supreme court, it is emphasized that the judge cannot alter the order of priority determined by the claimant and may not directly examine the alternative claim without first rendering a decision on the principal claim. Any contrary approach would constitute a violation of the principle of being bound by the claim, as set out under Article 26 of the Code of Civil Procedure. For this reason, the judge is obliged to respect the hierarchical structure of the claims.

It should also be noted that, once an action with alternative claims is filed, the statute of limitations is suspended in respect of both the principal and the alternative claim. Both the principal and the alternative claims become pending. With respect to court fees, in actions with alternative claims, the fee is calculated on the basis of the claim with the higher value.

The effect of the statute of limitations in actions with alternative claims is of particular importance in practice. This is because, where the principal claim is dismissed, the question of whether the alternative claim has become time-barred may give rise to controversy.

According to the prevailing view in doctrine and practice, the filing of an action with alternative claims interrupts the statute of limitations in respect of both the principal and the alternative claim, and both claims become pending before the court. If a contrary approach were accepted, the claimant could suffer a loss of rights in respect of the second claim asserted on a contingent basis.

For this reason, the purpose of Article 111 of the Code of Civil Procedure is to enable the claimant to assert claims within a framework of legal certainty.

3. DIFFERENCES BETWEEN ACTIONS WITH ALTERNATIVE CLAIMS AND SIMILAR TYPES OF ACTIONS

An action with alternative claims is frequently confused in practice with the concepts of objective joinder of claims, elective actions, and alternative obligations. However, there are significant differences between these legal concepts.

In the objective joinder of claims, the claimant asserts multiple independent claims against the same defendant under a single action, and the court assesses each claim separately. By contrast, in an action with alternative claims, there is a hierarchical relationship of priority between the claims, and the court may examine the alternative claim only if the principal claim is dismissed.

In elective actions, the claimant is entitled to choose any one of several claims, whereas in actions with alternative claims the claims are arranged in a hierarchical order. Accordingly, the essence of an action with alternative claims lies in the hierarchical system of examination established between the claims.

4. PRACTICAL PROBLEMS ENCOUNTERED IN ACTIONS WITH ALTERNATIVE CLAIMS

One of the primary practical issues encountered in actions with alternative claims is the incorrect structuring of the relationship between claims. In practice, claimants sometimes assert claims in an alternative manner even though there is no legal or economic connection between them. In such cases, the court may be required to sever the claims or undertake an assessment on procedural grounds.

In addition, courts' examination of the alternative claim without expressly dismissing the principal claim constitutes one of the grounds for reversal in practice. Accordingly, the correct structuring of the relationship between claims in actions with alternative claims is of particular importance in terms of procedural economy.

5. CONCLUSION

An action with alternative claims is a special type of action set out under Article 111 of the Code of Civil Procedure, which enables the claimant to assert multiple claims in a hierarchical manner. In this type of action, a principal–alternative relationship is established between the claims, and the court first examines the principal claim. If the principal claim is dismissed, the alternative claim is then examined. In this way, the claimant is able to secure multiple contingencies under the same legal dispute. Actions with alternative claims serve the principle of procedural economy and prevents the initiation of unnecessary proceedings. However, for the proper application of this type of action, it is necessary that there exists a legal or economic connection between the claims, that the claims are correctly ordered, and that the judge acts in accordance with the principle of being bound by the claim. The case-law of the Court of Cassation consistently upholds these features of actions with alternative claims. For this reason, actions with alternative claims constitute an important procedural mechanism that both prevents the loss of rights of the parties and ensures the efficient conduct of proceedings.

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ASSESSMENT OF LIABILITY IN CASES OF DEFECTS AND WEAR & TEAR IN LEASED PROPERTY

Damage to or deficiencies in leased real property, whether identified at the time of delivery to the lessee or arising during the tenancy, may give rise to various legal disputes. In practice, some of the most common issues include the failure to take into account defects existing in the property at the time the lease agreement is concluded, the determination of liability for ordinary or extraordinary damage occurring during the lease term, and the allocation of responsibility for damage identified during the vacating and handover process. This article examines the principal obligations of lessors and lessees under the Turkish Code of Obligations and assesses their respective liabilities in the disputes most frequently encountered in practice.

I. LESSOR'S OBLIGATION TO DELIVER THE LEASED PROPERTY IN ACCORDANCE WITH THE LEASE AGREEMENT

A. Delivery of the Leased Property in Accordance with the Lease Agreement

The leased property must be delivered to the lessee in compliance with all terms and conditions agreed under the lease agreement. This requirement is set out under Article 301 of the Turkish Code of Obligations. Accordingly; *"The lessor is obliged to deliver the leased property on the agreed date, in a condition suitable for the intended use under the lease agreement, and to maintain it in such condition throughout the term of the contract. This provision cannot be amended to the detriment of the lessee in residential and roofed workplace leases. In other lease agreements, any contractual arrangement contrary to this provision may not be imposed against the lessee through general terms and conditions."* At the stage of establishing the lease relationship, the terms stipulated under the lease agreement gain particular importance at the time of delivery. In some cases, lease agreements may include statements and undertakings that do not reflect the actual condition of the leased property. For instance, contractual clauses may require the property to be returned in a painted condition, even though it was not delivered in such condition at the commencement of the lease. As a general rule, the leased property must be vacated and returned in the same condition as it was received. At the stage of termination and handover, various disputes may arise between the parties, both in relation to contractual obligations and to damages and wear & tear occurring in the property during the lease term.

B. Determination of Liability for Defects Arising at and after the Delivery of the Leased Property

Article 304 of the Turkish Code of Obligations reads as follows: *"In the event that the leased property is delivered with material defects, the lessee may rely on the provisions concerning the default of the obligor or the lessor's liability arising from subsequent defects in the leased property. Where the leased property is delivered with non-material defects, the lessee may, instead, rely on the provisions governing the lessor's liability for defects arising after delivery of the leased property."*

Defects that render the leased property impossible to use or operate in accordance with the purpose intended under the lease agreement, or that significantly reduce such use or operation, are considered material defects. For example, wastewater from an upper-floor apartment leaking into the shop below (decision, dated 08.06.1959 and numbered 3848/3237, of the 3rd Civil Chamber of the Court of Cassation), the infestation of woodworms or rats that cannot be eliminated by ordinary means (BGE 31 II 603), the failure of the leased property to generate the yield or income promised by the lessor or expected from the purpose of the contract, and the refusal to grant a license due to a gubernatorial prohibition for premises leased for solid fuel trading activities (decision, dated 06.12.1994 and numbered 10123/10964, of the 3rd Civil Chamber of the Court of Cassation) are all considered material defects. [1]

In the case of material defects existing in the leased property or material defects arising thereafter, the lessee may, pursuant to Article 304 of the Turkish Code of Obligations, rely on the provisions governing the default of the obligor or the lessor's liability arising from subsequent defects in the leased property. Accordingly, under Articles 306–308 of the Turkish Code of Obligations, the lessee is entitled to request the elimination of the defect, terminate the lease agreement, demand a reduction in the rent, or claim compensation for damages.

"Article 301 of the Turkish Code of Obligations Nr. 6098 provides that the lessor is obliged to deliver the leased property in a condition suitable for the use intended under the lease agreement and to maintain it in such condition throughout the term of the contract. This obligation is not discharged merely by a physical handover of the property. The lessor is required to deliver the property in a condition appropriate for the purpose for which the lessee has leased it.

Pursuant to Article 304 of the Turkish Code of Obligations, in the event that the leased property is delivered with material defects, the lessee may rely on the provisions concerning the default of the obligor or the lessor's liability arising from subsequent defects in the leased property.

Where the property is delivered with non-material defects, the lessee may instead rely on the provisions governing the lessor's liability for defects arising after delivery. Under Article 305 of the Turkish Code of Obligations, where the leased property is defective, the lessee may request the elimination of the defects, a proportional reduction in the rent, or compensation for damages. In cases where the defects in the leased property result in impossibility of use or a significant reduction in usability, the lessee is expected to act in accordance with Articles 123 and 125 of the Turkish Code of Obligations and notify the lessor of the defect within a reasonable period." [2]

II. THE LESSEE'S OBLIGATION TO USE THE LEASED PROPERTY WITH DUE CARE

A. The Lessee's Duty of Care under Article 316 of the Turkish Code of Obligations

The obligations of the lessee are set out under Articles 313 et seq. of the Turkish Code of Obligations. One of the lessee's most fundamental obligations is the duty to use the leased property with due care and in accordance with the lease agreement. The resolution of disputes arising from the lessee's failure to use the leased property in compliance with the agreement is governed by Article 316. Accordingly;

"The lessee is obliged to use the leased property with due care and in accordance with the lease agreement, and to show due respect to the persons residing in the immovable property in which the leased property is situated, as well as to the neighbors.

If the lessee breaches this obligation, the lessor, in the case of residential and roofed workplace leases, shall serve a written notice granting the lessee a period of at least thirty days to remedy the breach and stating that the lease agreement will be terminated if the breach is not eliminated within such period. In other lease relationships, however, the lessor may terminate the lease agreement immediately by written notice without first serving any prior warning or notice on the lessee.

In residential and roofed workplace leases, where the lessee intentionally causes substantial damage to the leased property, where it is evident that granting a period for elimination would be futile, or where the lessee's breach of this obligation becomes intolerable for the lessor, the persons residing in the same immovable property, or the neighbors, the lessor may terminate the lease agreement immediately by written notice."

Where the lessee uses the leased property in violation of the provisions of this Article, the lessor is entitled to terminate the lease agreement by serving the notices, as required.

B. Wear & Tear Resulting from the Lessee's Ordinary Use of the Leased Property

"There is no dispute between the parties regarding the existence of a lease agreement with a term of one year, commencing on 01/05/2009. Pursuant to Article 316 of the Turkish Code of Obligations Nr. 6098 (Article 256 of the former Code of Obligations), the lessee is obliged to use the leased property with utmost care, and under Article 334 of the same Code (Article 266 of the former Code of Obligations), to return it to the lessor in the condition in which it was received, upon termination of the agreement. However, the lessee shall not be liable for ordinary wear & tear resulting from proper use in accordance with the contract but shall be solely liable for any damage and loss arising from improper use. Given the duration and purpose of the defendant's use of the leased property, it is beyond doubt that some wear and deterioration resulting from ordinary use would occur. Indeed, in the present case, since it is understood that the deterioration in the leased property stems from ordinary use, it has been found inappropriate to include in the compensable damages the rental amount corresponding to the 15-day period required for the repair of such defects, and to order its recovery from the defendant." [3]

As per the case law of the Court of Cassation, the lessee may not be held liable for wear & tear resulting from ordinary use. For instance, the lessee shall not be held responsible for deterioration arising from normal use, such as fading of wall paint, usage marks on parquet flooring, or wear of faucets. Liability may arise only in cases where the damage exceeds ordinary use.

"Pursuant to Article 316 of the Turkish Code of Obligations Nr. 6098, the lessee is obliged to use the leased property with due care, and under Article 334 of the same Code, to return it to the lessor in the condition in which it was received, upon termination of the agreement. However, the lessee shall not be liable for wear & tear or deterioration resulting from use in accordance with the contract but shall be solely liable for any damage and loss arising from improper use. It is observed that Article 10 of the lease agreement provides that the lessee is authorized, at all times, to carry out any functional or aesthetic decoration, renovation, and alteration works necessary for the conduct of its business activities at the leased premises, and that the lessor is deemed to have given prior consent thereto, such that no further permission or approval is required.

The parties have also agreed that, upon termination of the lease or prior thereto when vacating the premises, the lessee shall be free to remove the additions and decorations, either partially or wholly, it has made to the leased premises. It is further stipulated that the lessee shall not be entitled to claim compensation for any decorations not removed, and that the lessor shall not insist on the removal of such items or the restoration of the premises to their original condition.

This clause grants the lessee the authority to carry out renovations and decorative works on the leased premises in accordance with the intended use of the property, and further permits the removal and taking away of such renovations and decorations upon vacating the premises. However, the court incorrectly interpreted this provision and rendered its decision on the basis that certain damages identified under the expert's report constituted alterations made in line with the intended use of the property, which is not correct.

The court should have, based on the findings set out under the inspection report, commissioned a detailed examination by a court-appointed expert in the relevant field to determine, for each item of damage identified under the inspection report, whether it resulted from misuse or from ordinary use.

In the event that the damage is found to have arisen from misuse, taking into account the contractual provisions, a reassessment of the costs should have been conducted based on the prevailing market unit prices as of the date of evacuation, and also from the items determined to require replacement, a deduction for depreciation (wear & tear) should have been made, and a reviewable expert report should have been obtained.

A decision should have been rendered in accordance with the outcome of such examination. Instead, the judgment was rendered on the basis of an incomplete examination, which is not correct." [4]

III. OBLIGATION TO VACATE AND RETURN THE LEASED PROPERTY

The Obligation to Return under Article 334 of the Turkish Code of Obligations

Pursuant to Article 334 of the Turkish Code of Obligations, the lessee is obliged to return the leased property in the condition in which it was received, upon expiry of the lease agreement. In practice, the most common disputes arise from allegations that the leased property has not been returned in the same condition as it was delivered at the time of handover. For instance, disputes frequently occur where the property was delivered with newly painted walls, yet is not returned in a similarly painted condition upon vacation of the premises.

"Under its statement of claim, the claimant alleged that the leased property had been delivered with satin paint and that the defendant repainted it using plastic paint. Under the inspection report referred to hereinabove, painting costs were also included among the items of damage. In this respect, the claimant is deemed to have accepted that the defendant carried out repainting during the tenancy. Moreover, requiring the leased property, which was already painted, to be repainted is contrary to the ordinary course of life. On the other hand, it is not stipulated under the contract that the leased property was delivered to the defendant with satin paint. The claimant has also failed to prove this allegation. Pursuant to Article 266/1 of the Turkish Code of Obligations, the lessee is obliged to return the leased property in the same condition as it was received. The lessee shall not be held liable for deterioration or changes resulting from ordinary use.
In view of the parties' acknowledgment that the leased property was repainted by the defendant, it cannot be concluded that the defendant had an obligation to deliver the premises in a painted condition upon vacating and handover. In this respect, the court should have dismissed the claim with regard to the item concerning painting costs. However, instead of rejecting the claim, the court rendered a judgment upholding it, which is not considered correct. Accordingly, the decision must be reversed." [5]

Accordingly, save for cases where the contract expressly stipulates that the dwelling was delivered in a painted condition and must likewise be returned in a painted condition upon vacation, it shall not be possible to require that the dwelling be repainted under the obligation of restitution in kind due to wear & tear arising from ordinary use at the time of vacation.

IV. BURDEN OF PROOF AND THE IMPORTANCE OF INSPECTION REPORTS IN DISPUTES

One of the most important issues in disputes arising from defects and damage in lease relationships is the proof of the existence and nature of the alleged damage. In practice, lessors frequently seek compensation for damages allegedly occurring in the immovable property after vacating, whereas lessees argue that such damages constitute ordinary wear & tear resulting from normal use. At this point, delivery reports drawn up at the time of handover, photographic records, expert reports, and inspection reports prepared upon vacation constitute significant evidence. In particular, the determination of the condition in which the leased property was delivered through written and visual evidence plays a decisive role in resolving subsequent disputes. Otherwise, the burden of proof becomes more difficult to discharge for the parties, and the litigation process may be prolonged.

V. CONCLUSION

Defects, damage, and deterioration arising in the processes of delivery, use, and vacation of the leased property constitute some of the most frequently disputed issues in practice under the scope of lease relationships. In this context, as a rule, the lessor is liable for material defects existing at the time of delivery or those arising thereafter.

Accordingly, the lessee is entitled to request the elimination of the defect, to demand a reduction in the rent, to claim compensation for damages, or, where the relevant conditions are met, to terminate the contract. Conversely, the lessee is obliged to use the leased property in accordance with the contract and with due care, and may be held liable for any damage arising from misuse and from use exceeding ordinary wear & tear. On the other hand, as per the case law of the Court of Cassation, the lessee is liable only for damage and loss resulting from misuse, and may not be held responsible for depreciation and wear & tear occurring over time due to the ordinary use of the immovable property. Therefore, in disputes arising at the stage of vacation, it is necessary to assess, in light of the specific circumstances of the case, whether the changes that have occurred remain within the limits of ordinary use.

However, in practice, a significant majority of disputes arise from the determination of whether the changes occurring in the leased property constitute ordinary wear & tear resulting from normal use or damage arising from the lessee's negligent use.

For this reason, each case must be assessed in light of the respective specific circumstances, expert examinations must be conducted in a technical and reviewable manner, and the parties should act by documenting the delivery and vacation processes. These measures are of crucial importance for ensuring legal certainty.

In conclusion, in order to prevent disputes arising from lease relationships, it is of significant importance that the condition of the leased property at the time of delivery be recorded in detail under an inspection report, and that the parties' rights and obligations be clearly set out under the lease agreement.

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ANOTHER REGIONAL COURT OF APPEAL ESTABLISHED IN TÜRKİYE!

By the decision of the General Assembly of Judges and Prosecutors dated 06.05.2026, the Regional Court of Appeal of Malatya has been established. The Regional Court of Appeal of Malatya is scheduled to become operational on 01.09.2026.

The judicial jurisdiction of the Regional Court of Appeal of Malatya has been determined by the General Assembly of Judges and Prosecutors. Accordingly, the jurisdiction of the Regional Court of Appeal of Malatya will cover the following provinces:

- Malatya
- Adıyaman
- Elazığ
- Tunceli

Following this decision, Adıyaman and Malatya have been removed from the jurisdiction of the Regional Court of Appeal of Gaziantep, and Elazığ has been removed from the jurisdiction of the Regional Court of Appeal of Diyarbakır, and Tunceli has been removed from the jurisdiction of the Regional Court of Appeal of Erzurum. These provinces have been incorporated into the jurisdiction of the newly established Regional Court of Appeal of Malatya. The jurisdictions of the other Regional Courts of Appeal remain unchanged and continue to apply as before.

Upon the commencement of operations of the Regional Court of Appeal of Malatya, the jurisdiction of the provinces listed above will be transferred to this newly established court. The Regional Court of Appeal of Malatya is scheduled to become operational on 01.09.2026. As of September 1, 2026 onwards, the aforementioned provinces will fall under the jurisdiction of the newly established Regional Court of Appeal.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/05/20260507-1.pdf***

LAW AMENDMENT INTRODUCING A 15-YEAR AGE LIMIT FOR SOCIAL MEDIA USE PUBLISHED IN THE OFFICIAL JOURNAL!

Law Nr. 7578, published in the Official Journal in May 2026, introduced significant obligations for social network providers and digital gaming platforms. The new regulation draws particular attention for its provisions aimed at strengthening the protection of children in digital environments.

Under the Law, social media platforms are required to establish age verification systems, with the aim of restricting access for children under the age of 15. In addition, the regulation envisages the development of safer and more segregated usage models for users in the 15–18 age group.

For digital gaming platforms, parental control mechanisms and child-protection measures are made mandatory. Platforms that fail to comply with the regulations may be subject to administrative sanctions, including advertising bans and bandwidth throttling.

These amendments are regarded as among the most comprehensive recent reforms in terms of expanding the responsibilities of digital platforms under Law Nr. 5651.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/05/20260501-1.htm***

EFFECT OF REVERSAL OF THE UNDERLYING JUDGMENT ON ANNULMENT OF DISPOSITION ACTIONS IN COURT OF CASSATION CASE LAW

I. INTRODUCTION

In the case law of the Court of Cassation, actions for annulment of disposition are defined as a type of action whereby assets and rights, or the values replacing them, which have been removed from the debtor's estate with the intent to prejudice the creditor, are restored to the debtor's estate through a lawsuit brought by the creditor whose rights have been adversely affected by such disposition, for the purpose of enabling the recovery of the claim [1]. In addition to the general procedural requirements for actions, certain specific conditions must also be satisfied for an action for annulment of disposition to be admissible.

One such condition is the existence of a finalized debt enforcement proceeding against the debtor. In actions for annulment of disposition, the absence of this condition constitutes a procedural deficiency that may be remedied during the course of proceedings. However, since such actions are accessory to debt enforcement proceedings, the case will become moot if the debt is paid during the proceedings or if the debt enforcement proceedings initiated against the debtor are discontinued [2].

In practice, in debt enforcement proceedings based on a final judgment, uncertainties arise as to the effect of the annulment or reversal of the underlying judgment, following appellate or cassation review, on actions for annulment of disposition. At times, courts of first instance, due to an erroneous legal assessment, conclude that the requirement of a finalized debt enforcement proceeding no longer exists on the ground that the underlying judgment has been reversed, and accordingly dismiss actions for annulment of disposition for lack of a procedural condition. However, the annulment or reversal of the underlying judgment in debt enforcement proceedings based on a final judgment does not eliminate the debt enforcement proceeding itself; it merely suspends the debt enforcement measures. Therefore, in such cases, the debt enforcement proceeding continues to exist in legal terms, and the action for annulment of disposition does not become moot.

Under this article, the requirement of a finalized debt enforcement proceeding in actions for annulment of disposition will be examined first. Subsequently, the effects of the annulment or reversal of the underlying judgment in debt enforcement proceedings based on a final judgment on the debt enforcement proceedings will be assessed within the framework of Article 40 of the Debt Enforcement and Bankruptcy Law. Finally, the effects of the suspension of debt enforcement proceedings on actions for annulment of disposition will be analyzed in light of the case law of the Court of Cassation.

II. FINALIZED DEBT ENFORCEMENT PROCEEDING AS A PROCEDURAL REQUIREMENT IN ACTIONS FOR ANNULMENT OF DISPOSITION

An action for annulment of disposition is set out under Articles 277 et seq. of the Debt Enforcement and Bankruptcy Law. The purpose of this action is to render ineffective, in relation to the claimant creditor, dispositions made by the debtor with the intent to defraud creditors.

In this respect, an action for annulment of disposition does not result in absolute nullity under substantive law; rather, it merely grants the claimant creditor the right to pursue compulsory debt enforcement against the asset or right that is the subject of the disposition.

In order for an action for annulment of disposition to be admissible, certain specific procedural requirements must be satisfied. According to the established case law of the Court of Cassation, the specific conditions for such actions are the existence of a genuine claim, the existence of a finalized debt enforcement proceeding against the debtor, and the requirement that the contested disposition must have been made after the debt arose.

Decision, bearing the Basis number 2022/58, the Decision number 2022/1818 and dated 21.12.2022, of the General Assembly of Civil Chambers of the Court of Cassation

"In order for an action for annulment of disposition to be admissible, in addition to the general procedural requirements applicable to all actions under Article 114 of the Code of Civil Procedure, certain specific procedural requirements must also be met. As also stated under the decisions of the General Assembly of Civil Chambers of the Court of Cassation, dated 23.10.2013 and bearing the Basis number 2013/17-224 and the Decision number 2013/1478, and dated 30.03.2016 and bearing the Basis number 2014/17-843 and the Decision number 2016/433, and dated 15.11.2017 and bearing the Basis number 2017/17-2361 and the Decision number 2017/1371, these specific conditions are the existence of a genuine claim of the claimant, the existence of a finalized debt enforcement proceeding against the debtor, and the requirement that the contested disposition must have been made after the debt arose." [3]

Pursuant to the aforementioned case law, there must be a finalized debt enforcement proceeding against the debtor. This is because an action for annulment of disposition is not an independent claim action, but rather a type of action that is accessory to debt enforcement proceedings. However, the fact that the existence of a finalized debt enforcement proceeding constitutes a procedural requirement does not mean that such condition must exist prior to the filing of the action for annulment of disposition, nor that any deficiency in this requirement cannot be remedied during the course of proceedings.

According to the case law of the Court of Cassation, it is accepted that debt enforcement proceedings may even be initiated after the filing of an action for annulment of disposition, provided that they are finalized during the course of the proceedings. Accordingly, the absence of a finalized debt enforcement proceeding, or even the absence of any debt enforcement proceeding at the time the action is filed, does not constitute grounds for dismissal of the case [4].

Indeed, according to the case law of the Court of Cassation, the existence of a finalized debt enforcement proceeding is regarded, within the scope of Article 115/2 of the Code of Civil Procedure Nr. 6100, as a procedural deficiency that may be remedied at a later stage:

Decision, bearing the Basis number 2014/843, the Decision number 2016/433 and dated 30.03.2016, of the General Assembly of Civil Chambers of the Court of Cassation

"However, as also stated in Article 115(2) of the Code of Civil Procedure, where a remediable procedural defect exists, the action shall not be dismissed outright; instead, the court must grant a period of time for the defect to be cured. In such cases, if the procedural requirement is of a curable nature, the court should first grant time for its completion, and if the deficiency is remedied within the prescribed period, the court shall proceed to examine the merits of the case and render a decision accordingly. Otherwise, the case shall be dismissed on procedural grounds.

As also stated above in both practice and doctrine, the existence of a finalized debt enforcement proceeding against the debtor is accepted as a procedural requirement in actions for annulment of disposition. Due to this nature, the absence of such procedural requirement may also be remedied during the course of proceedings concerning the annulment action. " [5]

As can be seen, although the existence of a finalized debt enforcement proceeding is accepted as a procedural requirement, it is possible for this requirement to be fulfilled during the course of the proceedings.

III. THE EFFECT OF THE ANNULMENT OR REVERSAL OF THE UNDERLYING JUDGMENT ON DEBT ENFORCEMENT PROCEEDINGS BASED ON A FINAL JUDGMENT

Debt enforcement proceedings based on a final judgment are set out under Articles 24 to 41 of the Debt Enforcement and Bankruptcy Law Nr. 2004 and constitute a type of debt enforcement proceedings initiated on the basis of a court judgment or documents deemed to have the force of a judgment. In this type of proceeding, since the claim has already been established by a court decision, the debtor has no right to object to the debt.

As a rule, it is not required for the judgment to have become final in order to initiate debt enforcement proceedings based on a judgment. Pursuant to Article 443 of the Code of Civil Procedure Nr. 1086, which remains applicable by reference under Provisional Article 3 of the Code of Civil Procedure Nr. 6100, the mere fact that a judgment has been appealed does not, as a rule, stay its enforcement, unless a decision for suspension of debt enforcement proceedings is granted. [6]

After a judgment subject to debt enforcement proceedings is pursued without having become final, it is possible that the underlying judgment may subsequently be annulled or reversed as a result of appellate or cassation review. In such cases, Article 40 of the Debt Enforcement and Bankruptcy Law must be applied.

Article 40/1 of the Debt Enforcement and Bankruptcy Law: The annulment of a judgment by a regional court of appeal or its reversal on cassation suspends debt enforcement proceedings at the point they have reached.

As is clearly understood from the wording of the provision, a decision of reversal or annulment does not eliminate debt enforcement proceedings based on a judgment; it merely suspends the debt enforcement measures at the stage they have reached. In other words, a reversal decision does not retroactively render the debt enforcement proceedings void; it only temporarily prevents the continuation of debt enforcement actions. Indeed, the case law of the Court of Cassation also expressly states that the reversal of the underlying judgment does not result in the annulment of debt enforcement proceedings based on a judgment:

Decision, bearing the Basis number 2018/7067, the Decision number 2018/12270 and dated 27.11.2018, of the 12th Civil Chamber of the Court of Cassation

"In the event that a judgment is reversed while debt enforcement proceedings are ongoing, debt enforcement measures shall be suspended at the stage they have reached (Art. 40/1 of the Debt Enforcement and Bankruptcy Law). Accordingly, the reversal of the judgment merely results in the suspension of enforcement, without annulling the debt enforcement proceedings themselves." In the case of partial reversal and partial affirmation of the judgment, debt enforcement measures shall be suspended with respect to the reversed part, whereas debt enforcement proceedings shall continue with respect to the affirmed part. From another perspective, if the court, following the reversal decision, renders a new judgment in compliance therewith, the creditor may again seek enforcement of this new judgment without waiting for it to become final.

The creditor may request enforcement of the new judgment within the pending debt enforcement file, or alternatively, there is no obstacle to initiating a new debt enforcement proceeding based on the judgment. In the event that the court renders a decision of resistance against the reversal judgment, the reversal decision becomes ineffective, and consequently the suspension of enforcement arising from the reversal is also lifted. In such a case, the creditor may request the continuation of the stayed debt enforcement proceedings based on the judgment under the same enforcement file. If the court, complying with the reversal decision, renders a new judgment consistent with the nature and scope of the reversed decision, and the creditor seeks enforcement of this new judgment within the pending debt enforcement file, there is no need to reissue a debt enforcement order to the debtor. Otherwise, where the court renders a new judgment after reversal and the subject matter of the claim and its accessories are altered, it becomes mandatory to issue a new debt enforcement order to the debtor under the pending debt enforcement file, beyond the scope of the original debt enforcement order." [7]

In the aforementioned decision, it is clearly stated that a reversal decision does not terminate debt enforcement proceedings, but merely suspends them, and that the legal existence of the proceedings is preserved.

Furthermore, the decision sets out, in the form of alternative scenarios, the manner in which debt enforcement proceedings should continue following a reversal decision.

Accordingly, in light of Article 40 of the Debt Enforcement and Bankruptcy Law and the case law of the Court of Cassation, it is not possible to interpret the annulment or reversal of the underlying judgment in debt enforcement proceedings based on a final judgment as meaning that the debt enforcement proceedings have not become final or have been annulled. In such cases, the debt enforcement proceedings merely remain suspended, and they continue to produce legal effects depending on the outcome of the proceedings conducted following the reversal.

IV. THE EFFECT OF THE SUSPENSION OF DEBT ENFORCEMENT PROCEEDINGS BASED ON A JUDGMENT ON ACTIONS FOR ANNULMENT OF DISPOSITION

In actions for annulment of disposition, the determining factor in terms of the procedural requirement of a finalized debt enforcement proceeding is the existence of an ongoing and finalized debt enforcement proceeding. As long as the debt enforcement proceeding continues to exist, the specific procedural requirement for an action for annulment of disposition is deemed to be satisfied. Moreover, since the requirement of a finalized debt enforcement proceeding constitutes a curable procedural defect within the meaning of Article 115(2) of the Code of Civil Procedure, this deficiency may be remedied during the course of the proceedings even if a finalized debt enforcement proceeding does not exist at the time of filing.

For these reasons, in the event that the underlying judgment under debt enforcement proceedings based on a final judgment is reversed or annulled, the suspension of debt enforcement proceedings does not eliminate the “finalized debt enforcement proceeding” requirement, which constitutes a specific procedural condition for actions for annulment of disposition, and the case does not become moot.

Indeed, the case law of the Court of Cassation on this matter is consistent. According to the Court of Cassation, the reversal of the judgment does not eliminate the debt enforcement proceedings; it merely suspends debt enforcement measures pursuant to Article 40 of the Debt Enforcement and Bankruptcy Law. Accordingly, since it cannot be said that the requirement of a finalized debt enforcement proceeding is eliminated on the ground that the judgment forming the basis of the debt enforcement proceedings has been annulled or reversed, rendering a decision to dismiss the action on the contrary ground is contrary to law.

Decision, bearing the Basis number 2015/3577, the Decision number 2017/11571 and dated 12.12.2017, of the 17th Civil Chamber of the Court of Cassation

“In this present case, the debt subject to debt enforcement proceedings relates to the attorney’s fee awarded in favor of the plaintiffs in the judgment rendered by the ... Commercial Court of First Instance of …….., bearing the Basis number 2011/10 and the Decision number 2011/84, and debt enforcement proceedings were initiated based on this judgment in the form of debt enforcement proceedings based on a final judgment. The debt enforcement proceedings became final in accordance with the provisions of the Debt Enforcement and Bankruptcy Law, and during the attachment carried out at the debtor’s address on 19.03.2012, no attachable assets were found.

The court, however, dismissed the action on the ground that the judgment of the ... Commercial Court of First Instance of ……, bearing the Basis number 2011/10 and the Decision number 2011/84, had been reversed, and therefore the debt enforcement proceedings were not final. However, under debt enforcement proceedings based on a judgment, the reversal of the underlying judgment does not result in the non-finalization or annulment of the debt enforcement proceedings; rather, pursuant to Article 40 of the Debt Enforcement and Bankruptcy Law, debt enforcement proceeding is merely suspended. The judgment becomes final in accordance with the outcome rendered upon reversal, and if it is established that the creditor has no claim, any amounts collected from the debtor during the debt enforcement proceedings shall be refunded. Moreover, according to the case file and the UYAP (National Judiciary Informatics System) records, the judgment of the ... Commercial Court of First Instance of ……, bearing the Basis number 2011/10 and the Decision number 2011/84, which forms the basis of the debt enforcement proceedings, was reversed on jurisdictional grounds by the 11th Civil Chamber of the Court of Cassation in its decision numbered 2012/2238, on the basis that the competent court was the Labor Court. Following the reversal, the ... Labor Court of ….., in its judgment, bearing the Basis number 2014/796 and the Decision number 2015/22, partially upheld the claim for pecuniary damages and again awarded attorney’s fees in favor of the plaintiffs for the dismissed portion. This judgment was subsequently reversed by the 9th Civil Chamber of the Court of Cassation in its decision, bearing the Basis number 2015/9903 and the Decision number 2017/950, in respect of the claim for non-pecuniary damages; however, the appeal regarding the pecuniary damages, namely the damages giving rise to the plaintiffs’ claim, was rejected, and the request for rectification of the decision was also dismissed. In this case, it has also been established that the plaintiffs are entitled to attorney’s fees. The court should have examined the merits of the case, as the procedural prerequisites were satisfied, and rendered a decision in accordance with the outcome of such examination. However, rendering a decision in writing without taking into account Article 40 of the Debt Enforcement and Bankruptcy Law and the other relevant circumstances is contrary to procedural and substantive law.”

Nevertheless, in practice, it is accepted that the status of the judgment forming the basis of debt enforcement proceedings should be treated as a preliminary issue to be awaited under Article 165 of the Code of Civil Procedure.

Decision, bearing the Basis number 2019/1440, the Decision number 2020/1747 and dated 11.12.2020, of the 5th Civil Chamber of the Regional Court of Appeal of Izmir

“In order for such actions to be heard, in addition to other procedural requirements, the debt enforcement proceedings against the debtor must have become final. In this present case, the debt subject to debt enforcement proceedings relates to the claim arising from the judgment, bearing the Basis number 2014/498 and the Decision number 2015/1089, of the 1st Commercial Court of First Instance of Izmir, and debt enforcement proceedings were initiated on the basis of this judgment in the form of debt enforcement proceedings based on a judgment.

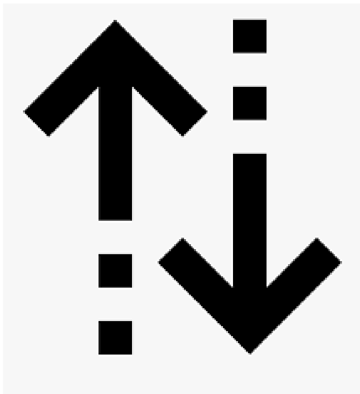
The debt enforcement proceedings became final in accordance with the provisions of the Debt Enforcement and Bankruptcy Law. However, the court dismissed the action on the ground that the underlying judgment had been reversed and, therefore, the debt enforcement proceedings were not final. However, in debt enforcement proceedings based on a judgment, the reversal of the underlying judgment does not result in the non-finalization or annulment of the debt enforcement proceedings; pursuant to Article 40 of the Debt Enforcement and Bankruptcy Law, debt enforcement proceeding is merely suspended. The judgment becomes final in accordance with the outcome rendered upon reversal, and if it is established that the creditor has no claim, any amounts collected from the debtor during enforcement shall be refunded. In this respect, the relevant file should have been treated as a preliminary issue and awaited, and if the existence of a recoverable claim were to be established as a result of the proceedings, the court should have proceeded to examine the merits of the case under Articles 277 et seq. of the Debt Enforcement and Bankruptcy Law. Instead, rendering a decision based on an erroneous assessment in written form is contrary to procedural and substantive law. (Decision, bearing the Basis number 2014/21254 and the Decision number 2017/2725, of the 17th Civil Chamber of the Court of Cassation)"

When the aforementioned decisions are assessed together, it is clearly seen that a reversal or annulment decision does not eliminate the requirement of a finalized debt enforcement proceeding in actions for annulment of disposition. In such cases, the court is required to treat the proceedings concerning the judgment underlying the enforcement as a preliminary issue to be awaited, and, if the existence of a recoverable claim is established, to adjudicate the merits of the case accordingly.

If it is conclusively established as a result of the proceedings following the reversal that no claim exists, restitution of enforcement will come into question and the action for annulment of disposition will become moot.

Conversely, if the creditor's claim is confirmed at the end of the proceedings, the court must proceed to examine the merits of the action for annulment of disposition and render a decision accordingly.

Accordingly, rendering a decision dismissing the action on the sole ground that the requirement of a finalized debt enforcement proceeding has ceased to exist due to the reversal of the judgment forming the basis of debt enforcement proceedings is clearly contrary to Article 40 of the Debt Enforcement and Bankruptcy Law, Article 115/2 of the Code of Civil Procedure, and the established case law of the Court of Cassation.



V. CONCLUSION

An action for annulment of disposition is a type of action that renders ineffective, in relation to the creditor, dispositions carried out by the debtor with the intent to prejudice the creditor. The specific procedural requirement of "the existence of a finalized debt enforcement proceeding against the debtor", which is necessary for such an action to be heard, is also accepted in the case law of the Court of Cassation as being of a nature that may be fulfilled during the course of proceedings, even if it is not present at the time the action is filed.

Furthermore, in debt enforcement proceedings based on a judgment, the annulment or reversal of the underlying judgment does not eliminate the debt enforcement proceedings pursuant to Article 40 of the Debt Enforcement and Bankruptcy Law; it merely suspends debt enforcement measures at the stage they have reached. Therefore, the fact that the judgment forming the basis of enforcement has been reversed or annulled does not remove the procedural requirement of a finalized debt enforcement proceeding in relation to an action for annulment of disposition brought on the basis of such debt enforcement proceedings.

As per the case law of the Court of Cassation, in the event that the underlying judgment in debt enforcement proceedings based on a judgment is reversed, the court is required to treat the proceedings concerning the reversed or annulled judgment as a preliminary issue to be awaited, and, if the existence of the claim is established, to render a decision on the merits accordingly.

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7. Decision, bearing the Basis number 2015/3577, the Decision number 2017/11571 and dated 12.12.2017, of the 17th Civil Chamber of the Court of Cassation

8. Decision, bearing the Basis number 2019/1440, the Decision number 2020/1747 and dated 11.12.2020, of the 5th Civil Chamber of the Regional Court of Appeal of Izmir

PRIOR CONSENT IN EMPLOYMENT CONTRACTS

INTRODUCTION

Labor law is a special branch of law that takes into account the economic and social imbalance of power between employees and employers and contains mandatory provisions designed to protect employees. Due to this protective structure, freedom of contract between the parties is not absolute. In particular, in matters directly affecting employees' fundamental rights, working conditions, and economic interests, the validity of employees' prior consent is subject to certain limitations.

On the other hand, in some cases, employees' prior consent is recognized as legally valid, and the employment relationship is maintained on this basis.

Under employment contracts, consent refers to the employee's prior agreement to a specific practice. However, due to the element of subordination inherent in the employment relationship, it is debatable whether every instance of employee consent is based on free will. For this reason, related applicable regulations, doctrine, and judicial decisions carefully assess in detail the matters in which prior consent may be given and those in which such consent is deemed invalid.

This article examines the circumstances in which an employee may or may not give prior consent within the framework of the Turkish Labor Law Nr. 4857, the Turkish Code of Obligations, Constitutional principles, and the case-law of the Court of Cassation.

I. THE CONCEPT OF CONSENT IN LABOR LAW

Consent refers to an individual's agreement to a specific legal transaction or practice. Under employment law, consent often denotes the employee's prior approval of certain actions to be carried out by the employer within the scope of the employer's managerial authority.

An employee's consent may arise in various forms:

- An explicit clause under the employment contract,
- Provisions of a collective bargaining agreement,
- A subsequent written approval,
- Implied consent manifested through conduct.

However, for consent to be considered valid under employment law, certain conditions must be satisfied:

1. The employee's consent must not be vitiated by defects of will.
2. The consent must be clear and unambiguous.
3. It must not be contrary to mandatory provisions of law.
4. It must not result in a prior waiver of the employee's fundamental rights.
5. It must not infringe upon the employee's personal rights.

Under the principle of employee protection under labor law, consent clauses that produce adverse effects on the employee are interpreted narrowly.

II. CIRCUMSTANCES IN WHICH AN EMPLOYEE MAY GIVE PRIOR CONSENT

A. Consent Regarding Overtime Work and Work on National and Public Holidays

Pursuant to Article 41 of the Turkish Labor Law Nr. 4857, the employee's consent must be obtained in order for overtime work to be performed. The Regulation on Overtime and Excess Working Hours further provides that such consent must be in writing. In practice, employers often include clauses in employment contracts stating that "the employee agrees to perform overtime work when necessary." In the case-law of the Court of Cassation, it is accepted that such general consent clauses do not, by themselves, grant an unlimited right to require overtime work. However, it is possible for the employee to give a general prior consent in principle to overtime work at the outset of the employment relationship.

Nevertheless, the employee may withdraw such consent at a later stage. In addition, mandatory provisions such as:

- the annual 270-hour limit,

- payment of overtime wages,

- compliance with occupational health and safety rules, and

- the protection of mandatory rest periods

may not be derogated from by consent.

Accordingly, an employee may give prior consent to overtime work; however, such consent does not grant the employer an unlimited authority.

A similar approach applies to work on national and public holidays. Pursuant to Article 44 of the Turkish Labor Law Nr. 4857, an employee may be required to work on national and public holidays only with her/his consent.

Such consent may be obtained either in advance through the employment contract or subsequently on a separate basis.

In the case-law of the Court of Cassation, contractual clauses stating that “the employee agrees to work on official holidays when necessary” are generally considered valid. However, such consent produces effects only with respect to the obligation to work; it does not eliminate the employer’s obligation to pay national and public holiday wages.

Accordingly, an employee may give prior consent to work on national and public holidays; however:

- The employee may not waive the right to national and public holiday pay,
- The employee does not lose the right to additional compensation corresponding to such work, and
- The employee may not be subjected to unlimited practices that would entirely eliminate the right to rest.

Accordingly, prior consent included in the employment contract merely constitutes the legal basis for performing the work; it does not eliminate the employee’s entitlement to wages or other employment-related rights. Pursuant to Article 41 of the Turkish Labor Law Nr. 4857, the employee’s consent is required for the performance of overtime work. The Regulation on Overtime and Excess Working Hours further stipulates that such consent must be given in writing.

In practice, employers frequently include clauses in employment contracts stating that “the employee agrees to perform overtime work when necessary.” In the case-law of the Court of Cassation, such general consent clauses are not considered sufficient, on their own, to grant the employer an unlimited right to require overtime work.

However, it is accepted that the employee may, in principle, give prior consent to overtime work at the outset of the employment relationship.

Nevertheless, the employee may withdraw such consent at a later stage. In addition, mandatory provisions such as:

- the annual 270-hour limit,

- payment of overtime wages,

- compliance with occupational health and safety rules, and

- the protection of mandatory rest periods

may not be derogated from by consent. Accordingly, an employee may give prior consent to overtime work; however, such consent does not grant the employer an unlimited authority.

B. Prior Consent to the Working Time Averaging Scheme

Pursuant to Article 63 of the Labor Law, the employee’s consent is required for the application of the working time averaging scheme. Under this system, working hours may be increased in certain weeks and reduced in others, while the average weekly working time is maintained.

The employee may accept the application of the working time averaging scheme either in the employment contract or through a separate instrument. However, the maximum daily working time limit of 11 hours may not be exceeded in any case. Accordingly, prior consent to the working time averaging scheme is, as a rule, considered valid.

C. Consent to the Payment of Wages into a Bank Account

An employee may consent to the payment of wages through a bank account. In fact, in certain workplaces, this method is mandatory under statutory provisions. The employee’s designation of a bank account or the inclusion of a relevant clause in the employment contract is deemed valid.

D. Consent to Electronic Monitoring and Data Processing Practices

With technological developments, employers increasingly use workplace surveillance systems such as CCTV cameras, vehicle tracking systems, email monitoring, and biometric data processing. In these areas, the employee’s explicit consent plays an important role. Pursuant to Personal Data Protection Law Nr. 6698, explicit consent may be required in certain cases for the processing of an employee’s personal data.

Within certain limits, an employee may give consent to practices such as fingerprint recognition systems, vehicle tracking systems, corporate email monitoring, CCTV recording, and the processing of location data. However, any consent given must be specific, explicit, informed, and based on the employee’s free will. Excessive monitoring practices that severely infringe upon the employee’s personal rights may be deemed unlawful even where consent has been obtained.

However, both doctrine and the practice of the Personal Data Protection Authority recognize that, due to the subordinated nature of the employment relationship, explicit consent between employee and employer may not always be based on free will.

For this reason, it is stated that, to the extent possible, personal data processing activities should rely on legal bases other than explicit consent, such as statutory obligations, the performance of a contract, or legitimate interests.

E. Non-Compete Agreement

Non-compete agreements, as set out under the Turkish Code of Obligations, are agreements that provide that the employee shall not engage in certain activities during the term of the employment contract or after its termination. An employee may give prior consent to a non-compete obligation. However, for such consent to be valid, it must satisfy certain requirements:

- It must be made in writing,
- The employer must have a legitimate protectable interest,
- It must be limited in terms of place, time, and subject matter, and
- It must not jeopardize the employee’s economic future.

Otherwise, the court may declare the non-compete clause fully or partially invalid.

F. Consent to Non-Material Changes in Working Conditions

Within the scope of the employer’s managerial authority, the employee may give prior consent to some certain changes. For example, clauses may be included in the employment contract regarding:

- reassignment to a different department,
- assignment to similar duties,
- changes of workplace within the same provincial boundaries, and
- reasonable adjustments in work organization.

However, this authority must be exercised in accordance with the principle of good faith. However, pursuant to Article 22 of the Labor Law Nr. 4857, substantial changes in working conditions are subject to the employee’s written acceptance.

A distinction must be made between changes falling within the scope of the employer's managerial authority and those that constitute material modifications worsening the employee's working conditions. General consent clauses whereby the employee purportedly agrees in advance to all future and unspecified material changes are, in most cases, not considered valid.

III. CIRCUMSTANCES IN WHICH PRIOR EMPLOYEE CONSENT MAY NOT BE VALIDLY GIVEN

A. Prior Waiver of Wage and Severance Entitlements

An employee's right to wages is constitutionally protected. The employee may not waive future wage claims in advance before they arise. For example, provisions such as:

- a prior waiver of overtime pay,
- waiver of national and public holiday pay,
- waiver of annual leave pay,
- acceptance of remuneration below the statutory minimum wage, and
- waiver of severance and notice pay entitlements are invalid.

Pursuant to the mandatory provisions of the Labor Law, an employee may not waive wage-related rights in advance. Such clauses are generally regarded as invalid in the case-law of the Court of Cassation.

B. Waiver of Occupational Health and Safety Measures

An employee may not waive occupational health and safety measures in advance. For example, consent provisions such as:

- agreeing not to use protective equipment,
- undertaking not to object to hazardous working conditions, and
- releasing the employer from liability in the event of a workplace accident are invalid.

Pursuant to the Occupational Health and Safety Law Nr. 6331, the employer's duty of care is mandatory in nature.

The employee's consent does not relieve the employer of liability.

C. Consent to Interventions Seriously Infringing Personal Rights

An employee may not validly consent to practices that seriously infringe upon their personal rights. For example, practices such as:

- continuous audio recording,
- video surveillance of changing rooms,
- excessive monitoring of private life, and
- searches that violate human dignity

are considered unlawful. Since personal rights are protected under the Constitution and the Turkish Civil Code, an employee may not waive such rights without limitation.

D. Exceeding Mandatory Limits on Working Time

An employee may not validly consent to the exceeding of statutory maximum daily or weekly working time limits. For example, practices such as:

- consistently exceeding the 11-hour daily working time limit,
- eliminating rest periods, and
- failing to grant weekly rest days

are unlawful even if the employee's consent has been obtained. Working time regulations in labor law are considered to be of public order nature.

E. Waiver of Trade Union Rights

An employee may not validly give prior binding consent to refrain from joining a trade union or from exercising trade union rights. Within the scope of freedom of association guaranteed by the Constitution, provisions such as:

- a commitment not to join a trade union,
- a prior waiver of the right to strike, and
- a waiver of collective bargaining rights are invalid.

F. Non-Waivability of the Right to Paid Annual Leave

An employee's right to paid annual leave is a reflection of the constitutional right to rest. Pursuant to Article 53 of Labor Law Nr. 4857, the right to paid annual leave may not be waived.

Any advance waiver by the employee of future annual leave entitlements, or acceptance of payment in lieu of leave, is not legally valid. The case-law of the Court of Cassation also emphasizes the public order nature of the right to annual leave.

IV. PRIOR CONSENT IN THE CASE-LAW OF THE COURT OF CASSATION

The general tendency in the case-law of the Court of Cassation is to interpret prior employee consent narrowly, due to the employee's economic dependency. In particular, the Court of Cassation frequently regards as invalid:

- clauses constituting general terms and conditions,
- unilateral provisions favoring the employer, and
- contractual terms restricting the employee's fundamental rights.

Decision, bearing the Basis number 2013/21489 and the Decision number 2014/5547, of the 7th Civil Chamber of the Court of Cassation

"Where the employer reinstates the employee, the employment relationship is deemed to have continued without interruption; therefore, no entitlement arises to payment in lieu of unused annual leave. Any amounts previously paid to the employee in respect of unused annual leave may also be reclaimed by the employer. Since Article 53 of Law Nr. 4857 stipulates that the right to paid annual leave cannot be waived, it would also be incorrect to treat previously paid leave compensation as corresponding to unused annual leave in the event that the employee returns to work following reinstatement."

Decision, bearing the Basis number 2020/5440 and the Decision number 2021/2876, of the 9th Civil Chamber of the Court of Cassation

"The defendant employer argued that, pursuant to the 15th and 16th collective bargaining agreements relied upon as grounds for termination, an employee convicted of an infamous offence could not be re-employed, and therefore no severance pay was due as a result of the termination. However, it is observed that the relevant provisions of the collective bargaining agreements concern termination and re-employment, and that no clause stipulating the non-payment of severance pay to the employee is included. Moreover, collective bargaining agreements cannot contain provisions contrary to mandatory provisions of law. Only relative mandatory provisions—i.e., rules laid down in favor of the employee—may be derogated from through collective agreements to the extent that such derogation benefits the employee. In this context, a provision in a collective bargaining agreement stipulating that severance pay shall not be paid in the event of a conviction for an offence committed outside the workplace would be contrary to mandatory statutory provisions and therefore invalid."

By contrast, in reasonable practices required by the organization of work, the employee's prior consent may be regarded as valid.

Decision, bearing the Basis number 2011/12029 and the Decision number 2013/11935, of the 9th Civil Chamber of the Court of Cassation

"Accordingly, national and public holidays consist of 1 January, 23 April, 19 May, and 30 August, as well as the religious holidays. The Ramadan Feast lasts three and a half days, commencing at 13:00 on the eve of the holiday, and the Eid al-Adha lasts four and a half days, also commencing at 13:00 on the eve of the holiday.

The national holiday period begins at 13:00 on 28 October and continues throughout 29 October, constituting a one-and-a-half-day holiday. Pursuant to Article 2 of Law Nr. 2429, as amended by Law Nr. 5892, 1 May is also recognized as a public holiday. Whether the employee will work on national and public holidays may be determined by a collective bargaining agreement or an employment contract."

The Court of Cassation is observed to adopt, in particular, the following principles:

1. the prohibition of interpretation to the detriment of the employee,
2. the principle of employee protection,
3. the supremacy of mandatory legal provisions,
4. the principle of proportionality, and
5. the principle of good faith.

For this reason; the scope, nature, and effects of consent on the employee are assessed separately in each individual case. A common point in the Court of Cassation's decisions is that, due to the employee's economic dependency on the employer, prior consent is not regarded as absolutely valid. In particular, the Supreme Court subjects clauses that result in a prior waiver of the employee's fundamental rights, as well as contractual terms qualifying as standard terms and conditions, to strict scrutiny.

CONCLUSION

The issue of prior employee consent is one of the areas in which the balance between the principle of employee protection and freedom of contract in labor law is most clearly felt. In labor law, in order to protect fundamental rights, it is not considered permissible for employees to waive certain rights in advance. In particular, consent given in relation to wages, annual leave, severance pay, occupational health and safety, and personal rights is often regarded as invalid. By contrast, in matters concerning work organization, prior consent given by the employee may produce legal effects, provided that it is proportionate and reasonable.

The case-law of the Court of Cassation likewise generally adopts the principle of interpretation in favor of the employee and subjects consents given by employees to strict scrutiny due to their economic dependency. In conclusion, when assessing the validity of consent clauses in employment contracts, not only the parties' intentions but also the mandatory nature of labor law, the principle of employee protection, proportionality, and the protection of fundamental rights must be taken into account collectively. In particular, with the increasing digitalization of work, the expansion of remote working models, and the widespread use of data processing practices, the scope of the concept of consent in the employment relationship is gradually broadening. For this reason, the question of whether the employee's free will is genuinely formed is likely to remain one of the most intensely debated issues in both legal scholarship and judicial decisions in the coming period.

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CONSTITUTIONAL COURT OF TÜRKİYE ANNULS CIVIL PROCEDURE CODE PROVISION: RULE BLOCKING CASSATION AFTER APPEAL FOUND UNCONSTITUTIONAL!

The decision of the Constitutional Court of Türkiye, dated 26/02/2026 and bearing the Basis number 2026/49 and the Decision number 2026/48, published in the Official Journal dated Thursday, 21 May 2026 and bearing the issue number 33260, annulled the provision set forth in Article 362(1)(a) of the Code of Civil Procedure numbered 6100, which reads as follows: "*Decisions concerning cases whose amount or value does not exceed forty thousand Turkish Lira (inclusive).*"

The annulment applies specifically with respect to situations where "*the regional appeal has been partially or fully upheld*", thereby finding the exclusion from cassation review unconstitutional.

In its reasoning, the Constitutional Court stated that where a first-instance court decision—against which cassation is not available—is set aside by the Regional Court of Appeal upon acceptance of an appeal, and a new ruling on the merits is rendered for the first time by that court, the inability to seek cassation review against such a decision would impair the right to request judicial review of a judgment.

The Court further held that, in its current form, the provision is contrary to Articles 13 and 36 of the Constitution of the Republic of Türkiye.

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/05/20260521-9.pdf***

GENERAL COMMUNIQUÉ ON THE TAX PROCEDURE LAW (SERIAL NO. 593) PUBLISHED IN THE OFFICIAL JOURNAL!

The General Communiqué on the Tax Procedure Law (Serial No. 593), drawn up by the Revenue Administration under the Ministry of Treasury and Finance, was published in the Official Journal dated 8 May 2026 and bearing the issue number 33247 and entered into force on the same date.

The Communiqué sets out the procedures and principles for issuing electronic documents via new-generation payment recording devices, with the aim of strengthening the registered economy, expanding the use of electronic document applications, simplifying and streamlining business processes, and integrating mandatory electronic documents in a way that includes payment information, thereby enhancing tax compliance levels.

The Communiqué enables the issuance of electronic documents—including e-Invoices and e-Archive invoices—through New Generation Payment Recording Devices (NGPRDs).

As a result, all invoices and documents can be issued via a single device, without the need for separate hardware or additional software.

Under the new system, manufacturers intending to provide e-document issuance services via New Generation Payment Recording Devices (NGPRDs) are required to apply to the Revenue Administration and comply with the specified technical and security requirements.

The Revenue Administration may set different technical criteria depending on the types of documents to be issued and the taxpayer groups involved.

In addition, it is stipulated that the technical conformity of the devices will be assessed jointly by the Revenue Administration and TÜBİTAK (Scientific and Technological Research Council of Türkiye).

Source: ***https://www.resmigazete.gov.tr/eskiler/2026/05/20260508-13.htm***

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